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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SAM MCGEE, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

vs.

FIFTH THIRD BANCORP, KEVIN T.
KABAT, CHRISTOPHER G. MARSHALL,
DANIEL T. POSTON, and GEORGE A.
SCHAEFER, JR.,

Defendants.

CASE NO.: 1:08 CV 539

CLASS ACTION COMPLAINT

J. DLOTT

JURY TRIAL DEMANDED

1. Plaintiff, Sam McGee ("Plaintiff"), brings this action individually and on behalf of all former shareholders of First Charter Corp. ("First Charter") that acquired the common stock of Fifth Third Bancorp ("Fifth Third" or the "Company") pursuant or traceable to the Registration Statement and Prospectus, which included the Proxy Statement for First Charter Special Meeting, on Form S-4 filed with the U.S. Securities and Exchange Commission ("SEC") by Fifth Third on November 7, 2007, as amended on November 29, 2007 (Registration No. 333-147192), which became effective on November 30, 2007 (the "Registration/Proxy Statement"). Plaintiff also brings this action on behalf of all First Charter shareholders of record at the close of business of November 26, 2007, who were solicited to vote on the proposed merger of First Charter and Fifth Third pursuant to the Registration/Proxy Statement for the January 18, 2008 Special Meeting.

2. Plaintiff alleges the following based upon information and belief, except as to those allegations concerning Plaintiff, which are based upon personal knowledge. Plaintiff's

information and belief allegations are based upon, among other things: (a) the investigation conducted by and through his attorneys; (b) review and analysis of filings made by Fifth Third with the SEC; (c) review and analysis of press releases, public statements, news articles, securities analysts' reports and other publications disseminated by or concerning Fifth Third; and (d) other publicly available information about Fifth Third. Most of the facts supporting the allegations contained herein are known only to the Defendants or are within their control. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth in this Class Action Complaint ("Complaint") after a reasonable opportunity for discovery.

NATURE OF THE ACTION

3. This is a federal class action on behalf of all former shareholders of First Charter that acquired the common stock of Fifth Third pursuant or traceable to the Registration/Proxy Statement filed in connection with Fifth Third's acquisition of First Charter, which transaction was completed on June 6, 2008, seeking to pursue remedies under Sections 11, 12(a)(2), and 15 the Securities Act of 1933 (the "Securities Act") and Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 14a-9 promulgated thereunder by the SEC, and Section 20(a) of the Exchange Act. For purposes of Plaintiff's claims under Sections 14(a) and 20(a) of the Exchange Act, the Class also includes all First Charter shareholders of record as of November 26, 2007. The Defendants are Fifth Third, the Company's President and Chief Executive Officer Kevin T. Kabat ("Kabat"), former Executive Vice President and Chief Financial Officer Christopher G. Marshall ("Marshall"), Executive Vice President, Controller and current Chief Financial Officer Daniel T. Poston ("Poston"), and former Chairman of the Board of Directors of Fifth Third George A. Schaefer, Jr. ("Schaefer"). Defendants Kabat, Marshall, Poston, and Schaefer are referred to collectively as the "Individual Defendants" (the

Individual Defendants together with Fifth Third are referred to collectively as “FITB Defendants”).

4. Fifth Third is a registered financial services company that operates through its commercial banking, branch banking, consumer lending and investment advisor businesses. At the time the First Charter acquisition was announced, Fifth Third had \$101 billion in assets, and operated 18 affiliates with 1,171 full-services Banking Centers, predominately in the Midwest.

5. During the relevant period, the FITB Defendants made false and misleading statements concerning the quality of the Company’s Tier 1 capital (*i.e.*, a bank’s core capital held against risky assets), the relevant ratios and sufficiency of its Tier 1 capital (*i.e.*, the ratio of a bank’s core equity capital to its total risk-weighted assets), the necessity to take net charge-offs stemming from increasing credit losses, and the need to shore up capital due to the Company’s exposure to poorly performing real estate markets, particularly in Florida and the Mid-West region.

6. On August 16, 2007, First Charter publicly announced that it signed a definitive agreement to be acquired by Fifth Third for \$31.00 per share, or \$1.1 billion, which would be paid in the form of 70% Fifth Third common stock and 30% cash. In connection with Fifth Third’s acquisition of First Charter, on November 7, 2007, amended on November 29, 2007, Fifth Third filed with the SEC a Registration Statement on Form S-4, signed by each of the Individual Defendants, for the issuance of 35 million shares of the Company’s common stock to be used to fund the acquisition. The Registration/Proxy Statement included a Prospectus of Fifth Third and a Proxy Statement for the Special Meeting of First Charter shareholders on January 18, 2008, whereby the First Charter Board of Directors, sought First Charter shareholder approval of the proposed merger.

7. The Registration/Proxy Statement stated that, pursuant to the Merger Agreement, each share of First Charter exchanged in the merger would receive a number of Fifth Third common shares having a value of \$31.00, based on the average closing price of Fifth Third shares on the five trading days ending on the day immediately before the closing of the merger. The Registration/Proxy Statement also explained that the market value of Fifth Third common stock to be issued in the merger will fluctuate and the number of Fifth Third shares received by First Charter shareholders cannot be determined until closing of the merger, but the value of the Fifth Third shares which First Charter shareholders will receive “is fixed at \$31.00.”

8. The First Charter Board stated in the Prospectus/Proxy Statement that they “believe[] that the terms of the merger agreement are fair to, and that the merger is in the best interests of, First Charter and its shareholders.” The First Charter Board also made the following recommendation to First Charter shareholders:

The First Charter Board of Directors recommends that you vote ***FOR*** approval of the merger agreement.

9. On January 18, 2008, the special meeting of First Charter shareholders was held to vote on the merger agreement. With 99% of shareholders voting, the proposed Fifth Third merger received “overwhelming shareholder support.”

10. The merger closed on June 6, 2008 and each First Charter shareholder who elected to receive or received Fifth Third stock in the merger was issued 1.7412 shares of Fifth Third common stock, based upon the average closing price of Fifth Third on the five trading days prior to the June 6, 2008 closing.

11. At the time of the issuance of the Prospectus/Proxy Statement to First Charter shareholders on November 29, 2007 and thereafter, the FITB Defendants failed to disclose the following material adverse facts which would have been important for First Charter shareholders

to know in deciding whether to vote in favor of the merger with Fifth Third: (a) the Company's exposure to certain poorly performing real estate markets, including Florida, Ohio, and Michigan, and the extent to which this exposure was materially increasing; (b) the Company's growing exposure to late payments and defaults on mortgages and other non-performing loans, and the extent to which this exposure was materially increasing; (c) the extent of the decline in the quality of the Company's Tier 1 capital base; (d) the deteriorating credit trends and increasing expenses, including negative trends, in the Company's consumer loan portfolio, including the extent of the increase in late payments and defaults; (e) the negative trends in the Company's home equity and commercial construction loans, and the extent to which there was a decrease in the value of the underlying assets and an increase in late payments and defaults, and (f) the deterioration in the credit quality of its loans.

12. The truth began to emerge on June 18, 2008, when Fifth Third issued a press release revealing, among other things, that the Company was in desperate need of capital and was planning a \$1 billion convertible preferred stock offering and a fire sale of "non-core businesses" to raise an additional \$1 billion in capital. The Company also announced that it was slashing its quarterly dividend 66% from \$0.44 per share to \$0.15 per share. Fifth Third also increased its capital targets to 8.0% - 9.0% (from 7.5% - 8%) for its Tier 1 capital ratio and projected a second quarter Tier 1 capital ratio of 8.5% (from 7.71% for the first quarter), which includes the impact of its First Charter acquisition and related accounting adjustments. Fifth Third revealed that it now expects 2008's ratio of reserves to loans and leases to exceed 2.0% and anticipates an even higher ratio in 2009, *inter alia*, stating:

Fifth Third Bancorp today announced actions to strengthen its capital position in light of continued deterioration in credit trends during the second quarter of 2008 and its view that conditions are unlikely to improve in the near-term. The Company's Board of Directors has approved the following actions:

- The planned issuance of \$1 billion in Tier 1 capital in the form of convertible preferred shares.

- A reduction in the quarterly dividend level. The Company declared its second quarter cash dividend on its common stock and set the level at \$0.15 per share, a reduction from the previous \$0.44 per share quarterly level. The new dividend is payable on July 22, 2008, to holders of record on June 30, 2008.

- The anticipated sales of certain non-core businesses that, if successfully completed, would supplement common equity capital by an estimated additional \$1 billion or more. Fifth Third owns several non-strategic businesses that are not significantly synergistic with its core financial services businesses. We expect these transactions to be completed over the course of the next several quarters.

In conjunction with these actions and a more difficult operating environment, Fifth Third is revising its capital targets and is now targeting an 8 to 9 percent range for its Tier 1 capital ratio. The convertible preferred share issuance and dividend reduction will allow us to readily meet our higher Tier 1 capital ratio target throughout the remainder of 2008. We believe, given the uncertainty with respect to trends in the economy and credit environment, that proceeding with the sale of certain non-core businesses will ensure we remain within our capital ratio target as we move through 2009.

13. These disclosures caused Fifth Third common stock to decline 27% from its previous close of \$12.73 per share, to close on June 18, 2008 at \$9.26 per share on very heavy volume.

14. The June 18, 2008 announcement of the previously concealed material facts revealed that the market price of Fifth Third stock on the five trading days prior to the June 6, 2008 closing of the merger, upon which the exchange ratio of First Charter shares was based, did not reflect the true value of Fifth Third shares. The true value of Fifth Third shares during the five day valuation period was materially less than the market value of Fifth Third shares because of the non-disclosure of these material facts. As a result, First Charter shareholders did not receive Fifth Third shares worth \$31.00, but instead received Fifth Third shares worth substantially less and should have received additional Fifth Third shares in order to receive the

\$31 value merger consideration that they agreed to, pursuant to the Prospectus/Proxy statement. Alternatively, if the First Charter shareholders had been informed of the material undisclosed facts, they would have had the opportunity to vote against the merger. Therefore, the First Charter shareholders suffered damage which was directly and proximately caused by the material false statements and omissions in the Prospectus/Proxy Statement.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant to § 22 of the Securities Act, 15 U.S.C. § 77v. The claims alleged herein arise under §§ 11, 12(a)(2), and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2), and 77o.

16. Venue is proper in this Judicial District pursuant to § 22 of the Securities Act. Many of the acts and transactions giving rise to the violations of law alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in this Judicial District.

17. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

THE PARTIES

18. Plaintiff acquired Fifth Third common stock pursuant or traceable to Fifth Third's Registration/Proxy Statement, as demonstrated by his certification annexed hereto and has suffered damages as a result of the wrongful acts of the Defendants as alleged herein.

19. Defendant Fifth Third, incorporated under Ohio law and headquartered in Cincinnati, Ohio, is a financial services company that operates through its commercial banking, branch banking, consumer lending and Investment advisor businesses.

20. Defendant Kabat is and was at all times relevant to this action, the Company's Chief Executive Officer and President. Defendant Kabat reviewed, approved and signed the Company's materially false and misleading Registration/Proxy Statement.

21. Defendant Marshall was the Company's Executive Vice President and Chief Financial Officer until he resigned on May 1, 2008, effective as of April 30, 2008. Defendant Marshall reviewed approved and signed the Company's materially false and misleading Registration/Proxy Statement.

22. Defendant Poston was, at all relevant times, the Company's Executive Vice President and Controller. After Defendant Marshall's resignation, Defendant Poston has served as the Company's Chief Financial Officer. Defendant Poston reviewed approved and signed the Company's materially false and misleading Registration/Proxy Statement.

23. Defendant Schaefer was, until his retirement on June 17, 2008, Chairman of the Fifth Third Board of Directors. Defendant Schaefer was formerly President and Chief Executive Officer of the Company. Defendant Schaefer reviewed approved and signed the Company's materially false and misleading Registration/Proxy Statement.

24. The Individual Defendants, by virtue of their high-level positions with the Company, directly participated in the management of the Company, were directly involved in the day-to-day operations of the Company at the highest levels and were privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. The Individual Defendants were involved

in drafting, producing, reviewing and/or disseminating the false and materially misleading statements and information alleged herein and approved or ratified these statements, in violation of the Federal securities laws.

25. As an officers and controlling persons of a publicly-held company whose securities were, and are, registered with the SEC pursuant to the Exchange Act, and are traded on the NASDAQ and governed by the provisions of the Federal securities laws, The Individual Defendants had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' material misrepresentations and omissions in the Registration/Proxy Statement and in the SEC filings relating to and/or incorporated by reference in those documents violated these specific requirements and obligations.

26. The Individual Defendants, because of their positions of control and authority as officers and directors of the Company, were able to and did control the content of the Registration/Proxy Statement and the SEC filings relating to and/or incorporated by reference in those documents. The Individual Defendants were provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, The Individual Defendants are responsible for the accuracy of the Registration/Proxy Statement and the SEC filings relating to and/or incorporated by reference in those documents and are therefore

primarily liable for the representations contained therein.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who purchased or otherwise acquired Fifth Third common stock pursuant or traceable to the Registration/Proxy Statement on Form S-4 filed with the SEC by Fifth Third on November 7, 2007, as amended on November 29, 2007 (Registration No. 333-147192). For purposes of Plaintiff's claims under Sections 14(a) and 20(a) of the Exchange Act, the Class also includes all First Charter shareholders of record as of November 26, 2007. Excluded from the Class are the FITB Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which the FITB Defendants have or had a controlling interest.

28. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Fifth Third or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

29. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of Federal law that is complained of herein.

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30. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

31. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the Federal securities laws were violated by Defendants' acts as alleged herein;

(b) Whether statements contained in the Registration/Proxy Statement and SEC filings relating to or incorporated by reference in the Registration/Proxy Statement were materially false and misleading; and

(c) To what extent the members of the Class have sustained damages and the proper measure of damages.

32. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

33. Fifth Third's Board of Directors met on August 15, 2007 and approved a \$31.00 per share bid to acquire First Charter, a regional financial services company headquartered in Charlotte, North Carolina, which, at the time, operated 57 branches in North Carolina and 2 in suburban Atlanta, and the holding company of First Charter Bank.

34. On August 16, 2007, First Charter and Fifth Third publicly announced they had signed a definitive agreement to merge. On this news, the price of First Charter rocketed up 37.8%, or \$7.65, to \$27.90 in early-afternoon trading.

35. Under the Amended and Restated Agreement and Plan of Merger, dated as of September 14, 2007, by and among First Charter, Fifth Third and Fifth Third Financial, First Charter agreed to be acquired by Fifth Third for \$31.00 per share, or \$1.1 billion, which would be paid in the form of 70% Fifth Third common stock and 30% cash. The \$31.00 per share offering price represented a 53.1% premium from the closing price of First Charter common stock on August 15, 2007 – the day before the deal was announced.

36. On November 7, 2007 (as amended on November 29, 2007), Fifth Third filed with the SEC its Registration/Proxy Statement and Prospectus for 35,000,000 shares of common stock to be issued upon the completion of the merger of First Charter with and into Fifth Third. The Registration/Proxy Statement was signed by each of the Individual Defendants. The Registration/Proxy Statement became effective on November 30, 2007. Pursuant to a formula set forth in the Amended and Restated Agreement and Plan of Merger, the Registration/Proxy Statement provided for First Charter shareholders to tender their First Charter common stock in exchange for a combination of Fifth Third common stock and cash. Specifically, the Registration/Proxy Statement stated that First Charter shareholders would have “the right to receive either \$31.00 worth of Fifth Third common stock or \$31.00 in cash based on the election of First Charter shareholders,” for “[e]ach share of First Charter common stock ... that is issued and outstanding immediately prior to the effective time of the merger....” First Charter Shareholders could also “elect to receive a mix of Fifth Third common stock and cash worth \$31.00 in return for each First Charter common share.”

37. Under the heading “Background of the Merger,” the Registration/Proxy Statement stated that the First Charter Board of Directors “regularly considered various strategic options directed at increasing shareholder value and maximizing First Charter’s return on equity,” including, “the possible acquisition of smaller institutions by First Charter ... strategic combinations with similarly sized financial institutions and the merger of First Charter with a larger financial institution.” According to the Registration/Proxy Statement, serious discussions concerning a possible merger with Fifth Third began in late 2006 and ramped up during the first six months of 2007, *inter alia*, stating:

Those potentially interested banks included Fifth Third, whose Chief Financial Officer, Christopher G. Marshall, contacted Mr. James by telephone several times in the fourth quarter of 2006 and the first half of 2007. Mr. Marshall and Kevin T. Kabat, Fifth Third’s Chief Executive Officer, met with Mr. James on March 7, 2007 and June 7, 2007.

38. Negotiations with Fifth Third and other financial institutions continued until August 15, 2008. The Registration/Proxy Statement states that the First Charter Board of Directors accepted Fifth Third’s bid of \$31.00 per share to acquire First Charter based primarily on the amount and composition of consideration Fifth Third offered, as well as Fifth Third’s history of paying dividends:

- the fact that the consideration payable in the transaction will be valued at \$31.00 per share at the time of closing;
- Fifth Third’s history of paying dividends on its common stock;
- the fact that Fifth Third’s common stock has greater liquidity than First Charter’s common stock;

* * *

The First Charter Board of Directors did not quantify or attempt to assign relative weights to the specific factors considered in reaching its determination; **however, the First Charter Board of Directors placed special emphasis on the consideration**, including the form, fixed value and tax treatment of such consideration, payable in the proposed merger and the receipt of a favorable fairness opinion from its financial advisor.

(Emphasis added.)

39. Under the heading “Reasons for the Merger,” the Registration/Proxy Statement, *inter alia*, stated:

The First Charter Board of Directors believes that the terms of the merger agreement are fair to, and that the merger is in the best interests of, First Charter and its shareholders.

40. Under the heading “Risks Relating to the Merger,” the Registration/Proxy Statement, *inter alia*, stated:

The conversion ratio is variable and will fluctuate due to changes in the market price of Fifth Third common stock.

If you receive Fifth Third common shares as merger consideration you will receive a certain amount of shares of Fifth Third common stock for each share of First Charter common stock if the merger is completed. The conversion ratio is equal to \$31.00 divided by the average market price of Fifth Third common stock for the five trading days ending on the trading day immediately before the closing of the merger. Changes in the price of Fifth Third common stock from the date of the merger agreement, from the date of this proxy statement/prospectus and from the date of the special meeting will affect the conversion ratio and, thus, the number of Fifth Third common shares that you receive as merger consideration. Fifth Third’s stock price may increase or decrease before and after the effective time of the merger due to a variety of factors, including, without limitation, general market and economic conditions, changes in Fifth Third’s businesses, operations and prospects and regulatory considerations. Many of these factors are beyond Fifth Third’s control.

41. The Registration/Proxy Statement states that the First Charter Board of Directors engaged the firm of Keefe, Bruyette & Woods, Inc. (“KBW”) as its financial advisor on the Fifth Third bid and that KBW issued a fairness opinion indicating that Fifth Third was well capitalized, stating:

KBW’s analysis indicated that Fifth Third’s Leverage Ratio, Tier 1 Risk-Based Capital Ratio and Total Risk Based Capital Ratio would all remain “well capitalized” by regulatory standards.

42. The Registration/Proxy Statement also included a Proxy Statement for the Special Meeting of First Charter shareholders on January 18, 2008, seeking their approval of the Plan of Merger with Fifth Third. The Registration/Proxy Statement stated that the First Charter Articles of Incorporation require that in order to merge with another corporation, "First Charter's shareholders must approve such merger by the affirmative vote of not less than 75% of the aggregate voting power of the outstanding stock entitled to vote." In seeking this 75% approval vote, the Board of Directors of First Charter solicited Proxies for the Special Meeting, by use of the Registration/Proxy Statement, stating that the First Charter Board of Directors recommended that First Charter shareholders vote to approve the Plan of Merger, *inter alia*, as follows:

Recommendation to First Charter Shareholders

The First Charter Board of Directors recommends that you vote **FOR** approval of the merger agreement. The First Charter Board of Directors recommends that you vote **FOR** approval of any proposal to adjourn or postpone the special meeting, if necessary or appropriate, to solicit additional proxies in the event that there are not sufficient votes in favor of approval of the merger agreement at the time of the special meeting.

(Emphasis in original.)

43. Additionally, the Registration/Proxy Statement stated that the First Charter Board believes that First Charter shareholders would benefit from receiving Fifth Third stock:

The First Charter Board of Directors believes that you will benefit by either becoming a shareholder of Fifth Third, or receiving cash in return for your First Charter common stock.

44. Finally, the Registration/Proxy Statement represented that the First Charter Board believed that the merger is in First Charter's and its shareholders' best interests and urged First Charter shareholders to vote their proxies:

First Charter has scheduled a special meeting for its shareholders to vote on the merger agreement. The date, time and place of the special meeting are as follows:

10:00 a.m., Eastern time, January 18, 2008, the First Charter Center, 10200 David Taylor Drive, Charlotte, North Carolina 28262-2373.

The Board of Directors of First Charter believes that the merger is in First Charter's and your best interests.

Your failure to vote will have the same effect as voting against the merger, so whether or not you plan to attend the special meeting, please promptly return the enclosed proxy card to us so that your shares are voted at the special meeting. The merger cannot be completed unless the shareholders of First Charter approve the merger agreement by the affirmative vote of 75% of the aggregate voting power of the outstanding stock of First Charter entitled to vote at the close of business on November 26, 2007. **Your vote is very important.**

(Emphasis in original.)

45. Attached as an exhibit to the Registration/Proxy Statement was a proxy card seeking First Charter shareholder approval of the merger of First Charter and Fifth Third, *inter alia*, stating:

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" THE FOLLOWING PROPOSALS

1. Proposal to approve the merger of First Charter with and into Fifth Third Financial Corporation, substantially on the terms set forth in the Amended and Restated Plan of Merger dated as of September 14, 2007 by and among First Charter, Fifth Third Bancorp and Fifth Third Financial Corporation.

(Emphasis in original.)

46. The Registration/Proxy Statement included a chart purporting to depict Fifth Third's financial condition, including its loan loss reserves and percentage of non-performing assets, as compared to its competitors and First Charter, stating:

	<u>Fifth Third</u>	<u>Fifth Third Peer Group Median</u>	<u>First Charter</u>	<u>First Charter Peer Group Median</u>
Financial Condition Measures:				
Tangible Equity/Tangible Assets	6.53 %	5.55 %	7.48 %	6.66 %
Loans/Deposits	112 %	117 %	110 %	95 %
Latest Twelve Months Net Charge-offs /Average Loans	0.46 %	0.25 %	0.07 %	0.14 %
Loan Loss Reserves/Loans	1.02 %	1.08 %	1.26 %	1.16 %
Nonperforming Assets/Assets	0.55 %	0.42 %	0.41 %	0.35 %

47. The Registration/Proxy Statement also reported Fifth Third's purported capital ratios for the quarter ended September 30, 2007, as follows:

Capital Ratios:

Average shareholders' equity to average assets	9.56 %
Tier 1 risk-adjusted capital	8.46 %
Total risk-adjusted capital	10.87 %
Tier 1 leverage	9.23 %

48. The Registration/Proxy Statement was materially false and misleading because it failed to disclose: (a) Fifth Third's exposure to certain poorly performing real estate markets, including Florida, Ohio, and Michigan, and the extent to which this exposure was materially increasing; (b) Fifth Third's growing exposure to late payments and defaults on mortgages and other non-performing loans, and the extent to which this exposure was materially increasing; (c) the extent of the decline in value of Fifth Third's core Tier 1 capital; (d) the deteriorating credit trends and increasing expenses, including negative trends, in the Fifth Third's consumer loan portfolio, including the extent of the increase in late payments and defaults; (e) the negative trends in Fifth Third's home equity and commercial construction loans, and the extent to which there was a decrease in the value of the underlying assets and an increase in late payments and defaults, and (f) the deterioration in the credit quality of its loans.

49. On December 17, 2008, First Charter filed with the SEC on Form DEFA 14A, "Definitive Additional Materials" in furtherance of the Proxy Statement for First Charter Special Meeting and notice of shareholder meeting for January 18, 2008, again seeking First Charter shareholder approval of the Fifth Third acquisition, *inter alia*, stating:

Dear Shareholder,

We recently mailed proxy materials to you for the special meeting of shareholders to be held on January 18, 2008, beginning at 10:00 am, Eastern [T]ime at the First Charter Center, 10200 David Taylor Drive, Charlotte, North Carolina 28262-2373. According to our records, your vote has not been received.

Your Board Urges You to Vote FOR the Approval of the Merger

At the special meeting, shareholders are being asked to approve an agreement providing for the merger of First Charter with and into Fifth Third. If the merger is approved and completed, each outstanding share of First Charter common stock will be exchanged for either \$31.00 in cash or such number of shares of Fifth Third common stock that have a value of \$31.00. **The Board of Directors recommends that shareholders vote “FOR” approval of the merger agreement and “FOR” the approval of any proposal to adjourn or postpone the special meeting, if necessary to solicit additional proxies.**

Your shares cannot be voted unless you give your specific instructions.

Your Vote is Very Important

Your vote is extremely important; the merger cannot be completed unless it is approved by **75% of the outstanding stock of First Charter entitled to vote as of the record date.** Please vote today by using the toll-free telephone voting service or the Internet. Voting instructions are located on the enclosed proxy card. You may also vote by signing, dating and returning the proxy card in the envelope provided. Your cooperation in promptly voting your proxy will be very much appreciated.

If you have any questions regarding voting, you may call our proxy solicitor, Morrow & Co., Inc., toll-free at (877) 807-8896.

Sincerely,

Robert E. James, Jr.
President and Chief Executive Officer

(Emphasis in original.) This proxy solicitation was false and misleading for the reasons stated in paragraph 48, above.

50. On January 2, 2008, First Charter filed with the SEC on Form DEFA 14A, “Definitive Additional Materials” in furtherance of the Proxy Statement for First Charter Special Meeting and notice of shareholder meeting for January 18, 2008, again seeking First Charter shareholder approval of the Fifth Third acquisition, *inter alia*, stating:

The Special Meeting of Shareholders is approximately 2 weeks away

Dear Shareholder,

The special meeting of shareholders of First Charter will be held in approximately 2 weeks, on January 18, 2008. According to our records, **your vote has not yet been received.**

At the special meeting, shareholders are being asked to approve an agreement providing for the merger of First Charter with and into Fifth Third. If the merger is approved and completed, each outstanding share of First Charter common stock will be exchanged for either \$31.00 in cash or such number of shares of Fifth Third common stock that have a value of \$31.00.

The Board of Directors recommends that shareholders vote “FOR” approval of the merger agreement and “FOR” the approval of any proposal to adjourn or postpone the special meeting, if necessary to solicit additional proxies.

Every vote counts

Your vote is extremely important; the merger cannot be completed unless it is approved by 75% of the outstanding stock of First Charter entitled to vote as of the record date.

Please take the time now to cast your vote. You can do so by following the instructions on the enclosed card to vote by telephone or Internet. You can also vote by signing, dating and returning the proxy card in the envelope provided.

If you have any questions regarding voting, or if you need assistance in voting, please call our proxy solicitor, Morrow & Co. LLC, toll-free at (877) 807-8896.

Sincerely,

Robert E. James, Jr.
President and Chief Executive Officer

(Emphasis in original.) This proxy solicitation was false and misleading for the reasons stated in paragraph 48, above.

51. After filing the Registration/Proxy Statement with the SEC and the “ Definitive Additional Materials,” and prior to the closing of the First Charter acquisition on June 6, 2008, the FITB Defendants continued to issue materially false and misleading statements regarding the Company’s business and financial condition.

52. On January 14, 2008, Fifth Third filed with the SEC a current report on Form 8-K updating the market on the status of regulatory approvals necessary for the First Charter acquisition, *inter alia*, stating:

Fifth Third previously reported that the Merger was expected to close in the first quarter of 2008, subject to regulatory approval and approval by the holders of 75% of the outstanding shares of First Charter Common Stock. The Merger is subject to the approval of the Federal Reserve Board and the prior approval of the North Carolina Commissioner of Banks. On September 18, 2007, Fifth Third submitted applications for both approvals and received the approval of the North Carolina Commissioner of Banks on October 22, 2007. As of the date of this report Fifth Third has not yet received the approval of the Federal Reserve Board. Fifth Third has responded to information requests from the Federal Reserve Board regarding its application and comment letters received from the public and is currently responding to further inquiries from the Federal Reserve Board regarding related topics. Consequently, although a first quarter closing still could be possible if approval would be obtained soon, Fifth Third no longer expects or believes that the transaction will close in the first quarter of 2008. As the passage of time makes a first quarter closing increasingly unlikely, Fifth Third now is planning for closing in the second quarter of 2008 although no assurance can be given in this regard. As previously reported, the First Charter shareholder meeting to consider and vote upon the Merger will be held at 10:00 a.m. on January 18, 2008.

53. On January 22, 2008, Fifth Third issued a press release announcing the Company's financial results for the fourth quarter of 2007, and concurrently filed with the SEC a current report on Form 8-K, signed by Defendant Marshall, that included as an exhibit the complete text of the press release. The January 22, 2008 press release, *inter alia*, stated:

Fifth Third Bancorp today reported 2007 earnings of \$1.1 billion, or \$2.03 per diluted share, compared with \$1.2 billion, or \$2.13 per diluted share in 2006. Reported fourth quarter 2007 earnings were \$38 million, or \$0.07 per diluted share, compared with \$325 million, or \$0.61 per diluted share in the third quarter of 2007 and \$66 million, or \$0.12 per diluted share, for the same period in 2006. Reported results included a non-cash estimated charge of \$155 million, both pre-tax and after-tax, or \$0.29 per share, to lower the current cash surrender value of one of our Bank-Owned Life Insurance ("BOLI") policies. Additionally, quarterly results included a non-cash charge of \$94 million pre-tax, or \$0.12 per share after-tax, related to Visa members' indemnification of estimated future litigation settlements, as well as \$8 million pre-tax, or \$0.01 per share after-tax, in

acquisition-related costs primarily associated with the acquisition of R-G Crown, which closed in early November.

* * *

The following operating results on a non-GAAP basis exclude the impact of the above charges, the third quarter non-cash charge related to the Visa/American Express litigation settlement of \$78 million pre-tax, or \$0.10 per share after-tax, and the fourth quarter 2006 non-cash charges related to balance sheet actions of \$454 million pre-tax, or \$0.52 per diluted share (comparisons are being provided to supplement an understanding of the fundamental trends). On an operating basis, 2007 full year earnings were \$1.4 billion, or \$2.54 per diluted share, compared with \$1.5 billion, or \$2.65 per diluted share in 2006. On the same basis, fourth quarter 2007 earnings were \$260 million, or \$0.49 per diluted share, compared with \$376 million, or \$0.71 per diluted share, in the third quarter of 2007, and \$357 million, or \$0.64 per diluted share, in the fourth quarter of 2006.

54. Commenting on these results, Defendant Kabat claimed that, although the fourth quarter of 2007 was a difficult quarter for the banking industry, Fifth Third did not have any significant market-related losses and operating results continued to be “strong,” stating:

Obviously, this has been a difficult quarter for the banking industry... Like others, we saw a fairly marked turn in credit performance during the quarter. And, while *we have not had any significant market-related losses on structured securities, loans, or funds we manage for others*, one of our BOLI insurance policies was invested in assets that experienced significant market declines due to widening credit spreads, which negatively impacted our reported results. *Operating results continue to be relatively strong, in terms of loan and core deposit growth, net interest income growth, and noninterest income growth.* However, the credit environment remains challenging, and we expect credit conditions and the performance of our loan portfolio to continue to deteriorate in the near term. This led to an increase in our loan loss reserves in the fourth quarter and, given current trends, we would expect that to continue in the near-term. We have been actively working over the past year to take steps to address areas of concern. These areas include home equity loans and, more generally, real estate loans, particularly in the upper Midwest and Florida.

As a lending institution, we know we will experience credit cycles and we expect them. It is our responsibility to ensure that we are prepared for them and that we have the balance sheet strength and earnings power to manage through them. Fortunately, Fifth Third is well-positioned on both counts, and we intend to continue to focus on executing on our strategic plans and capitalizing on opportunities presented by this environment.

(Emphasis added.)

55. The statements in Fifth Third's January 22, 2008 press release were materially false and misleading because the FITB Defendants failed to disclose to the investing public that non-performing assets (*i.e.*, an asset or account of borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, typically based on non-payment of interest and/or installment of principal for a period of more than 90 days) were rapidly increasing and that this negative trend would continue for the indefinite future. Moreover, even though defendant Kabat stated that Fifth Third expected the performance of its loan portfolio to continue to deteriorate in the near term and had increased its loan loss reserves, defendant Kabat failed to disclose that the loan portfolio needed a substantial infusion of capital. Finally, the FITB Defendants failed to disclose the increasing negative trends in loan-loss provisions.

56. On February 22, 2008, Fifth Third filed with the SEC its annual report on Form 10-K (the "2007 10-K"), which was signed by Defendants Kabat, Marshall, Poston and Schaefer, and certified by Defendants Kabat and Marshall pursuant to the requirements of Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 that: "[T]he financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant." With respect to the Company's 2007 financial results, the 2007 10-K, *inter alia*, stated:

The Bancorp's net income was \$1.1 billion or \$1.99 per diluted share in 2007, a nine percent decrease compared to \$1.2 billion and \$2.13 per diluted share in 2006. Current year results were impacted by a \$177 million charge to lower the current cash surrender value of one of the Bancorp's bank-owned life insurance ("BOLI") policies. The BOLI charge reflected a decrease in cash surrender value due to declines in value of the policies underlying investments due to significant disruptions in the financial markets and widening credit spreads. This charge reflected an additional \$22 million recorded subsequent to the Bancorp's issuance of fourth quarter of 2007 earnings. Current year results were also impacted by provision for loan and lease losses of \$628 million, an increase of \$285 million over 2006. The increased provision for loan and lease losses was a result of the

deteriorating credit environment discussed further in the Risk Management section.

57. Additionally, the 2007 10-K claimed that Fifth Third did not have any exposure to sub-prime mortgages or sub-prime backed securities and the FITB Defendants represented that the Company was “well-capitalized,” *inter alia*, stating:

The Bancorp maintains a conservative approach to both lending and investing activities as it does not originate or hold subprime loans, nor does it hold collateralized debt obligations (“CDOs”) or asset-backed securities backed by subprime loans in its securities portfolio. However, the Bancorp has exposure to the housing markets, which weakened considerably during 2007, particularly in the upper Midwest and Florida. Consequently, net charge-offs as a percent of average loans and leases were 61 basis points (“bp”) in 2007 compared to 44 bp in 2006. At December 31, 2007, nonperforming assets as a percent of loans and leases increased to 1.32% from .61% at December 31, 2006.

The Bancorp’s capital ratios exceed the “well-capitalized” guidelines as defined by the Board of Governors of the Federal Reserve System (“FRB”). As of December 31, 2007, the Tier I capital ratio was 7.72% and the total risk-based capital ratio was 10.16%. The Bancorp had senior debt ratings of “Aa3” with Moody’s, “A+” with Standard & Poor’s, “AA-” with Fitch and “AAL” with DBRS at December 31, 2007, which indicate the Bancorp’s strong capacity to meet its financial commitments. The “well-capitalized” capital ratios, along with strong credit ratings, provide the Bancorp with access to the capital markets.

58. The 2007 10-K was materially false and misleading because it failed to accurately and completely disclose the extent of the growth in the Company’s non-performing assets and its rapidly increasing loan and lease loss reserves that were quickly eroding the Company’s capital structure and would require the Company to raise billions in new capital.

59. On April 22, 2008, Fifth Third issued a press release, and concurrently filed with the SEC a current report on Form 8-K, signed by Defendant Marshall, that included as an exhibit the full text of the press release, reporting the Company’s financial results for the first quarter of 2008, including: “[E]arnings of \$292 million, or \$0.55 per diluted share, compared with \$16 million, or \$0.03 per diluted share in the fourth quarter of 2007 and \$359 million, or \$0.65 per

diluted share, for the same period in 2007.” The April 22, 2008 press release and Form 8-K also highlighted certain trends, *inter alia*, stating:

**FIFTH THIRD BANCORP REPORTS FIRST QUARTER 2008
EARNINGS OF \$0.55 PER DILUTED SHARE**

- Net interest income increased 11 percent versus first quarter 2007
- Average loans up 9 percent and core deposits up 5 percent
- Net interest margin expanded 12 basis points sequentially
- Noninterest income increased 43 percent from first quarter 2007
- Payments processing income growth of 15 percent
- Deposit service revenue up 17 percent
- Corporate banking income growth of 30 percent
- Tangible common equity ratio expanded to 6.22 percent; total capital ratio up 116 bps to 11.32 percent
- Allowance to loan ratio increased to 1.49 percent

60. Commenting on these results, defendant Kabat emphasized that the Company was “well-positioned” compared to its competitors and that the FITB Defendants “expect to continue to post strong operating results,” stating:

This quarter we produced excellent loan and deposit growth that drove impressive performance in net interest income and continued strong fee growth from our businesses... However, strong operating performance continues to be offset by higher credit costs, primarily reflecting further deterioration of residential real estate, homebuilder and residential development loans. Nonperforming asset growth and higher loan losses reflect a weaker economic environment and continue to be disproportionately experienced in Florida and Michigan. Based on these developments, we significantly increased our allowance for loan and lease losses during the quarter.

We remain very active in taking steps to address the issues we and the industry are facing, and to work with borrowers to address difficulties they are experiencing. We expect credit conditions to continue to deteriorate in the near

term, and to experience higher nonperforming assets and credit losses during this period.

Although every credit cycle differs, we expect them to occur. We take seriously our responsibility to provide credit to our customers, to lend prudently, and to maintain the capital necessary to manage through these cycles. ***This is an unusually difficult cycle, but we believe Fifth Third is well-positioned relative to many of its peers. We expect to continue to post strong operating results, to execute on our strategic plans, and to capitalize on the opportunities that are created by an environment such as this.***

(Emphasis added.)

61. On April 22, 2008, Fifth Third conducted a conference call with analysts, in which defendants Kabat and Marshall participated. Defendant Kabat, *inter alia*, stated:

[W]e continue to maintain relatively strong capital levels. Our tangible capital levels increased during the quarter.”

62. In questions from Matthew O’Connor from UBS about the need to raise capital and the security of the dividend, defendant Marshall stated:

MO: Fifth Third’s always been a bit more conservative when it comes to capital than most banks, meaning carrying more, and I’m just wondering your thoughts, the environment is very uncertain here, your capital ratios will be at the lower end of your targeted levels, and I’m just wondering what you might be able to do to get them up there, whether there is some additional asset sales or securitizations, or would you consider a non-dilutive capital raise? And of course while we’re on the topic, if you could comment on your dividend which does screen high on a couple of different metrics.

CM: Matt, actually we expect our capital to be comfortably within our targets. The TCE ratio is probably which your referencing. I said it would be at 6% for most of the rest of the year where the target is 6.5, and that’s the result of First Charter more than anything else. We expect to rebuild that following that acquisition. There are a number of things we are looking at, we have a very aggressive plan in place to continue auto securitizations inline with the plans we’ve talked about previously. We’d like to see our on balance auto portfolio would be about half of what it was at the being of the year and we’re on track to get there. We will look selectively at other asset sales when they make sense, but we actually think, while we are very, very mindful of managing our capital carefully, we actually think we feel pretty comfortable with where we are. With regard to the dividend, and that’s a great question, I guess I’d think we feel pretty comfortable with where we are. With regard to the dividend, and that’s a great

question, I guess I'd answer it this way; we can't take anything for granted in the current environment and yet we are very conscious of our commitment to maintaining our dividend, and we are doing everything and will continue to do everything to maintain our commitment to our shareholders and to deliver on their expectations.

MO: So, on the capital side at this point you'll just grow into the targeted levels or the higher end of the targeted levels as opposed to raising anything?

CM: We have normal issuances planned, which I can't really comment on more than that, but I wouldn't expect to see us do anything out of the ordinary and certainly nothing resembling any of the extreme capital raises you've seen from some of our more stressed peers. We don't think that's, I mean we think of ourselves as being in an entirely different category and don't need to do any of those things.

63. The statements in the April 22, 2008 press release, Form 8-K and analysts' conference call were materially false and misleading because they failed to accurately and completely disclose the extent of the growth in the Company's non-performing assets and its rapidly increasing loan and lease loss reserves that were quickly eroding the Company's capital structure and would require the Company to raise billions in new capital and reduce the dividend.

64. The FITB Defendants' statements during the relevant period were also false and misleading because they failed to disclose (a) Fifth Third's exposure to certain poorly performing real estate markets, including Florida, Ohio, and Michigan, and the extent to which this exposure was materially increasing; (b) Fifth Third's growing exposure to late payments and defaults on mortgages and other non-performing loans, and the extent to which this exposure was materially increasing; (c) the extent of the decline in the quality of Fifth Third's Tier 1 capital base; (d) the deteriorating credit trends and increasing expenses, including negative trends, in the Fifth Third's consumer loan portfolio, including the extent of the increase in late payments and defaults; (e) the negative trends in Fifth Third's home equity and commercial construction loans,

and the extent to which there was a decrease in the value of the underlying assets and an increase in late payments and defaults, and (f) the deterioration in the credit quality of its loans.

65. On June 6, 2008, Fifth Third filed with the SEC a registration statement on Form S-4MEF, signed by Defendants Kabat, Poston, and Schaefer, for the purpose of registering an additional 13,000,000 shares of Fifth Third common stock for issuance in connection with the merger of First Charter, pursuant to the Registration/Proxy Statement, which provided for the registration of 35,000,000 shares of its common stock.

66. On June 6, 2008, Fifth Third issued a press release, and concurrently filed with the SEC a current report on Form 8-K which included as an exhibit the full text of the press release, announcing the completion of the acquisition of First Charter. The June 6, 2008 press release, *inter alia*, stated:

Fifth Third Bancorp (NASDAQ: FITB) today announced the completion of its acquisition of First Charter Corporation. Fifth Third is adding approximately \$4.8 billion in assets and \$3.2 billion in deposits as well as 57 branches in North Carolina and two in suburban Atlanta to its existing franchise. The acquisition provides Fifth Third an entrance into the thriving Charlotte metropolitan market and adds to a growing presence in Georgia. Fifth Third now ranks fourth in total deposits in the Charlotte metropolitan market and seventh overall in North Carolina.

* * *

Fifth Third Bancorp will pay \$31.00 per First Charter share, or approximately \$1.1 billion. As specified in the merger agreement, First Charter's shareholders were entitled to elect cash or shares of Fifth Third common stock with the limitation that the aggregate merger consideration to be paid in the form of 70% in shares of Fifth Third Bancorp common stock and 30% in cash.

Preliminary results of the First Charter shareholder election process indicate that cash option was selected in exchange for approximately 26-31 percent of First Charter shares. Those shareholders who made a valid cash election will either receive consideration in accordance with their election or will receive a portion of their consideration in Fifth Third common stock and the remainder in cash, depending upon the final results of the election which will be published within approximately seven days.

Approximately 57 percent of First Charter shares elected to receive Fifth Third stock and consequently, Fifth Third anticipates that those First Charter shareholders that made a valid election to receive shares of Fifth Third common stock will receive consideration in accordance with their election. Shareholders who did not make a valid election or who expressed no preference will either receive shares of Fifth Third common stock for their shares of First Charter common stock or will receive a portion of their consideration in cash and the remainder in Fifth Third common stock, depending upon the final results of the election.

67. Commenting on the close of this transaction, defendant Kabat stated:

The finalization of this acquisition gives Fifth Third Bank a solid foothold into an additional fast growing Southeastern metropolitan market ... Approximately a quarter of our banking centers are now in the Southeast, which is quite a change from just a short while ago. I am very excited about our continued growth, and want to welcome our new customers and employees to Fifth Third.

The Truth Begins to Emerge

68. On June 18, 2008, the Company shocked investors when it issued a press release, and concurrently filed with the SEC a current report on Form 8-K, signed by Defendant Poston, that included as an exhibit the full text of the press release, revealing, among other things, that the Company was in desperate need of capital and was planning a \$1 billion convertible preferred stock offering and a fire sale of “non-core businesses” to raise an additional \$1 billion in capital. The Company also announced that it was slashing its quarterly dividend 66% from \$0.44 per share to \$0.15 per share, *inter alia*, stating:

Fifth Third Bancorp today announced actions to strengthen its capital position in light of continued deterioration in credit trends during the second quarter of 2008 and its view that conditions are unlikely to improve in the near-term. The Company’s Board of Directors has approved the following actions:

- The planned issuance of \$1 billion in Tier 1 capital in the form of convertible preferred shares.
- A reduction in the quarterly dividend level. The Company declared its second quarter cash dividend on its common stock and set the level at \$0.15

per share, a reduction from the previous \$0.44 per share quarterly level. The new dividend is payable on July 22, 2008, to holders of record on June 30, 2008.

- The anticipated sales of certain non-core businesses that, if successfully completed, would supplement common equity capital by an estimated additional \$1 billion or more. Fifth Third owns several non-strategic businesses that are not significantly synergistic with its core financial services businesses. We expect these transactions to be completed over the course of the next several quarters.

In conjunction with these actions and a more difficult operating environment, Fifth Third is revising its capital targets and is now targeting an 8 to 9 percent range for its Tier 1 capital ratio. The convertible preferred share issuance and dividend reduction will allow us to readily meet our higher Tier 1 capital ratio target throughout the remainder of 2008. We believe, given the uncertainty with respect to trends in the economy and credit environment, that proceeding with the sale of certain non-core businesses will ensure we remain within our capital ratio target as we move through 2009.

We expect our Tier 1 capital ratio at the end of the second quarter of 2008 to be approximately 8.5 percent, which includes the impact of the First Charter acquisition and related purchase accounting adjustments, which reduced tangible equity ratios by approximately 55 bps. This second quarter ratio does not include a potential reduction of approximately 20 basis points to the Tier 1 capital ratio that would result from an accounting charge to earnings related to leveraged leases in the second quarter of 2008, if we conclude that we are required to record a charge, as discussed more fully in a Form 8-K filed today with the Securities and Exchange Commission.

For future quarters, we have re-evaluated our capital ratios under a range of scenarios for the credit environment. As part of the analysis of the capital actions described above, we considered the possibility of further deterioration in the second half of 2008, as well as continuation and acceleration of more severely stressed conditions through 2009. While viewed as unlikely, even if 2009 charge-off levels were to exceed 2008 expected charge-offs by up to 85 percent, we would expect our Tier 1 capital ratio to remain within the targeted 8 to 9 percent range. Our current outlook for 2008 net charge-offs is approximately 160 to 165 bps of total loans and leases, with second half 2008 net charge-offs of approximately 170 bps annualized. We currently expect the year-end 2008 ratio of reserves to loans and leases to exceed 2 percent, with the actual amount subject to changes in credit trends and reserve modeling. Additionally, we currently expect 2009 net charge-offs to be higher than 2008 levels and provision expense to continue to exceed charge-offs, resulting in continued growth in our loan loss reserves.

69. In a letter to shareholders dated June 18, 2008, Defendant Kabat admitted that the decision to reduce the dividend was made “only after long and careful consideration.” He also disclosed that, during the Class period, Fifth Third had undertaken a thorough review of its credit portfolio.

70. News of this shocked the market, causing the price of Fifth Third common stock to decline 27% from its previous close of \$12.73 per share, to close on June 18, 2008 at \$9.26 per share – a drop of \$3.47 per share – on unusually heavy volume.

COUNT I

Against the FITB Defendants for Violations of § 11 of the Securities Act

71. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

72. This Count is brought pursuant to § 11 of the Securities Act, 15 U.S.C. § 77k, on behalf of all persons or entities who acquired Fifth Third common stock pursuant or traceable to the Registration/Proxy Statement.

73. For purposes of this claim, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging or sounding in fraud or intentional or reckless misconduct.

74. The Registration/Proxy Statement, as set forth above, was inaccurate and misleading, contained untrue statements of material facts, and omitted to state other facts necessary to make the statements contained therein not misleading. Specifically, as set forth above, the Registration/Proxy Statement was untrue and misleading in that it failed to accurately report the rapidly declining quality of the Company’s Tier 1 capital, the relevant ratios and sufficiency of its Tier 1 capital, the necessity to take net charge-offs stemming from increasing

credit losses, and the need to shore up capital due to the Company's exposure to poorly performing real estate markets in Florida and the Mid-West region, as described at length above. These misstatements rendered the statements made in the Registration/Proxy Statement materially false and misleading.

75. Fifth Third, as the issuer of the Registration/Proxy Statement, is strictly liable for the false and misleading statements therein.

76. The Individual Defendants signed the Registration/Proxy Statement. Therefore, the Individual Defendants are liable to Plaintiff and the other members of the Class who purchased or otherwise acquired Fifth Third common stock pursuant to or traceable to the Registration/Proxy Statement for the various misstatements and omissions contained therein under § 11 of the Securities Act.

77. Plaintiff and the other members of the Class acquired Fifth Third common stock pursuant to or traceable to the Registration/Proxy Statement. At the time they acquired Fifth Third common stock, Plaintiff and other members of the Class were without knowledge of the facts concerning the inaccurate and misleading statements and omissions alleged herein.

78. Less than one year has elapsed from discovery of the violations and facts upon which this Complaint is based to the time of filing of this action. Less than three years has elapsed from the time that Fifth Third's common stock was offered bona fide to the public to the time of filing of the action.

79. By reason of the conduct alleged herein, each Defendant named in this Count violated § 11 of the Securities Act. As a direct and proximate result of the FITB Defendants' conduct, Plaintiff and the other members of the Class have sustained substantial damage in

connection with their acquisition of the common stock pursuant to or traceable to the Registration/Proxy Statement.

COUNT II

Against Defendant Fifth Third for Violations of Section 12(a)(2) of the Securities Act in Connection with the First Charter Registration Statement

80. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

81. For purposes of this claim, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging or sounding in fraud or intentional or reckless misconduct.

82. This claim is brought pursuant to Section 12(a)(2) of the Securities Act, against Fifth Third on behalf of all acquirers of Fifth Third securities in the First Charter acquisition.

83. Fifth Third was a seller, offeror, and/or solicitor of sales of the securities offered pursuant to the Registration/Proxy Statement, which contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading as set forth above.

84. Plaintiff and other members of the Class who acquired Fifth Third common stock in the exchange for First Charter common stock have sustained damages as a result of the untrue statements of material facts and omissions in the Registration/Proxy Statement for which they hereby elect to rescind and tender their Fifth Third stock to Fifth Third, in return for the consideration paid for the Fifth Third common stock with interest or request damages if they no longer own the Fifth Third Stock.

85. This claim is brought within the applicable statute of limitations.

86. By virtue of the foregoing, Fifth Third violated Section 12(a)(2) of the Securities

Act.

COUNT III

Against the Individual Defendants for Violations of § 15 of the Securities Act

87. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

88. This Count is brought pursuant to § 15 of the Securities Act, on behalf of all persons or entities who purchased or otherwise acquired Fifth Third common stock pursuant to or traceable to the Registration/Proxy Statement.

89. For purposes of this claim, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging or sounding in fraud or intentional or reckless misconduct.

90. The Individual Defendants were control persons of Fifth Third by virtue of their executive and/or directorial positions at the Company. The Individual Defendants had the power, and exercised the same, to cause Fifth Third to engage in the violations of law complained of herein and were able to and did control the contents of the Registration/Proxy Statement.

91. By reason of their positions as senior officers and directors of Fifth Third and their actual control over the Company's day-to-day operations, financial statements, public filings and their intimate involvement and control over the Registration/Proxy Statement, the Individual Defendants are jointly and severally liable to Plaintiff and the other members of the Class as a result of the wrongful conduct alleged herein.

COUNT IV

**Brought on Behalf of All First Charter Shareholders of Record as of November 26, 2007
Against the FITB Defendants for**

**Violations of Section 14(a) of the Exchange Act and
Rule 14a-9 Promulgated Thereunder by the SEC**

92. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

93. For purposes of this claim, Plaintiff expressly excludes and disclaims any allegation that could be construed as alleging or sounding in fraud or intentional or reckless misconduct.

94. The Registration/Proxy Statement, including the Proxy Statement for the First Charter Special Meeting, contained untrue statements of material facts and omitted material facts required to be stated in order to make the statements contained therein not misleading.

95. All defendants named in this count, jointly and severally, solicited and/or permitted the use of their names in solicitations contained in the Registration/Proxy Statement.

96. The Individual Defendants signed the Registration/Proxy Statement or permitted the use of their names in the Proxy Statement for First Charter Special Meeting.

97. Fifth Third is the issuer of the Registration/Proxy Statement.

98. In a Form 8-K filed with the SEC on Nov 2, 2007 and a press release issued that day, First Charter stated: "Fifth Third and First Charter and their respective directors and executive officers may be deemed participants in the solicitation of proxies from First Charter's Shareholders in connection with the Merger."

99. The Registration/Proxy Statement was inaccurate and misleading, contained untrue statements of material facts, and omitted to state other facts necessary to make the statements contained therein not misleading. Specifically, as set forth above, the Registration/Proxy Statement was untrue and misleading in that it failed to accurately report the rapidly declining quality of the Fifth Third's Tier 1 capital, the relevant ratios and sufficiency of

its Tier 1 capital, the necessity to take net charge-offs stemming from increasing credit losses, and the need for a massive infusion of capital due to the Fifth Third's exposure to poorly performing real estate markets in Florida and the Mid-West region, as described at length above.

100. By means of the Registration/Proxy Statement, the FITB Defendants sought to secure Plaintiff's approval of the First Charter merger by and into Fifth Third and solicited proxies from Plaintiff and other members of the Class.

101. The misrepresentations and omissions identified above were material to Plaintiff and the Class in determining whether to vote, and if so, how to vote with respect to the proposed Plan of Merger, dated as of September 14, 2007, by and among First Charter, Fifth Third and Fifth Third Financial. But for the false and misleading statements and omissions in the proxy solicitation, Plaintiff and the Class would not have voted to approve the Plan of Merger and would not have tendered their First Charter shares for shares of Fifth Third or would have insisted upon a substantially greater number of Fifth Third shares in exchange for their First Charter shares and/or a substantially greater cash component of the \$31.00 per share offered by Fifth Third to reflect the true value of the Fifth Third shares at the time.

102. Each defendant named in this claim acted negligently in making untrue statements of material facts and omitted material facts required to be stated in order to make the statements contained therein not misleading.

103. The Registration/Proxy Statement was an essential link in the accomplishment of the merger. As a direct and proximate result of the Registration/Proxy Statement, the shareholders of First Charter approved the merger. Without the Registration/Proxy statement and two subsequent solicitations, the FITB Defendants would not have been able to secure the

necessary affirmative vote of not less than 75% of the aggregate voting power of the outstanding First Charter stock entitled to voted.

104. Plaintiff and Class members eligible to vote on the merger were damaged as a direct and proximate result of the untrue statements and omissions in the Registration/Proxy Statement.

105. This claim is brought within the applicable statute of limitations.

106. By reason of the foregoing, Defendants have violated Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 promulgated thereunder, 17 C.F.R. § 240.14a-9.

COUNT V

**Brought on Behalf of All First Charter Shareholders of Record
as of November 26, 2007 Against the Individual Defendants
Violations of Section 20(a) of the Exchange Act**

107. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

108. The Individual Defendants acted as controlling persons of Fifth Third within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of Fifth Third's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Fifth Third's, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Fifth Third's, press releases, public filings

and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

109. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the violations of Section 14(a) of the Exchange Act and the Rules promulgated thereunder, as alleged herein, and exercised the same.

110. As set forth above, Defendants each violated Section 14(a) and Rules 14a-3 and 14a-9 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of the Individual Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their acquisition of the Company's stock pursuant to the Registration/Proxy Statement.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

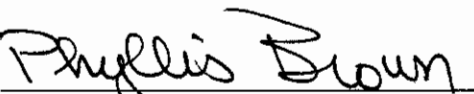
- (a) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (b) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (c) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: August 12, 2008

Respectfully submitted,

By: 
Phyllis E. Brown, Esq. (0037334)
LAW OFFICES OF PHYLLIS E. BROWN
119 East Court Street
Cincinnati, Ohio 45202
Phone: (513) 241-0061
Fax: (513) 621-7086

Liaison Counsel for Plaintiff

Sherrie R. Savett, Esq.
Michael T. Fantini, Esq.
Barbara A. Podell, Esq.
Eric Lechtzin, Esq.
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103
Phone: (215) 875-3000
Fax: (215) 875-4604

Counsel for Plaintiff

malta440269-001

**FIFTH THIRD BANCORP
CERTIFICATION PURSUANT TO THE FEDERAL SECURITIES LAW**

Sam McGee ("Plaintiff") duly swears and says, as to the claims asserted under the federal securities laws, that:

1. I have reviewed the complaint filed against Fifth Third Bancorp ("Fifth Third") and certain of its officers.

2. I did not purchase the security that is the subject of this action at the direction of my counsel or in order to participate in this private action.

3. I am willing to serve as a representative plaintiff on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. I was a holder of 500 shares of First Charter Corp. common stock as of November 26, 2007. I acquired Fifth Third common stock pursuant or traceable to Registration/Proxy Statement on Form S-4 filed with the SEC by Fifth Third on November 7, 2007, as amended on November 29, 2007 (Registration No. 333-147192). My transactions in the securities of Fifth Third between and including October 19, 2007 through June 17, 2008 are as follows:

SECURITIES PURCHASED OR ACQUIRED	DATE OF PURCHASE PURCHASE	PRICE PER SHARE
870.6	6/6/08 (Merger)	Conversion of First Charter shares; 1.7412 Fifth Third Shares per First Charter share
SECURITIES SOLD	DATE OF SALE	PRICE PER SHARE
NA	NA	NA

5. I have not sought to serve as a class representative in any other action filed under the United States federal securities laws in the past three (3) years preceding the date on which this certification is signed.

6. I have not and will not accept any payment for serving as a representative plaintiff on behalf of the class beyond my pro rata share of any recovery, or as ordered or approved by the court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 12th day of August, 2008.

By: _____

Sam McGee, Esq.
521 East Boulevard
Charlotte, NC 28203

1:08 CV 539

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Sam McGee

(b) County of Residence of First Listed Plaintiff Mecklenburg
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Phyllis E. Brown, Law Offices of Phyllis Brown, 119 E. Court St., Cincinnati, OH 45202 (513) 241-6466

DEFENDANTS

Fifth Third Bancorp, Kevin T. Kabat, Christopher G. Marshall, Daniel Poston, George Schaefer, Jr.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Securities Exchg. Act of 1934 and the Securities Act of 1933

Brief description of cause:
Failure to disclose material info about the company and its operation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER 1:08-LV-421 & 1:08-CV-49

DATE

08/12/2008

SIGNATURE OF ATTORNEY OF RECORD

Phyllis Brown

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Court Name: US District Court SDO
Division: 1
Receipt Number: 100CIN002767
Cashier ID: garrinm
Transaction Date: 08/12/2008
Payer Name: LAW OFFICE OF PHYLLIS BROWN

CIVIL FILING FEE
For: LAW OFFICE OF PHYLLIS BROWN
Case/Party: D-OHS-1-08-CV-000539-001
Amount: \$350.00

CHECK
Remitter: LAW OFFICE OF PHYLLIS BROWN
Check/Money Order Num: 2412
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

A fee of \$45.00 will be assessed on
all returned checks.