

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97937 / July 18, 2023**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6350 / July 18, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21531**

**In the Matter of**

**FIFTH THIRD SECURITIES, INC.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND  
CEASE-AND-DESIST  
PROCEEDINGS, PURSUANT  
TO SECTIONS 15(b), 15B(c)  
AND 21C OF THE  
SECURITIES EXCHANGE  
ACT OF 1934 AND SECTION  
203(e) OF THE  
INVESTMENT ADVISERS  
ACT OF 1940, MAKING  
FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (the “Advisers Act”), against Fifth Third Securities, Inc. (“Fifth Third” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b), 15B(c) and 21C of

the Securities Exchange Act of 1934 and Section 203(e) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and the Offer, the Commission finds<sup>1</sup> that:

#### Summary

These proceedings involve Fifth Third’s failure to comply with Exchange Act Rule 15c2-12 (“Rule 15c2-12” or the “Rule”) when participating as an underwriter in certain primary offerings of municipal securities. The Rule generally requires underwriters, in primary offerings of \$1 million or more, to obtain disclosure documents from issuers and to reasonably determine that the issuer of the municipal securities or an obligated person has undertaken to provide certain information pertaining to the offered securities on a continuing basis to the Municipal Securities Rulemaking Board (“MSRB”). This undertaking is commonly referred to as a “continuing disclosure undertaking” or a “continuing disclosure agreement.” Continuing disclosures enable investors in municipal securities in the secondary market to make informed investment decisions and to protect themselves from misrepresentations or other fraudulent activities by brokers, dealers and municipal securities dealers.

Rule 15c2-12 includes an exemption for limited offerings of municipal securities placed with a small number of sophisticated investors with investment intent. Underwriters participating in offerings of municipal securities issued in denominations of \$100,000 or more that are sold to no more than thirty-five persons are exempt from the Rule’s requirements if the underwriters have a reasonable belief that each purchaser: (1) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment; and (2) is not purchasing the securities for more than one account or with a view to distributing the securities.

From March 2018 to September 2022 (the “Relevant Period”), Fifth Third, while serving as sole underwriter for 79 limited offerings, sold securities to broker-dealers and certain investment advisers without a reasonable belief that the broker-dealers and investment advisers were purchasing the securities for investment as required under Rule 15c2-12(d)(1)(i). Moreover, Fifth Third lacked policies and procedures reasonably designed to determine if purchasers satisfied the exemption’s requirements. As a result, Fifth Third violated Rule 15c2-12, as well as MSRB Rule G-27, which requires municipal securities underwriters to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure compliance with Rule 15c2-12. Fifth Third also violated Section 15B(c)(1) of the Exchange Act by failing to comply with the MSRB rule.

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<sup>1</sup> The findings herein are made pursuant to the Offer and are not binding on any other person or entity in this or any other proceeding.

## Respondent

1. **Fifth Third**, incorporated in Ohio and headquartered in Cincinnati, Ohio, is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor.

### Rule 15c2-12 under the Exchange Act

2. Broker-dealers that participate as underwriters in primary offerings of municipal securities of \$1 million or more must comply with Rule 15c2-12 unless the offering is exempt pursuant to Section (d) of the Rule.<sup>2</sup>

3. Rule 15c2-12 is designed to prevent fraud in primary offerings of municipal securities. The Rule enhances the accuracy and timeliness of disclosures made to investors by establishing standards for the procurement and dissemination of disclosure documents by underwriters.<sup>3</sup>

4. Rule 15c2-12(b) requires underwriters in primary offerings of municipal securities: (a) to obtain and review a copy of an official statement deemed final by the issuer of the municipal securities, except for the omission of specified information; (b) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (c) to contract with the issuer to receive, within specified time periods, sufficient copies of the issuer's final official statement; and (d) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request.<sup>4</sup> Before purchasing or selling municipal securities in connection with an offering, the Rule also requires an underwriter to reasonably determine that an issuer of municipal securities or an obligated person has undertaken in a written agreement or contract, for the benefit of holders of such securities, to provide annual reports containing certain financial information and operating data to the MSRB, as well as timely notice of certain specified events pertaining to the municipal securities being offered.<sup>5</sup> This undertaking is commonly referred to as a "continuing disclosure undertaking" or a "continuing disclosure agreement." Continuing disclosures enable investors in municipal securities in the secondary market to make informed investment decisions and to protect themselves from misrepresentations or other fraudulent activities by brokers, dealers and municipal securities dealers.

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<sup>2</sup> 17 C.F.R. §§ 240.15c2-12(a) [general application of Rule] and (d) [offerings exempt from general application of Rule].

<sup>3</sup> *Municipal Securities Disclosure*, Exchange Act Rel. No. 26985, 54 Fed. Reg. 28799, 28800-01 (Final Rule, Jul. 10, 1989) [Rule 15c2-12 promulgated, in part, under Section 15(c) of the Exchange Act, 15 U.S.C. § 78o(c)].

<sup>4</sup> 17 C.F.R. §§ 240.15c2-12(b)(1)-(4).

<sup>5</sup> 17 C.F.R. § 240.15c2-12(b)(5).

## **Exemption from Rule 15c2-12 for Limited Offerings**

5. The primary intent of Rule 15c2-12 is to focus on those offerings of municipal securities that involve the general public and are likely to be actively traded in the secondary market.<sup>6</sup> When the Commission adopted the Rule in 1989, it included exemptions designed to facilitate certain offerings where the Commission believed that, given the sophistication of the investors and the alternative mechanisms developed by the industry to facilitate disclosure in connection with such offerings, the specific requirements of the Rule were not necessary to prevent fraud or to encourage the dissemination of disclosure into the secondary market. This included an exemption for limited offerings.<sup>7</sup> Specifically, Section (d)(1)(i) of the Rule exempts primary offerings of municipal securities “in authorized denominations of \$100,000 or more, if such securities ... are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes: (A) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and (B) is not purchasing for more than one account or with a view to distributing the securities.”<sup>8</sup>

6. The Commission was concerned that any securities offered pursuant to a limited offering exemption could immediately be resold to public investors without the benefit of the Rule’s requirements, including the undertaking by issuers to provide investors with continuing disclosure about their investments. For these reasons, the Commission required that the securities be issued in relatively large denominations, \$100,000 or more, and that the underwriter have a reasonable belief that the securities are being acquired by the purchaser for investment. The Rule also requires underwriters to determine if each investor is purchasing the securities for one account in order to preserve the integrity of the limitation on sales to no more than thirty-five persons. Moreover, the persons that purchase the securities must possess the necessary knowledge and experience to evaluate the merits and risks of the investment. The Rule does not identify purchasers presumed to meet these criteria. Instead, the Rule requires that underwriters make a subjective determination that investors meet the purchaser qualifications.<sup>9</sup>

### **Fifth Third Failed to Comply with the Limited Offering Exemption**

7. During the Relevant Period, Fifth Third acted as sole underwriter for 79 offerings of municipal securities where it sought to rely on the exemption provided in Rule 15c2-12(d)(1)(i), but where the offerings did not actually satisfy the exemption’s requirements. Fifth Third did not provide investors in these securities with copies of any Preliminary Official Statement or Final Official Statement for the securities, or determine that a continuing disclosure undertaking had been entered into by the issuer, or an obligated person, as required by Rule 15c2-12(b).

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<sup>6</sup> 54 Fed. Reg. 28799 at 28809.

<sup>7</sup> 54 Fed. Reg. 28799 at 28801, 28808.

<sup>8</sup> 17 C.F.R. §§ 240.15c-12(d)(1)(i)-(ii).

<sup>9</sup> 54 Fed. Reg. 28799 at 28809-10.

8. In these 79 limited offerings, Fifth Third sold the municipal securities to broker-dealers and/or investment advisers with separately managed accounts. When it sold the municipal securities to these broker-dealers and investment advisers, Fifth Third did not have a reasonable belief that the broker-dealers and investment advisers were purchasing the securities for investment as required under Rule 15c2-12(d)(1)(i). Fifth Third did not inquire, or otherwise determine, if the broker-dealers and investment advisers were purchasing the securities for more than one account or for distribution. It also failed to ascertain for whom the broker-dealers and investment advisers were purchasing the securities. Fifth Third therefore was unable to form a reasonable belief that the broker-dealers and investment advisers were purchasing the securities for investors who possessed the necessary knowledge and experience to evaluate the investments. As a result, these 79 limited offerings did not qualify for the exemption under Rule 15c2-12(d)(1)(i).

9. Fifth Third realized \$442,465.59 from the 79 limited offerings that did not qualify for the exemption under Rule 15c2-12(d)(1)(i) and that resulted in its failure to comply with the disclosure requirements in Rule 15c2-12(b).

**Fifth Third Failed to Adopt Policies and Procedures Reasonably  
Designed to Ensure Compliance with the Limited Offering Exemption**

10. MSRB Rule G-27(c) requires each broker-dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the broker-dealer and its associated persons is in compliance with the Exchange Act and MSRB rules.

11. During the Relevant Period, Fifth Third did not have any specific policies or procedures reasonably designed to comply with Rule 15c2-12(d)(1)(i) and enabling it to form a reasonable belief that persons to whom it sold municipal securities pursuant to the limited offering exemption: (a) had such knowledge and experience in financial and business matters that they were capable of evaluating the merits and risks of the prospective investment; and (b) were not purchasing for more than one account or with a view to distributing the securities.

**Violations**

12. As a result of the conduct described above, Respondent willfully<sup>10</sup> violated Rule 15c2-12 and MSRB Rule G-27.

13. As a result of Respondent's willful violation of MSRB Rule G-27, Respondent willfully violated Section 15B(c)(1) of the Exchange Act.

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<sup>10</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

### **Disgorgement**

14. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.C shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **Remedial Efforts**

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken, and cooperation afforded the Commission staff, by Respondent.

### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offer.

Accordingly, pursuant to Sections 15(b), 15B(c) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 15B(c)(1) of the Exchange Act, Rule 15c2-12, and MSRB Rule G-27.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$442,465.59 and prejudgment interest of \$67,506.09 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000.00 to the Securities and Exchange Commission, of which a total of \$33,333.33 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining \$166,666.67 shall be transferred to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Payments must be made in one of the following ways:

(1) Respondent may transmit payments electronically to the Commission,

which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Fifth Third as the Respondent in these proceedings and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Assistant Director Ivonia K. Slade, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Mail Stop 5553, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary