

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95418 / August 4, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-15635

In the Matter of

**Fifth Third Bancorp and Daniel
Poston,**

Respondents.

**NOTICE OF PROPOSED PLAN OF
DISTRIBUTION AND
OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans ("Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matter.

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 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

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

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”).

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.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Allison J.P. Moon, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5876. All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File No. 3-15635” in the subject line. Comments received will be publicly available. Persons should submit only information they wish to make publicly available.

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

THE PROPOSED PLAN

The Net Available Fair Fund³ is comprised of the \$6,600,000.00 in civil money penalties paid by the Respondents, plus interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to investors who were harmed by the Respondents' failure to properly account for a portion of its commercial real estate loan portfolio. As calculated using the methodology detailed in the Plan of Allocation, investors will be compensated for their losses on shares of Fifth Third common stock and American Depositary Shares of Series F and Series G preferred stock that were purchased, as well as, related warrants that were granted, between October 21, 2008 and January 22, 2009.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁴

Vanessa A. Countryman
Secretary

³ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

⁴ 17 C.F.R. § 200.30-4(a)(21)(iii).