

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92511/ July 28, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-15635

In the Matter of	:	
	:	
	:	
FIFTH THIRD BANCORP	:	ORDER ESTABLISHING A
and DANIEL POSTON	:	FAIR FUND
	:	
Respondents.	:	

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 (“Order”)¹ against Fifth Third Bancorp (“Fifth Third”) and Daniel Poston (“Poston”) (collectively, the “Respondents”). According to the Order, Fifth Third failed to record substantial losses during the 2008 financial crisis by not properly accounting 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 the loans from “held for investment” to “held for sale” and to carry them at fair value. Because the fair value of these loans were significantly below Fifth Third’s carrying value, classifying them as held for sale would have resulted in a \$169 million impairment and increased the company’s pretax loss in the third quarter of 2008 by 132 percent. 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. In addition, according to the Order, 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 representations 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.

The Order found that Fifth Third and Poston violated the antifraud, books and records, and internal accounting controls provisions of the securities laws. The Commission ordered the Respondents to pay a total of \$6,600,000 in civil penalties to the Commission. The Commission further ordered the funds paid pursuant to the Order be held pending a decision whether the Commission, in its discretion, would seek to distribute the funds or transfer them to the general fund of the United States Treasury.

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

The Respondents paid \$6,600,000 in civil penalties as ordered by the Commission.

The Division of Enforcement (the "Division") has concluded that a distribution is feasible and appropriate.

The Division now recommends that a Fair Fund be established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so that the civil penalties paid can be distributed to investor victims.

Accordingly, IT IS HEREBY ORDERED, that pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is established, so the civil penalties paid by the Respondents can be distributed to investor victims.

By the Commission.

Vanessa A. Countryman
Secretary