

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95988 / October 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-15635

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In the Matter of	:	
	:	
Fifth Third Bancorp and Daniel	:	ORDER APPROVING
Poston,	:	PLAN OF DISTRIBUTION
	:	
Respondents.	:	
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On December 4, 2013, the Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders and Penalties (the “Order”)¹ against Fifth Third Bancorp and Daniel Poston (collectively, the “Respondents”). In the Order, the Commission found that Fifth Third failed to properly account for a portion of its commercial real estate loan portfolio. In the third quarter of 2008, Fifth Third decided to sell large pools of non-performing commercial loans. U.S. accounting rules required the company to reclassify them from “held for investment” to “held for sale,” and to carry them at fair value. Instead, Fifth Third continued to classify the loans as “held for investment,” which incorrectly suggested that the company had not made the decision to sell the loans. Because the fair values of these loans were significantly below Fifth Third’s carrying values, classifying them as held for sale would have resulted in a \$169 million impairment, and increased Fifth Third’s pretax loss in the third quarter of 2008 by 132 percent. In addition, according to the Order, Daniel Poston was familiar with the company’s loan sale efforts and understood the relevant accounting rules. Nevertheless, he failed to direct that Fifth Third classify the loans as required. Poston also made misrepresentations in a management letter to Fifth Third’s auditors that, in light of the company’s loan sale activities, were not true. Fifth Third’s and Poston’s accounting violations operated to deceive investors during a time of significant upheaval and financial distress for the company. In total, the Commission ordered the Respondents to pay \$6,600,000.00 in civil money penalties to the Commission.

On July 28, 2021, the Commission issued an order² that created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid can be distributed to harmed investors (the “Fair Fund”).

¹ Securities Act Rel. No. 9490 (Dec. 4, 2013).

² Order Establishing a Fair Fund, Exchange Act Rel. No. 92511 (July 28, 2021).

The Fair Fund includes the \$6,600,000.00 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund has been deposited in an interest-bearing account at the U.S. Department of the Treasury's Bureau of the Fiscal Service, and any interest accrued will be added to the Fair Fund.

On August 4, 2022, the Division of Enforcement, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice"),³ pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules");⁴ and simultaneously posted the Proposed Plan of Distribution (the "Proposed Plan"). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission's public website or by submitting a written request to Allison Moon, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period.

The Proposed Plan provides for the distribution of the Net Available Fair Fund⁵ to investors who were harmed by the Respondents' failure to properly account for a portion of its commercial real estate loan portfolio.

The Division of Enforcement now requests that the Commission approve the Proposed Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁶ that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission's website at www.sec.gov.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁷

Vanessa A. Countryman
Secretary

³ Exchange Act Rel. No. 95418 (Aug. 4, 2022).

⁴ 17 C.F.R. § 201.1103.

⁵ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

⁶ 17 C.F.R. § 201.1104.

⁷ 17 C.F.R. § 200.30-4(a)(21)(iv).