

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101618 / November 13, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-15635

In the Matter of	:	ORDER APPROVING APPLICATION OF
	:	FUND ADMINISTRATOR FOR
Fifth Third Bancorp and Daniel	:	PAYMENT OF FEES AND EXPENSES
Poston,	:	AND AUTHORIZING THE APPROVAL
	:	AND PAYMENT OF FEES AND
Respondents.	:	EXPENSES OF ADMINISTRATION

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 during the 2008 financial crisis. In the third quarter of 2008, Fifth Third decided to sell large pools of nonperforming 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 1 Securities Act Rel. No. 9490 (Dec. 4, 2013). 2 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.

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

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 collected can be distributed to harmed investors (the “Fair Fund”).

The Fair Fund consists of the \$6,600,000.00 collected from the Respondents. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any accrued interest will be added to the Fair Fund.

On December 29, 2021, the Division of Enforcement, pursuant to delegated authority, issued an order appointing Guidehouse Inc., Baker & Hostetler LLP, and Pace Claim Services LLC (“GBP”) as the fund administrator of the Fair Fund and set the administrator’s bond amount.³

In accordance with Rule 1105(d) of the Commission’s Rules,⁴ the Fund Administrator has submitted to the Commission staff two invoices for services rendered from December 29, 2021, through June 30, 2024, totaling \$189,995.67. The Commission staff has reviewed the Fund Administrator’s invoices, confirmed that the services have been provided, and finds the fees and expenses of \$189,995.67 to be reasonable. The Commission staff has requested that the Commission authorize the Office of Financial Management (“OFM”) to pay the Fund Administrator’s fees and expenses of \$189,995.67 from the Fair Fund in accordance with Rule 1105(e) of the Commission’s Rules.⁵

Additionally, to expedite and streamline the process for future payments, the Commission staff has requested that the Commission authorize OFM, at the direction of an Assistant Director of the Office of Distributions, to pay the Fund Administrator’s fees and expenses from the Fair Fund so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of an approved cost proposal submitted by the Fund Administrator.

Accordingly, it is hereby ORDERED, pursuant to Rule 1105(d) of the Commission’s Rules,⁶ that OFM pay the Fund Administrator’s fees and expenses of \$189,995.67 from the Fair Fund in accordance with Rule 1105(e) of the Commission’s Rules.⁷ Further, OFM is authorized to pay, at the direction of an Assistant Director of the Office of Distributions, any fees and expenses of the Fund Administrator from the Fair Fund in accordance with Rule 1105(e) of the

² Exchange Act Rel. No. 92511 (July 28, 2021).

³ Order Appointing Fund Administrator and Setting the Administrator’s Bond Amount, Exchange Act Rel. No. 93875 (Dec. 29, 2021).

⁴ 17 C.F.R. § 201.1105(d).

⁵ 17 C.F.R. § 201.1105(e).

⁶ 17 C.F.R. § 201.1105(d).

⁷ 17 C.F.R. § 201.1105(e).

Commission's Rules,⁸ so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of an approved cost proposal submitted by the Fund Administrator.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁹

Vanessa A. Countryman
Secretary

⁸ 17 C.F.R. § 201.1105(e).

⁹ 17 C.F.R. § 200.30-4(a)(21)(vi).