

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93875 / December 29, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-15635

<hr/>	:	
In the Matter of	:	
	:	
Fifth Third Bancorp and	:	ORDER APPOINTING
Daniel Poston,	:	FUND ADMINISTRATOR AND
	:	SETTING ADMINISTRATOR'S
	:	BOND AMOUNT
Respondents.	:	
<hr/>		

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 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

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

impairment and increased the company's pretax loss in the third quarter of 2008 by 132%. 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 Commission 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 \$6,600,000.00 in civil money 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.

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").

The Fair Fund consists of the \$6,600,000.00 paid by the Respondents. 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 accrued interest will be for the benefit of the Fair Fund.

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

The Division of Enforcement now seeks the appointment of Guidehouse Inc., Baker & Hostetler LLP, and Pace Claims Services LLC (“GBP”)³ as the fund administrator and requests that the administrator’s bond be set at \$6,600,000.00. GBP is included in the Commission’s approved pool of administrators.

Accordingly, IT IS HEREBY ORDERED that GBP is appointed as the fund administrator, pursuant to Rule 1105(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”),⁴ and shall obtain a bond in accordance with Rule 1105(c) of the Commission’s Rules,⁵ in the amount of \$6,600,000.00.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁶

Vanessa A. Countryman
Secretary

³ The entities comprising GBP were formerly known as Navigant Consulting, Navigant PACE, and Goody Group LLC/Goody Counsel PLLC.

⁴ 17 C.F.R. § 201.1105(a).

⁵ 17 C.F.R. § 201.1105(c).

⁶ 17 C.F.R. § 200.30-4(a)(17).