

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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THE CITY OF FARMINGTON  
HILLS EMPLOYEES  
RETIREMENT SYSTEM,  
Individually and on Behalf of All  
Others Similarly Situated,  
  
Plaintiff,

Court File No. 0:10-cv-04372-DWF-JJG

**DEFENDANT WELLS FARGO  
BANK, N.A.'S FIRST MOTION TO  
COMPEL DISCOVERY FROM  
PLAINTIFF**

vs.

WELLS FARGO BANK, N.A.,  
  
Defendant.

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Wells Fargo Bank, N.A. (“Wells Fargo”), by and through its undersigned counsel, respectfully moves this Court pursuant to Rules 26(b), 33, 34, and 37(a) of the Federal Rules of Civil Procedure to compel Plaintiff The City of Farmington Hills Employees Retirement System (“CFHERS”) to produce all documents responsive to Wells Fargo’s Document Request Nos. 3, 4, 6, 12, 14, 16, and 19 and fully answer Wells Fargo’s Interrogatories Nos. 1 and 2. Wells Fargo also moves for an Order requiring CFHERS to provide pages 121, 125, 135 and 142 of document WFSL\_PL\_000120-44 to Wells Fargo in the form as originally produced so that Wells Fargo can present a motion to contest certain redactions on those pages.<sup>1</sup>

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<sup>1</sup> In addition, Wells Fargo identified two documents produced by CFHERS that contain redactions which CFHERS did not log. CFHERS, however, has confirmed that those two documents were inadvertently omitted from its log and that CFHERS will provide Wells Fargo with a supplement to its log reflecting the redactions in those documents.

Pursuant to District of Minnesota Local Rule 37.1, Wells Fargo certifies that the parties have met and conferred but have been unable to resolve their disputes without intervention of the Court.

This Motion is based upon the accompanying Memorandum of Law, Affidavit of Rory D. Zamansky and its exhibits as well as the Affidavit of James S. Reece and its exhibit. Wells Fargo also submits a Proposed Order for the Court's consideration

Pursuant to Local Rule 37.2, each discovery request at issue in Wells Fargo's Motion to Compel, along with CFHERS's response and Wells Fargo's concise statement of why CFHERS's response is improper, are as follows:

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify each representation allegedly made by Wells Fargo to CFHERS that is the basis for any claim asserted by CFHERS in this lawsuit. For each such representation, state: (a) the date and time it was made; (b) the form of the communication, e.g., in person, by telephone, in writing; (c) by whom it was made; (d) to whom it was made; (e) the content of the representation.

**CFHERS'S RESPONSE:** Plaintiff objects to the extent that this interrogatory requests information that is within Defendant's possession, custody or control. Subject to and without waiving the foregoing general objections, and the right to supplement this Response and/or to present at trial information uncovered as discovery and investigation continues, Plaintiff responds by referring Defendant to the following documents:

- 1.) Securities Lending Agreement. Signed June 26, 2006. Bates Nos. WFSL\_PL\_000003-000007.

- 2.) Subscription Agreement. Wells Fargo Enhanced Yield Fund, Wells Fargo Trust for Securities Lending, Enhanced Yield Series. Signed June 26, 2006. Bates Nos. WFSL\_PL\_000008-00012.
- 3.) Subscription Agreement: Collateral Investment for Term Loans Trust - A Separate Series of the Wells Fargo Trust for Securities Lending. Signed June 26, 2006. Bates Nos. WFSL\_PL\_000014-000018.
- 4.) Collateral Guidelines for Securities Lending. Dated August 2008. Bates Nos. WFSL\_PL\_000019-000022.
- 5.) Securities Lending Services Agreement: Client Addendum. Dated February 2005. Bates Nos. WFSL\_PL\_000230-000287.
- 6.) Lehman Buy-In Information, Dated January 15, 2009. Bates Nos. WFSL\_PL\_000001- 000002, 000451-000452, 000653-000654.
- 7.) Disaggregation Accounting Q&A: November 2008. Dated November 2008. Bates Nos. WFSL\_PL\_000023-000024, 000460-000461.
- 8.) Letter from Robert G. Smith. Dated December 18, 2008. Bates Nos. WFSL\_PL\_000025-000026, 000455-000456, 000519-000520.
- 9.) Letter from Robert G. Smith. Dated April 17, 2009. Bates No. WFSL\_PL\_000045, 000439.
- 10.) Letter from Robert G. Smith. Dated April 30, 2009. Bates Nos. WFSL\_PL\_000049-000050, 000626-0000627.
- 11.) Letter from Robert G. Smith. Dated May 20, 2009. Bates Nos. WFSL\_PL\_000055-000056, 000435-000436, 000437.

- 12.) Email from Tony Laubach. Dated April 23, 2009. Bates No. WFSL\_PL\_000438.
- 13.) Letter from Robert G. Smith. Dated February 4, 2008. Bates Nos.  
WFSL\_PL\_000061-000062.
- 14.) Letter from Robert G. Smith. Dated January 15, 2009. Bates Nos.  
WFSL\_PL\_000063-000064, 000449-000450, 000657-000658.
- 15.) Notice from Wells Fargo Securities Lending. Dated September 19, 2008.  
Bates Nos. WFSL\_PL\_000114-000115, 000464-000465, 000557-000558.
- 16.) Letter from Robert G. Smith. Dated November 18, 2008. Bates No.  
WFSL\_PL\_000116, 000459, 000540.
- 17.) Letter from Robert G. Smith. April 16, 2010. Bates Nos. WFLS\_PL\_000400-  
000401.
- 18.) Letter from Robert G. Smith. March 15, 2010. Bates Nos. WFLS\_PL\_000402-  
000403.
- 19.) Letter from Robert G. Smith. February 19, 2010. Bates No. WFLS\_PL\_000404.
- 20.) Letter from Robert G. Smith. February 2, 2010. Bates No. WFLS\_PL\_000405.
- 21.) Letter from Robert G. Smith. January 20, 2010. Bates Nos. WFLS\_PL\_000406-  
000407.
- 22.) Letter from Robert G. Smith. December 18, 2010. Bates Nos. WFLS\_PL\_000408  
-000409.
- 23.) Letter from Robert G. Smith. Dated November 18, 2009. Bates Nos. WFLS\_PL\_  
000411-000412.

- 24.) Letter from Robert G. Smith. Dated November 17, 2009. Bates No. WFLS\_PL\_000413.
- 25.) Letter from Robert G. Smith. Dated October 19, 2009. Bates Nos. WFLS\_PL\_000400-000401.
- 26.) Letter from Robert G. Smith. Dated October 5, 2009. Bates No. WFLS\_PL\_000417.
- 27.) Letter from Robert G. Smith. Dated September 21, 2009. Bates Nos. WFLS\_PL\_000418-000419.
- 28.) Letter from Robert G. Smith. Dated September 21, 2009. Bates No. WFLS\_PL\_000420.
- 29.) Letter from Robert G. Smith with attachments. Dated August 24, 2009. Bates Nos. WFLS\_PL\_000421-000428.
- 30.) Wells Fargo Securities Lending Program Collateral Investment Update Notice. Dated March 6, 2009. Bates No. WFSL-PL-000441.
- 31.) Letter from Robert G. Smith. Dated October 16, 2008. Bates Nos. WFLS\_PL\_000462-000463.
- 32.) Letter from Robert G. Smith. Dated September 18, 2008. Bates No. WFLS\_PL\_000474.
- 33.) Q&A Regarding the Restructured Cheyne Security. Dated September 18, 2008. Bates Nos. WFSL\_PL\_000475-000477.
- 34.) Wells Fargo Trust for Securities Lending Fact Sheet: Enhanced Yield Business Trust. Bates No. WFSL\_PL\_000478.

- 35.) Wells Fargo Trust for Securities Lending Fact Sheet: Collateral Investment for Term Loans Trust. Bates No. WFSL\_PL\_000479.
- 36.) Client Distribution in Kind Q&A. Dated September 24, 2008. Bates Nos. WFSL\_PL\_000471-000473, 000559-000561, 000738-000740.
- 37.) Securities Lending Borrower Default Q&A. Dated September 24, 2008. Bates Nos. WFSL\_PL\_000469-000470, 000570-000571, 000736-000737.
- 38.) Securities Lending Lehman Brothers Q&A. Dated September 24, 2008. Bates Nos. WFSL\_PL\_000467-000468, 000575-000576, 000743-000744.
- 39.) Letter from Robert G. Smith. Dated September 16, 2008. Bates No. WFSL\_PL\_000480.
- 40.) Letter from Robert G. Smith. Dated May 1, 2008. Bates No. WFSL\_PL\_000481.
- 41.) Letter from Robert G. Smith. Dated May 15, 2008. Bates Nos. WFSL-PL-000482-000483.
- 42.) Letter from Robert G. Smith. Dated April 18, 2008. Bates Nos. WFSL\_PL\_000484-000486.
- 43.) Letter from Robert G. Smith with attachments. Dated September 17, 2007. Bates Nos. WFSL\_PL\_000488-000491.
- 44.) Letter from Robert G. Smith with attachments. Dated June 14, 2007. Bates Nos. WFSL\_PL\_000492-000493.
- 45.) Letter from Robert G. Smith with attachments. Dated March 14, 2007. Bates Nos. WFSL\_PL\_000494-000495.

- 46.) Letter from Robert G. Smith with attachments. Dated March 14, 2007. Bates Nos. WFSL\_PL\_000496-000501.
- 47.) Email from Tony Laubach. Dated July 20, 2006. Bates No. WFSL\_PL\_000502.
- 48.) Securities Lending Q&A. Bates Nos. WFSL\_PL\_000503-000506.
- 49.) Letter from Robert G. Smith. Dated October 16, 2006. Bates Nos. WFSL\_PL\_000507-000508.
- 50.) Wells Fargo Trust for Securities Lending Fact Sheet: Enhanced Yield Business Trust. Bates No. WFSL\_PL\_000509.
- 51.) Letter from Robert G. Smith. Dated August 25, 2009. Bates Nos. WFSL\_PL\_000581-000582.
- 52.) Questions and Answers: Information for Victoria Finance Holders. Dated August 25, 2009. Bates Nos. WFSL\_PL\_000583-000584, 000749-000750.
- 53.) Letter from Robert G. Smith. Dated August 21, 2009. Bates No. WFSL\_PL\_000429, 000586, 000751.
- 54.) Letter from Robert G. Smith. Dated July 21, 2009. Bates Nos. WFSL\_PL\_000430-000431, 000608-000609, 000664-000665.
- 55.) Letter from Robert G. Smith. Dated June 22, 2009. Bates No. WFSL\_PL\_000432.
- 56.) Letter from Robert G. Smith. Dated June 18, 2009. Bates Nos. WFSL\_PL\_000433-000434.
- 57.) Year End Accounting and Tax Information - Wells Fargo Securities Lending. Bates No. WFSL\_PL\_000443, 000647, 000745.

- 58.) Letter from Robert G. Smith. Dated April 20, 2009. Bates Nos.  
WFSL\_PL\_000632-0000633, 000741-0000742.
- 59.) Wells Fargo Securities Lending Program Update. Dated March 24, 2009. Bates  
No. WFSL\_PL\_000639.
- 60.) Wells Fargo Securities Lending Program Update. Dated March 24, 2009. Bates  
No. WFSL\_PL\_000639.
- 61.) Letter from Robert G. Smith. Dated August 25, 2009. Bates Nos.  
WFSL\_PL\_000662-000663.
- 62.) Information for Victoria Finance Holders. Dated December 18, 2008. Bates Nos.  
WFSL\_PL\_000456-000458, 000746-000748.

**WELLS FARGO’S RECITATION WHY CFHERS’S RESPONSE IS IMPROPER:**

CFHERS’s listing does not identify any “representation” in the designated documents that is the basis for its claims or other information requested in Interrogatory No. 1, as required by Federal Rule of Civil Procedure (“Rule”) 33(d).

**INTERROGATORY NO. 2:** Identify each security purchased with collateral cash in the Securities Lending Program that you contend the purchase and/or holding of which violated any alleged duties owed by Wells Fargo.

**CFHERS’S RESPONSE:** Plaintiff objects to this interrogatory as premature at this stage of the litigation. Subject to and without waiving the foregoing objection, and the right to supplement this Response and/or to present at trial information uncovered as discovery and investigation continues, Plaintiff responds individually as follows:

1. Cheyne Finance SIV;



2. Stanfield Victoria SIV;
3. Corporate Bonds issued by Bear Stearns;
4. Corporate Bonds issued by Lehman Brothers;
5. Corporate Bonds issued by Merrill Lynch;
6. Corporate Bonds issued by Morgan Stanley;
7. Corporate Bonds issued by SLM Corporation;
8. Others yet to be identified Corporate Bonds, Mortgage Backed Securities, Asset Backed Securities, and Structured Investment Vehicles.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

Wells Fargo objects to this response because CFHERS has not identified any specific security, the date of purchase, or any other information beyond the general identification of issuers of securities. CFHERS has failed to supplement its response or otherwise more specifically identify what "Corporate Bonds, Mortgage Backed Securities, Asset Backed Securities, and Structured Investment Vehicles" it alleges were improper.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 3:** All account statements, confirmations, account forms, account agreements, correspondence, reports or other documents, howsoever designated, for all of CFHERS's investment accounts of any kind in which securities lending have been held including, without limitation, brokerage accounts, custodial accounts, securities lending accounts, or internal accounts or portfolios.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is vague, overbroad and imposes an undue burden. Plaintiff further objects to the extent

that the request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Plaintiff also objects to the extent that this request calls for the production of documents that are either within Defendant's possession, custody or control. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

CFHERS contends that Wells Fargo, as Trustee for the Wells Fargo Trust for Securities Lending (the "Business Trust") purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities, including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 4:** All documents relating to CFHERS's investments, investment accounts, or investment portfolios.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is vague, overbroad and imposes an undue burden. Plaintiff further objects to the extent that the request calls for documents neither relevant to any party's claims or defenses nor

reasonably calculated to lead to the production of admissible evidence. Plaintiff also objects to the extent that this request calls for the production of documents that are either within Defendant's possession, custody or control. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 6:** All documents relating to investment advice, recommendations or counseling (whether internal or external).

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is vague, overbroad and imposes an undue burden. Plaintiff further objects to the extent that the request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Plaintiff also objects on the grounds that it calls for documents protected from disclosure by the

attorney-client privilege and/or work product doctrine. Plaintiff further objects to the extent that this request calls for the production of documents that are either within Defendant's possession, custody or control. Moreover, Plaintiff objects to the extent that the request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 12:** All documents relating to communications between CFHERS and any other person concerning SIVs, fixed income investments, corporate bonds, asset-backed securities, mortgage-backed securities or any other securities, however designated.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is vague, overbroad, imposes an undue burden, and calls for documents protected from disclosure by the attorney-client privilege and/or work product doctrine. Plaintiff also objects to the extent that this request calls for the production of documents that are either within Defendant's possession, custody or control. Plaintiff further objects to the extent that this request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 14:** All documents relating to SIVs, corporate bonds, asset-backed securities, mortgage-backed securities or any other securities which CFHERS

asserts were of a type which should not have been purchased and/or held by the Securities Lending Program.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is overly vague, overbroad and imposes an undue burden, and calls for documents protected from disclosure by the attorney-client privilege and/or work product doctrine. Plaintiff also objects to the extent that this request calls for the production of documents that are within Defendant's possession, custody or control. Plaintiff further objects to the extent that this request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:** CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 16:** All internal and external audits of CFHERS's financial statements, accounts, investments, investment accounts, assets or portfolios, including without limitation, communications with auditors about SIVs, fixed-income securities, asset-backed securities, mortgage-backed securities, commercial paper or any other security which was of a type which CFHERS asserts should not have been purchased by the Securities Lending Program.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is overly vague, overbroad and imposes an undue burden. Plaintiff also objects to the extent that this request calls for the production of documents that are either within Defendant's possession, custody or control. Plaintiff further objects to the extent that this request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:**

CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of

specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.

**REQUEST NO. 19:** All CFHERS's Board of Directors or Board subcommittee agendas, meeting minutes, notes, memoranda or other documents which include references of any nature relating to securities held by CFHERS and/or the Securities Lending Program.

**CFHERS'S RESPONSE:** Plaintiff objects to this request on the grounds that it is overly vague, overbroad and imposes an undue burden. Plaintiff further objects to the extent that this request calls for documents neither relevant to any party's claims or defenses nor reasonably calculated to lead to the production of admissible evidence. Subject to the objections asserted herein, Plaintiff will provide all non-privileged, relevant and responsive documents relating to Plaintiff's involvement in the Wells Fargo Securities Lending Program. Plaintiff reserves the right to supplement this response after the completion of additional discovery.

**WELLS FARGO'S RECITATION WHY CFHERS'S RESPONSE IS IMPROPER:** CFHERS contends that Wells Fargo, as Trustee for the Business Trust, purchased unsuitable, risky and illiquid securities. CFHERS also claims that Wells Fargo did not adequately monitor these securities and that Wells Fargo, as trustee of the Business Trust, should have sold them at varying times because of market developments. These claims necessarily put at issue CFHERS's investment knowledge, including knowledge of specific investments and market information it had regarding securities including the types that it claims were unsuitable, risky and illiquid in this lawsuit.



\* \* \* \* \*

As set forth in the accompanying Memorandum of Law in Support of Wells Fargo's First Motion to Compel Discovery from Plaintiff, Wells Fargo respectfully requests that this Court issue an Order requiring CFHERS:

1. To produce all documents responsive to Wells Fargo's Request for Production Nos. 3, 4, 6, 12, 14, 16 and 19 and fully answer Wells Fargo's Interrogatories Nos. 1 and 2; and

2. To produce pages 121, 125, 135 and 142 of document WFSL\_PL\_000120-44 to Wells Fargo in the form as originally produced so that Wells Fargo can present a motion to contest certain redactions on those pages.

Dated: February 8, 2011

Zelle Hofmann Voelbel & Mason LLP

By: s/ Rory D. Zamansky  
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