UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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STATUTES, RULES AND REGULATIONS

Lead plaintiffs Glickenhaus & Company ("Glickenhaus"), PACE Industry Union Management Pension Fund ("PACE") and The International Union of Operating Engineers Local No. 132 Pension Plan ("IUOE Local No. 132") (collectively, "lead plaintiffs" or "plaintiffs"), by their undersigned attorneys, respectfully submit this memorandum of law in support of the accompanying motion for class certification.[1]

I. PRELIMINARY STATEMENT

This is a class action against defendants Household International, Inc. ("Household" or the "Company"),[2] HFC (including all their subsidiaries and affiliates), Arthur Andersen LLP ("Andersen") and the following individual defendants: (i) William Aldinger, Chief Executive Officer and Chairman of the Household Board of Directors and a director of HFC; (ii) David Schoenholz, President, Chief Operating Officer and Vice-Chairman of the Household Board of Directors and a director of HFC; (iii) Gary Gilmer, Vice-Chairman of Consumer Lending and a director of HFC; and (iv) J.A. Vozar, a director of HFC.

Lead plaintiffs seek appointment as the representatives of a plaintiff class certified pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek an order (1) certifying this action (the "Action") as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) on behalf of a Class defined as

> all persons and entities who purchased or otherwise acquired publicly traded securities of Household International, Inc. during the period beginning October 23, 1997 through and including October 11, 2002 (the "Class Period"), including all

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[1] By Order dated December 18, 2002, the Court appointed Glickenhaus Institutional Group comprising of Glickenhaus, PACE and IUOE Local No. 132 as lead plaintiffs in this action on behalf of the class, pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78u-4(a)(3)(B), and approved its selection of counsel pursuant to §21D(a)(3)(B)(v), 15 U.S.C. §78u-4(a)(3)(B)(v).

[2] Unless specified otherwise, Household or the Company includes its subsidiaries, Household Finance Corporation, Inc. ("HFC"), Household Realty Corporation and Beneficial Corporation, subsequent to the latter's merger with Household on June 30, 1998.

> persons or entities who purchased or otherwise acquired debt securities of Household Finance Corporation, a wholly owned subsidiary of Household, pursuant to registration statements which became effective on or after August 19, 1999, or in the secondary market[3]

and (2) certifying plaintiffs as representatives for the Class and their counsel of record, Lerach Coughlin Stoia & Robbins LLP ("Lerach Coughlin"), as Class counsel and Miller Faucher and Cafferty LLP ("Miller Faucher") as liaison counsel.

Plaintiffs, like thousands of other investors, suffered damages caused by a fraudulent scheme carried out by defendants. As alleged in the [Corrected] Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws (the "Complaint"), defendants made materially false representations and omissions in public filings, press releases, analyst reports and other public statements concerning the Company and its operations and financial condition during the Class Period in violation of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC"), and §§11 and 15 of the Securities Act of 1933 ("Securities Act"). Defendants' false representations induced investors to purchase the securities of Household at artificially inflated prices during the Class Period (October 23, 1999 through October 11, 2002).

This motion satisfies the prerequisites for class certification: The proposed Class representatives are willing and able to protect the interests of the Class and will zealously participate in the prosecution of the case. Additionally, common issues predominate in this Action, and the class-action mechanism is superior to any other means of proceeding with this complex litigation.

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[3] Excluded from the Class are: (i) defendants; (ii) members of the family of each individual defendant; (iii) any entity in which any defendant has a controlling interest; (iv) officers and directors of Household or HFC, including their subsidiaries and affiliates; and (v) the legal representatives, heirs, successors, or assigns of any such excluded party.

Courts in this District have routinely certified securities cases for class action treatment. *See, e.g., Tatz v. Nanophase Techs. Corp.*, No. 01 C 8440, 2003 U.S. Dist. LEXIS 9982 (N.D. Ill. July 12, 2003); *In re Anicom Sec. Litig.*, No. 00 C 4391, 2002 U.S. Dist. LEXIS 5575 (N.D. Ill. Mar. 26, 2002); *Sutton v. Bernard,* No. 00 C 6676, 2001 U.S. Dist LEXIS 21300 (N.D. Ill. Dec. 17, 2001); *In re Systems Software Assocs., Inc. Sec. Litig.*, Master File No 97 C 177, 2000 U.S. Dist. LEXIS 18285 (N.D. Ill. Dec. 6, 2000); *Weiner v. Quaker Oats Co.*, No. 98 C 3123, 1999 U.S. Dist. LEXIS 17222 (N.D. Ill. Sept. 28, 1999); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP,* No. 97 C 7694, 1999 U.S. Dist. LEXIS 11351 (N.D. Ill. July 21, 1999); *Miller v. Material Sciences Corp.*, No 97 C 2450, 1999 U.S. Dist. LEXIS 10628 (N.D. Ill. June 25, 1999). This Action is similar to the numerous securities cases that have been certified as class actions in this and in every other federal circuit in the United States.

Accordingly, lead plaintiffs' motion for class certification should be granted.

II. STATEMENT OF FACTS[4]

Defendants' fraudulent scheme to artificially inflate Household's financial and operational results and key financial metrics, as well as understate certain of its expenses and risks associated with investing in the Company, can be traced, at a minimum, to 1997. ¶¶2, 192-196.[5] Defendants' wrongful and fraudulent scheme was accomplished in three ways: (1) predatory and abusive lending practices; (2) arbitrary and improper reaging and restructuring of delinquent loans; and (3) accounting manipulation.

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[4] As a result of its disposition of defendants' motions to dismiss, the Court is familiar with the allegations of the Complaint, which are incorporated herein by reference and will not be repeated at length. This summary is merely intended to place plaintiffs' class certification motion in proper context.

[5] All "¶" references herein are to the Complaint.

A. Household's Illegal and Predatory Lending Practices

Household is a large holding company for numerous wholly owned subsidiaries that provide consumer loans, mortgage services, auto finance and credit insurance products, and credit card services. ¶¶7, 37. Household's customer base is primarily composed of nonconforming, nonprime or subprime customers. ¶¶8, 107. Such customers generally have limited credit histories, modest incomes or high debt-to-income ratios or have experienced credit problems caused by occasional delinquencies, prior charge-offs or other credit-related actions. *Id.*

The Complaint alleges that, throughout the Class Period, defendants engaged in the widespread abuse of Household's customers through a variety of improper and illegal lending practices and techniques designed to maximize amounts loaned to borrowers in the subprime market. ¶¶51-82. Defendants' wrongful scheme allowed them to artificially inflate the Company's financial and operational results and key financial metrics, downplaying the risks associated with investing in the Company, including artificially inflating revenues, net income and earnings per share ("EPS"). ¶¶3, 14, 83, 139-140, 156, 162.

On October 2, 2002, Household was forced to announce in a release that it had entered into a $484 million settlement agreement with a multi-state group of attorney generals and banking regulators to resolve claims related to its illegal, widespread predatory lending practices, resulting in a massive $525 million charge against the Company's earnings. ¶¶5, 97-102.

B. Household's Improper "Reaging" or "Restructuring" of Delinquent Accounts

The Complaint also alleges that, throughout the Class Period, defendants improperly and arbitrarily "reaged" or "restructured" delinquent accounts to conceal Household's true levels of loan defaults and delinquencies. ¶¶107-124. By falsely representing an increased number of "current" accounts, defendants materially understated the Company's true credit quality and overstated EPS during the Class Period. ¶¶2, 4, 14, 24, 109, 120. During the second quarter of 2002, Household for

the first time disclosed its detailed reaging statistics, revealing a massive number of accounts that had been reaged multiple times. ¶123. On March 18, 2003, as a result of an investigation by the SEC into its reaging practices, Household agreed to a consent order with the SEC in which it agreed to cease and desist from further violations of federal securities laws.

By engaging in predatory lending and improper reaging practices, defendants materially misrepresented Household's regularly reported key operational metrics, such as credit loss reserves, delinquencies, net-charge-off, credit quality and asset performance. ¶¶2-5, 7-8, 14, 24, 37, 51-83, 97-102, 107, 109, 120, 123, 139-140.

C. Defendants' Improper Accounting of Costs Associated with Various Credit Card Co-Branding, Affinity and Marketing Agreements

Defendants further improperly accounted for expenses associated with Household's credit card co-branding, affinity and marketing agreements by amortizing the expenses related to these agreements over longer periods of time then allowed under Generally Accepted Accounting Principles ("GAAP"). ¶¶134-155. During the third quarter of 2002, defendants were forced to announce that Household had to take a $600 million (pre-tax) charge against earnings (going as far back as 1994) in a restatement that resulted in lowering earnings by $386 million. ¶¶5, 25, 50, 134-141.

D. Defendant Andersen Actively Participated in the Issuance of Household's False Financial Statements

Defendant Andersen was engaged by Household to provide independent auditing, accounting, management consulting and tax services. ¶46. During the Class Period, Andersen actively participated in the issuance of Household's false financial statements by falsely representing in reports to Household shareholders that Household's financial statements presented fairly, in all material respects, the financial position of Household. ¶¶174, 190, 202, 227, 249, 279, 316, 365.

Household's financial statements were also included in and incorporated by reference into the registration statements for HFC debt securities (as described below). ¶¶3, 46, 135, 172-176.

E. Defendants' Bond Issuances

During the Class Period, Household registered and/or sold more than $75 billion worth of debt securities via its subsidiary, HFC, pursuant to registration statements that included the Company's artificially inflated financial and operational results. ¶¶4, 28, 173, 245, 262, 276, 286, 309-310, 322, 384, 389. Immediately after the public disclosure of the Company's improper activities, Household's credit rating in the debt market was downgraded causing bond investors to suffer massive losses. ¶¶30, 100, 169. During the first week of October 2002, moreover, the price of Household stock dropped as low as $20.00 per share, 70% below its Class Period high of $63.25 at the beginning of the first quarter of 2002. ¶¶6, 29. Defendants' fraudulent scheme resulted in the elimination of well over $25 billion in market capitalization. ¶6.

III. THE PROPOSED CLASS REPRESENTATIVES

A. Glickenhaus & Company

Lead plaintiff Glickenhaus is an SEC-registered investment advisor with hundreds of millions of dollars of assets under management. ¶36(a). Glickenhaus is authorized to commence litigation and pursue claims against defendants. *Id.* Glickenhaus is a member of the New York Stock Exchange, the National Association of Securities Dealers, the Municipal Securities Rulemaking Board and the Securities Investor Protection Corporation. *Id.* Glickenhaus specializes in the management of equity, balanced and fixed-income portfolios. *Id.* During the Class Period, Glickenhaus purchased $100,000 face amount worth of HFC debt securities and 580,190 shares of Household stock, and suffered damages thereby.

B. PACE Industry Union Management Pension Fund

Lead plaintiff PACE is a multi-employer, collectively bargained Taft-Hartley Defined Benefit plan that is jointly administered and overseen by management and union trustees. ¶36(b). Currently, the fund administers over $3.5 billion of pension and retirement benefits for 75,000 plan participants, including paper, pulp and board mills workers and refinery workers from the Oil, Chemical & Atomic Workers Union that merged with the PACE International Union in 2000. *Id.* The PACE International Union has over 250,000 members in the United States and Canada. *Id.* During the Class Period, PACE purchased $3,320,000 face amount worth of HFC debt securities and 278,700 shares of Household stock, and suffered damages thereby.

C. The International Union of Operating Engineers Local No. 132

Lead plaintiff IUOE Local No. 132 is a self-insured, qualified Taft-Hartley Defined Benefit plan that is jointly administered and overseen by management and union trustees. ¶36(c). Currently, the fund administers over $160 million of pension and retirement benefits for over 3,000 plan participants. *Id.* During the Class Period, the IUOE Local No. 132 purchased $935,000 face amount worth of HFC debt securities and 29,300 shares of Household stock, and suffered damages thereby.

IV. THIS ACTION SHOULD BE CERTIFIED AS A CLASS ACTION PURSUANT TO RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE

It is widely recognized that a class action is a particularly appropriate mechanism for individual shareholders to obtain recovery in cases of alleged securities fraud. *See, e.g., Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 809 (1985) (Class actions allow the "plaintiffs to pool claims which would be uneconomical to litigate individually.... [M]ost of the plaintiffs would have no realistic day in court if a class action were not available."); *Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2002 U.S. Dist. LEXIS 16022, at *13 (N.D. Ill. Aug. 26, 2002); *In re Bank One Sec. Litig./First Chicago S'holder Claims*, Case No. 00 CV 0767, 2002 U.S. Dist. LEXIS 8709, at *7

(N.D. Ill. May 7, 2002) ("A class action is often the most fair and practicable means to address claims in securities cases.").

Due to the importance of the class action device in securities suits, "there is a ***strong public policy favoring class certification in securities fraud litigation***." *Weiner*, 1999 U.S. Dist. LEXIS 17222, at *16 (emphasis added). Accordingly, "[i]n a securities fraud action, 'any error, if there is one, should be committed in favor of allowing a class action.'" *In re General Instrument Corp. Sec. Litig.*, Master File No. 96 C 1129, 1999 U.S. Dist. LEXIS 18182, at *14 (N.D. Ill. Nov. 15, 1999) (citation omitted).

The determination of class certification is to be made on the basis of the requirements of Fed. R. Civ. P. 23 as evidenced by the allegations in the Complaint, and is not an inquiry into the merits of the case. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974) (the question of whether a complaint has merit is independent of whether a class should be certified under Rule 23).[6] Resolution of this class certification motion is limited to ascertaining whether the prerequisites of Rules 23(a) and 23(b) are satisfied. *Eisen*, 417 U.S. at 177. Thus, the "[a]llegations made in support of class certification are considered true." *Anicom*, 2002 U.S. Dist. LEXIS 5575, at *4. Moreover, "Rule 23 is a ***remedial rule*** [and courts] should ... construe[] [it] liberally to permit class actions, especially in the context of securities ... suits, where the class action device can prove effective in ***deterring illegal activity***." *Longden v. Sunderman*, 123 F.R.D. 547, 551 (N.D. Tex. 1988) (emphasis added).

Moreover, "a class of plaintiffs who purchased different types of securities may properly be certified with a representative party who purchased only one type of security." *Endo v. Albertine,*

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[6] *See also In re Hartmarx Sec. Litig.*, No. 01 C 7832, 2002 U.S. Dist. LEXIS 18273, at *6 (N.D. Ill. Sept. 18, 2002) ("A court may not consider the merits of a case in making a class certification determination."); *Palmer v. Combined Ins. Co. of Am.*, 217 F.R.D. 430, 436 (N.D. Ill. 2002).

147 F.R.D. 164, 167 (N.D. Ill. 1993) (holding that a class composed of stock and debenture purchasers can be represented by a purchaser of only one type of security because the facts and legal theories asserted by the class to prove any violations will be identical regardless of the type of security at issue). The complex nature of this case – particularly the fact that it contains purchasers or acquirors of various securities – is similar to the class action in *In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, 140 F.R.D. 425 (D. Ariz. 1992) ("*ACC/Lincoln*"). That class action, which followed one of the nation's largest financial frauds, proceeded efficiently and effectively with a single class of investors represented by a sampling of claimants seeking redress from a varied and large number of defendants. The class in *ACC/Lincoln* was defined as "all persons who purchased any and all types of securities of American Continental Corporation." *In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, 49 F.3d 541, 542 (9th Cir. 1995). The class there was represented by plaintiffs who purchased different securities and pursued various remedies under federal and state laws, and the district court certified a class as the superior method to adjudicate that complex litigation. *ACC/Lincoln*, 140 F.R.D. at 431.

This securities action embodies all the hallmarks traditionally considered when certifying a class action. The proposed Class consists of a large group of geographically dispersed purchasers or acquirors of Household securities over a five-year period who have sustained damages as a result of a common set of material facts that were omitted or misrepresented by the defendants. As amply demonstrated by the allegations in the Complaint and the discussion below, class certification is appropriate in this case because the proposed Class satisfies Fed. R. Civ. P. 23(a) and (b)(3).

A. The Proposed Class Satisfies the Requirements for Certification Under Rule 23(a)

Rule 23(a) sets forth four prerequisites to class certification:

(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

These four requirements are commonly referred to as the "numerosity," "commonality," "typicality," and "adequacy of representation" requirements. *See, e.g., Anicom*, 2002 U.S. Dist. LEXIS 5575, at *5. As demonstrated below, the proposed class representatives meet their burden of showing that the prerequisites of Rule 23(a) are satisfied.

1. The Members of the Class Are So Numerous that Joinder of All Members Is Impracticable

Plaintiffs satisfy the requirement of Rule 23(a)(1) because the number and geographic dispersion of prospective Class members is such that it is impractical to join all of the Class members in one lawsuit. *See* Fed. R. Civ. P. 23(a)(1) (numerosity requirement met where joinder of all members of the class is impracticable). Although the Class must be sufficiently numerous to make joinder impracticable, precise enumeration or identification of the members of a class is not necessary for class certification. *See, e.g., Anicom*, 2002 U.S. Dist. LEXIS 5575, at *6 (numerosity finding can be based on "good-faith estimates"); *Peterson v. H & R Block Tax Servs.*, 174 F.R.D. 78, 81 (N.D. Ill. 1997) ("'[T]he court is entitled to make common sense assumptions in order to support a finding of numerosity.'") (quoting *Patrykus v. Gomilla*, 121 F.R.D. 357, 360 (N.D. Ill. 1988)). Indeed, "in securities fraud suits, involving nationally traded securities, numerosity may be assumed." *Systems Software Assocs.*, 2000 U.S. Dist. LEXIS 18285, at **4-5.

In this case, the numerosity requirement is readily satisfied. The Complaint alleges that as of October 11, 2002, Household had over 454 million shares outstanding and sold more than $75 billion worth of debt securities during the Class Period. ¶¶4, 397. While the exact number of Class members cannot be determined until after the completion of discovery, there are in all likelihood

hundreds of thousands, if not more, of members in the proposed Class, and the threshold for a presumption of impracticality of joinder is certainly exceeded. *See, e.g., Riordan v. Smith Barney,* 113 F.R.D. 60 (N.D. Ill. 1986) (class of 29 certified in securities fraud action).

2. There Are Numerous Questions of Law or Fact Common to the Members of the Class

Commonality exists if the Class members share common questions of law or fact. The requirement is usually satisfied when a common nucleus of operative facts unites a class, *Rosario v. Livaditis,* 963 F.2d 1013, 1018 (7th Cir. 1992), *i.e.,* when "defendants have engaged in standardized conduct towards members of the proposed class." *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). The presence of factual variations among the class members does not defeat commonality, so long as there is at least one question of law or fact common to the class. *Rosario,* 963 F.2d at 1017. In *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975), the court held that:

> Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members' positions, and that the issue may profitably be tried in one suit.

Thus, Rule 23(a)(2) is generally considered a "'low hurdle, easily surmounted.'" *Nanophase,* 2003 U.S. Dist. LEXIS 9982, at *16 (quoting *Scholes v. Stone, McGuire & Benjamin,* 143 F.R.D. 181, 185 (N.D. Ill. 1992)).

The commonality requirement under Rule 23(a)(2) is amply satisfied in this action. Plaintiffs, like the other members of the proposed Class, purchased or acquired Household securities at prices that were artificially inflated by defendants' misrepresentations and omissions concerning facts and circumstances that were likely to have a material adverse impact on the Company. As stated in the Complaint, there are at least the following questions of fact and law common to all Class members:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether the registration statements issued by Household during the Class Period contained material misstatements or omitted to state material information;

(c) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, financial and operational results of Household;

(d) whether Andersen's unqualified reports issued on Household's financial statements during the Class Period materially misstated that Andersen's audits were conducted in accordance with Generally Accepted Auditing Standards and/or whether Household's financial statements were presented in accordance with GAAP;

(e) with respect to the claims arising under §10(b) of the Exchange Act, whether defendants acted willfully, knowingly, or recklessly in omitting or misrepresenting material facts;

(f) whether the market price of the Company's securities was artificially inflated during the Class Period due to the material misrepresentations, deceptions or non-disclosures alleged in the Complaint; and

(g) whether the members of the Class have sustained damages, and if so, the proper measure of such damages.

Plaintiffs' claims arise from the same set of facts and are based on common legal theories. Plaintiffs allege an overarching fraudulent scheme and course of business that acted to defraud all of the purchasers and acquirors of Household's equity and debt securities. The existence, nature, significance and uniformity of the fraudulent scheme perpetrated by defendants, as well as the material misrepresentations and omissions in their public statements during the Class Period, are issues common to all Class members.

Securities cases involving a class of purchasers allegedly defrauded over a period of time by misrepresentations similar to those alleged in this case repeatedly have been found to satisfy the common question requirement. *See Green v. Wolf Corp.*, 406 F.2d 291, 300 (2d Cir. 1968); *Walsh v. Northrup-Grumman Corp.*, 162 F.R.D. 440, 444 (E.D.N.Y. 1995); *Genden v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 114 F.R.D. 48, 51 (S.D.N.Y. 1987); *Cromer Fin. Ltd. v. Berger*, 205 F.R.D. 113, 122 (S.D.N.Y. 2001). Here, the lead plaintiffs have far exceeded this standard, which has been characterized as a "low hurdle" that is "easily surmounted." *Scholes*, 143 F.R.D. at 185; *cf. Bank One*, 2002 U.S. Dist. LEXIS 8709, at **11-12 (finding commonality requirement met in a securities fraud case where plaintiffs alleged that defendants made misrepresentations and omissions in the market concerning a publicly traded security). Accordingly, the commonality requirement under Rule 23(a)(2) has been met.

3. Plaintiffs' Claims Are Typical of Those of the Class

The typicality requirement of Rule 23(a)(3) is closely related to the commonality requirement of Rule 23(a)(2). *Ludwig v. Pilkington N. Am. Inc.*, No. 03 c 1086, 2003 U.S. Dist. LEXIS 20240, at *7 (N.D. Ill. Nov. 4, 2003), and as such, finding that commonality exists generally requires in a finding that typicality also exists, *Arenson v. Whitehall Convalescent & Nursing Home, Inc.*, 164 F.R.D. 659, 664 (N.D. Ill. 1996). A plaintiff's claim is typical if it arises from the same event, practice or course of action that gives rise to the claims of other class members and if his or her claims are based on a similar legal theory. *Rosario*, 963 F.2d at 1018; *see also De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232-33 (7th Cir. 1983) (holding that even when factual differences exist, similarity of legal theory satisfies the requirement).

The typicality requirement does not require that each member of a class suffer exactly the same injury as the named class representatives. *Tidwell v. Schweiker*, 677 F.2d 560, 566 (7th Cir. 1982). Typicality may be found even where "[t]here are factual distinctions between the claims of

the named plaintiffs and those of other class members." *De La Fuente*, 713 F.2d at 232. "Instead, we look to the defendant's conduct and the plaintiffs [sic] legal theory to satisfy Rule 23(a)(3)." *Rosario*, 963 F.2d at 1018; *Wagner v. Nutrasweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996) (indicating typicality "should be determined with reference to the [defendants'] actions, not with respect to particularized defenses it might have against certain class members").

Here, plaintiffs' claims are typical of the claims of the Class within the meaning of Rule 23(a)(3) because plaintiffs seek to recover damages caused by the same materially false and misleading statements contained in, or material facts omitted from, documents and statements disseminated by defendants to the investing public generally. Defendants' common scheme and course of conduct, engineered to artificially inflate Household's financial and operational results, and therefore the price of its securities, gives rise to the claims of the Class. Plaintiffs, like all other Class members, suffered losses from their transactions in Household equity and debt securities during the Class Period. Factual differences will not defeat class certification where the various claims arise from the same legal theory. Thus, a difference in the amount of damages, data, size or manner of purchase, the type of purchase and even the specific document influencing the purchase will not render the claim atypical in most securities actions. *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981); *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 208 (S.D.N.Y. 1995).

Moreover, in order to recover, the proposed Class representatives must prove the same wrongful conduct by defendants that will establish the claims asserted by the rest of the Class. Here, lead plaintiffs and the members of the Class seek to recover damages for losses from the same materially false and misleading statements contained in, or material facts omitted from, documents and statements disseminated by defendants to the investing public generally. The impact of defendants' material misrepresentations and omissions affected the market prices of Household

equity and debt securities and thereby affected all members of the Class. The losses of the proposed Class representatives therefore arise out of the same wrongful course of conduct affecting all Class members. Accordingly, plaintiffs' claims are typical of those of the Class.

4. Plaintiffs Will Fairly and Adequately Represent the Interests of the Class

a. The Standard of Adequacy

The fourth requirement for class certification under Rule 23(a) is that the proposed class representatives must be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "In determining adequacy of class representation, the court considers whether (1) any conflicts of interest exist between the named plaintiffs and the class members and (2) whether the named plaintiffs' counsel will adequately protect the interests of the class." *Anicom*, 2002 U.S. Dist. LEXIS 5575, at *8 (citing *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 58 (N.D. Ill. 1996)). Here, the proposed Class representatives and Class counsel more than satisfy the Rule 23 adequacy requirements.

b. The Proposed Class Representatives Will Fairly and Adequately Protect the Interests of the Class

The proposed class representatives satisfy both prongs of the adequacy requirement of Rule 23(a)(4). First, there are no conflicts of interest between plaintiffs and the other members of the Class. As stated above, plaintiffs, like the other Class members, were damaged as a result of defendants' unlawful conduct during the Class Period, and plaintiffs will have to prove the same wrongdoing as the absent Class members in order to establish defendants' liability. The Court may appoint these plaintiffs as the representatives of one Class defined as:

> All persons and entities who purchased or otherwise acquired publicly traded securities of Household International, Inc. during the period beginning October 23, 1997 through and including October 11, 2002 (the "Class Period"), including all persons or entities who purchased or otherwise acquired debt securities of Household Finance Corporation, a wholly owned subsidiary of Household, pursuant to

registration statements which became effective on or after August 19, 1999, or in the secondary market.

Each of the securities was affected by the fraudulent scheme pursued by defendants and the false and misleading statements made by them during the Class Period, which artificially inflated the price of all of Household's publicly traded securities. Thus far, lead plaintiffs have vigorously prosecuted the claims brought in this action on behalf of themselves and the Class, conducting an extensive investigation into defendants' fraudulent scheme and sheparding the Complaint past defendants' motion to dismiss. No Class members have been or will be disadvantaged by plaintiffs' representation of the Action.

Second, plaintiffs have retained attorneys with considerable experience in securities fraud class actions and complex litigation. The proposed class representatives are represented by Lerach Coughlin, whose lawyers have been appointed class counsel in hundreds of securities class actions.[7] The resume of lead counsel evidences its ability to vigorously prosecute this action with the proposed class representatives. *See* Ex. B attached hereto. Liaison counsel Miller Faucher is also qualified and experienced in the prosecution of securities class actions. *See* Ex. C attached hereto. There can be no legitimate dispute that lead counsel is qualified, experienced and capable of prosecuting this litigation on behalf of the Class.

Given the lack of conflict and their retention of competent counsel, plaintiffs are adequate Class representatives.

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[7] This Court, by Order dated December 18, 2002, approved lead plaintiffs' selection of Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") as lead counsel. On May 1, 2004, the west coast operations of Milberg Weiss became Lerach Coughlin. The Court was apprised of this change on May 7, 2004. *See* Exhibit ("Ex.") A attached hereto. Each of the proposed Class representatives has been informed of the formation of Lerach Coughlin, and has consented to their continued representation by the Lerach Coughlin attorneys who have been actively litigating this case since its inception.

B. The Requirements of Rule 23(b) Are Satisfied

In addition to meeting the requirements of Rule 23(a), an action must also satisfy at least one of the three conditions of Rule 23(b). Here, plaintiffs move for class certification under Rule 23(b)(3), which authorizes certification where (1) "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and (2) "a class action is superior to other available methods for the fair and efficient adjudication of this controversy." Fed. R. Civ. P. 23(b)(3). This action easily meets both standards under Rule 23(b)(3).

1. Common Questions of Law or Fact Common to the Class Predominate Over Individual Issues

To ensure that a class action is a more efficient means of adjudicating the controversy than individual actions, Rule 23(b)(3) requires that common issues predominate over issues that are particular to individual class members. The United States Supreme Court has stated that "[p]redominance is a test readily met in certain cases alleging consumer or ***securities fraud*** or violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 625 (1997) (emphasis added). Moreover, "'[w]hile common questions of law or fact must predominate, they need not be exclusive.'" *Van Kampen Funds*, 2002 U.S. Dist. LEXIS 16022, at *11 (citing *Scholes v. Moore*, 150 F.R.D. 133, 138 (N.D. Ill. 1993)). As with the commonality requirement under Rule 23(a), to determine whether common questions predominate, courts look to whether there is a "'common nucleus of operative facts.'" *Bank One*, 2002 U.S. Dist. LEXIS 8709, at *22 (quoting *Ziemack v. Centel Corp.*, 163 F.R.D. 530, 535 (N.D. Ill. 1995)). The court's inquiry in this regard is directed toward the issue of liability, rather than damages. *Beale v. Edgemark Fin. Corp.*, 164 F.R.D. 649, 658 (N.D. Ill. 1995).

In this case, defendants' liability arises from the dissemination of materially false and misleading statements and omissions contained in the financial reports, press releases, registration statements and other statements issued by defendants throughout the Class Period. Whether these

statements were materially misleading and, with respect to the §10(b) claims, whether defendants knew or recklessly disregarded this fact or otherwise acted in bad faith are the central issues in this case, and these issues predominate over any individual issues that theoretically might exist. *See Bank One*, 2002 U.S. Dist. LEXIS 8709, at *22 ("The issues of law and fact that flow from defendants' alleged misstatements and omissions predominate over any individual issue."). If plaintiffs and each of the Class members were to bring individual actions, they each would be required to prove the same wrongdoing by defendants in order to establish liability.

Moreover, there are few individual issues likely to be raised in the litigation of this class action. Indeed, the only possible individual issues are reliance and damages, which courts have uniformly held may not defeat class certification. *See Beale,* 164 F.R.D. at 658 ("The only individual issues involve questions of damages ... [which have] not been held to bar a class action."). Furthermore, the element of reliance poses no obstacle to class certification. The claims asserted under §11 of the Securities Act do not require reliance. *Wielgos v. Commonwealth Edison Co.*, 688 F. Supp. 331, 339 n.24 (N.D. Ill. 1988). Moreover, the claims asserted under §10(b) and Rule 10b-5 rely on the fraud-on-the-market theory, where reliance is presumed, and plaintiffs are not required to prove awareness of any particular misstatement. *Basic, Inc. v. Levinson,* 485 U.S. 224, 247 (1988).

Defendants' course of conduct was designed to have, and indeed did have, an effect on the market. There can be no question here that common questions of law or fact predominate.

2. A Class Action Is Superior to Other Available Means of Adjudication

A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Rule 23(b) sets forth the following factors to be considered in making a "superiority" determination:

> (A) the interest of members of the class in individually controlling the prosecution ... of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by ... members of the class;
(C) the desirability ... of concentrating the litigation of the claims in the particular forum; and
(D) the difficulties likely to be entered in the management of a class action.

Fed. R. Civ. P. 23(b)(3).

Securities actions, such as this one, easily satisfy the superiority requirement of Rule 23 because (i) absent a class action, the Court faces potentially hundreds of individual lawsuits, all of which would arise out of the same set of operative facts alleged in the Complaint, (ii) the resolution of common issues alleged in one class action will produce an efficient use of judicial resources and result in a single outcome that is binding on all Class members, (iii) any administrative difficulties in handling potential individual issues that may arise in this litigation are less burdensome than the problems which are likely to arise in administering hundreds of separate actions, and (iv) because of the prohibitive expenses of maintaining individual actions, denial of class certification here would effectively prevent numerous individuals from asserting their claims against defendants and severely weaken the protections provided to investors under the federal securities laws.

As a result, a class action is not only the superior, but perhaps the only feasible way to litigate the claims alleged in this Action. *See, e.g., Shutts*, 472 U.S. at 809 (class action plaintiffs pool claims that would otherwise be uneconomical to litigate individually). In addition, no serious difficulties are likely to be encountered in the management of this case as a class action – "Rule 23 was designed for this exact type of case." *See Bank One*, 2002 U.S. Dist. LEXIS 8709, at *24.

The violations of the federal securities laws by defendants caused economic injury to large numbers of geographically dispersed investors, making the cost of pursuing individual claims against well-financed adversaries, such as Household, plainly impracticable. The litigation of this controversy as a class action will adequately protect the interests of the Class members. In contrast,

the "alternative" to a class action – thousands of separate individual actions – offers no practical recourse for most Class members, and would indisputably burden the judicial system.

Accordingly, for the reasons discussed above, this Action is appropriate for class certification, embodying, as it does, all the hallmarks, both in form and in substance, of securities class actions traditionally certified in this District and elsewhere. Plaintiffs, represented by three institutional investor plaintiffs, will protect the interests of all persons who purchase Household equity and debt securities during the Class Period and who incurred damages because material facts were omitted or misrepresented by defendants.

V. CONCLUSION

For the reasons set forth herein, an Order should be entered (i) allowing this Action to be maintained as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, (ii) certifying the Action as a class action on behalf of

> all persons and entities who purchased or otherwise acquired publicly traded securities of Household International, Inc. during the period beginning October 23, 1997 through and including October 11, 2002 (the "Class Period"), including all persons or entities who purchased or otherwise acquired debt securities of Household Finance Corporation, a wholly owned subsidiary of Household, pursuant to registration statements which became effective on or after August 19, 1999, or in the secondary market

and (iii) certifying lead plaintiffs as the representatives for the Class; and their counsel of record Lerach Coughlin as Class counsel and Miller Faucher as liaison counsel.

Respectfully submitted,

DATED: June 30, 2004

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