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Informazione Regolamentata n. 0049-131-2016	Data/Ora Ricezione 28 Ottobre 2016 17:39:57	MTA
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Societa' : BANCA POPOLARE DI MILANO

Identificativo : 80740

Informazione
Regolamentata

Nome utilizzatore : BPOPMIN07 - Cidda

Tipologia : IRED 04

Data/Ora Ricezione : 28 Ottobre 2016 17:39:57

Data/Ora Inizio : 28 Ottobre 2016 17:54:58

Diffusione presunta

Oggetto : REGISTRATION OF THE RESOLUTION
APPROVING THE MERGER WITH
BANCO POPOLARE

Testo del comunicato

Vedi allegato.



BANCA POPOLARE DI MILANO

Press release

**NOTICE TO THE MEMBERS AND SHAREHOLDERS OF
BANCA POPOLARE DI MILANO S.C. A R.L.**

(pursuant to art. 84 of Consob Regulation no. 11971/1999)

**REGISTRATION OF THE RESOLUTION APPROVING THE MERGER WITH BANCO POPOLARE - SOC.
COOP. IN THE MILAN COMPANIES REGISTER**

PROCEDURES AND TERMS FOR EXERCISING THE RIGHT OF WITHDRAWAL

On **25 October 2016** (the "**Registration Date**") the resolution of the Extraordinary General Meeting of Members of Banca Popolare di Milano S.c. a r.l. ("**BPM**" or the "**Company**") held on 15 October 2016 at second calling (the "**Extraordinary Meeting**"), approving the Merger between BPM and Banco Popolare – Società Cooperativa (the "**Merger**"), to be carried out through the incorporation of a new banking company in the form of a joint-stock company called "Banco BPM Società per Azioni" ("**Banco BPM**") was filed with the Milan Companies Register.

RIGHT OF WITHDRAWAL AND QUALIFIED SHAREHOLDERS

The Merger by incorporation of Banco BPM involves the transformation of BPM from a cooperative into a joint-stock company (the so-called "transformative merger"). For this reason, the shareholders and members of BPM who did not participate in the shareholders' resolution approving the Merger can exercise a right of withdrawal from the company pursuant to art. 2437 of the Italian Civil Code (the "**Right of Withdrawal**").

In particular, the right of withdrawal is reserved for the shareholders and members of BPM who did not approve the Merger Resolution (i.e. those members who were absent, dissenting or abstentions) (shareholders and members of BPM, collectively known as the "**Qualified Shareholders**").

The effectiveness of the Right of Withdrawal is conditional on the effectiveness of the Merger.

LIQUIDATION VALUE

The unit liquidation value of BPM's shares for which the Right of Withdrawal is being exercised has been set at Euro 0.4918 per share. This value has been calculated in accordance with art. 2437-ter, paragraph 3, of the Italian Civil Code, by referring exclusively to the straight average of the closing stock exchange prices for BPM's shares over the six months prior to 13 September 2016 (the date of publication of the notice of calling of the Extraordinary General Meeting of Members of BPM, which then approved the Merger).

WITHDRAWAL NOTIFICATION

Pursuant to art. 2437-bis of the Italian Civil Code, Qualified Shareholders can exercise their right of withdrawal, for all or part of the shares that they own, by sending a notification to the Company in a sealed envelope with the caption "*Exercising the Right of Withdrawal*" by registered letter or similar means

that makes it possible to record the date on which the letter is sent (the "**Withdrawal Notification**"), to be sent to BPM within fifteen calendar days from the Registration Date, i.e. **by and no later than 9 November 2016** (the "**Withdrawal Right Exercise Deadline**").

The Withdrawal Notification must be addressed to "**Banca Popolare di Milano S.c. a r.l.**" – Via San Paolo 16, 20121 Milan, Members' Secretariat, by using the appropriate form available on BPM's website (www.gruppobpm.it, in the "General Meeting of Members 14/15 October 2016" section), or by a letter containing the following information:

- (i) personal details (first name, last name and date of birth in case of an individual, or company name and registered office in case of a company), the tax code of the withdrawing Qualified Shareholder (the "**Withdrawing Shareholder**"), as well as their address (and, where possible, a telephone number and/or an e-mail address) where communications concerning the withdrawal process can be sent;
- (ii) the number of shares for which the Right of Withdrawal is being exercised (the "**Shares Subject to Withdrawal**");
- (iii) details of the intermediary where the Shares Subject to Withdrawal are deposited.

In accordance with art. 23 of the Banca d'Italia-Consob Regulation dated 22 February 2008, as subsequently amended, for the Withdrawal Notification to be admissible, the entitlement to exercise the Right of Withdrawal must be certified by a specific communication (the "**Communication**") issued by the intermediary belonging to the Monte Titoli S.p.A. centralised management system where the Shares Subject to Withdrawal are deposited, and sent to BPM according to the procedures laid down in the applicable laws and regulations. It will therefore be up to the Withdrawing Shareholder to ask for the Communication to be sent to BPM. The intermediary appointed by the Withdrawing Shareholder has to forward the Communication to BPM by certified email at: recessobpm@pecserviziotitoli.it.

The Communication has to certify that:

- (i) the Withdrawing Shareholder has owned the Shares Subject to Withdrawal continuously before the date of the Extraordinary Meeting of Members that approved the Merger up to and including the date on which the Communication was issued. With respect to the eligibility criteria, to qualify to exercise the Right of Withdrawal a Shareholder who bought shares on the stock exchange has to have paid for them in time to receive them before the start of the Extraordinary Meeting of Members of 15 October 2016; and
- (ii) the Shares Subject to Withdrawal have to be free of pledges or other encumbrances in favour of third parties. Otherwise, for the Withdrawal Notification to be deemed admissible, the Withdrawing Shareholder must also send to BPM, following the same procedures and attached to the Withdrawal Notification, a specific statement by the secured party, or other beneficiary of the encumbrance, stating their irrevocable and unconditioned consent to the release of the Shares Subject to Withdrawal from pledge and/or encumbrances and to their liquidation in accordance with the Withdrawing Shareholder's instructions.

These communications, statements and certifications must also be made by Withdrawing Shareholders who hold BPM shares that have not been deposited with the centralised management system, with the formalities required under applicable laws and regulations. In this case, they must deliver the share certificates beforehand to an authorised intermediary for their centralisation in Monte Titoli S.p.A. and request the issuance of the above-mentioned Communication to exercise the Right of Withdrawal.

Withdrawing Shareholders are responsible for ensuring that the information provided in the Withdrawal Notification is correct and for sending it in by and no later than the Withdrawal Right Exercise Deadline. Any Withdrawal Notifications sent after this deadline and/or lacking the necessary information and/or not promptly accompanied by the Communication will not be accepted.

LOCK-UP OF SHARES SUBJECT TO WITHDRAWAL

In compliance with art. 2437-*bis*, para. 2, of the Italian Civil Code, the Shares Subject to Withdrawal will become unavailable up to the end of the liquidation procedure; hence, the shares mentioned above may not be transferred by shareholders up to the end of the liquidation procedure, making it temporarily impossible to sell their investment. In accordance with the applicable rules, issuance of the Communication by the intermediary will trigger the lock-up of the Shares Subject to Withdrawal .

LIQUIDATION PROCEDURE

In the event that one or more Qualified Shareholders exercise their Right of Withdrawal, the liquidation procedure will be carried out in compliance with art. 2437-*quater* of the Italian Civil Code which, in relation to the possible purchase of the Shares Subject to Withdrawal by Banco BPM, pursuant to art. 2437-*quater*, paragraph 5, of the Italian Civil Code, is subject to the limits and restrictions as per Law no. 33 of 24 March 2015, as explained below.

If the procedure as per art. 2437-*quater* of the Italian Civil Code is still underway at the effective date of the Merger, the Shares Subject to Withdrawal will be exchanged for newly issued ordinary shares of the company resulting from the Merger, Banco BPM (based on the exchange ratio established for the Merger, namely 1 Banco BPM ordinary share for every 6.386 BPM shares - the "**Exchange Ratio**"). It is understood that these newly issued Banco BPM shares shall also be subject to the lock-up restriction described in the previous paragraph ("*Lock-up of Shares under Withdrawal*") and that the withdrawing Qualified Shareholders shall be entitled to receive the same overall liquidation value indicated in the paragraph above on the "*Liquidation Value*".

As mentioned previously, the effectiveness of the withdrawal will be subject to the effectiveness of the Merger. This means that if the Merger is not completed, the Shares Subject to Withdrawal (or the Banco BPM shares assigned in exchange for them) will be released from the lock-up restriction described in the previous paragraph ("*Lock-up of Shares under Withdrawal*") and returned to the Withdrawing Shareholder free of any restriction; the liquidation procedure of such shares will therefore be interrupted.

(A) The Pre-emptive Offer

The Shares Subject to Withdrawal will first be pre-emptively offered to the shareholders of BPM who did not exercise their Right of Withdrawal, in proportion to the number of BPM shares that they hold (the "**Pre-emptive Offer**"). As provided by law, shareholders will be granted a term of not less than thirty days from the date on which the Pre-emptive Offer is deposited with the Milan Companies Register to exercise their pre-emptive rights. Moreover, those BPM shareholders who exercise their pre-emptive rights as part of the Pre-emptive Offer, provided they apply for it at the same time, will also be granted a pre-emptive right to buy the Shares Subject to Withdrawal that have not been taken up; in the event that the number of shares for which the pre-emption right is exercised is higher than the number of shares that have not been taken up at the end of the Pre-emptive Offer period, the shares will be distributed among all the applicants in proportion to the number of shares that they hold.

The terms and procedures to participate in the Pre-emptive Offer, together with any additional information thereon, will be communicated by BPM in the Pre-emptive Offer notice to be deposited with the Milan Companies Register pursuant to art. 2437-*quater*, para. 2, of the Italian Civil Code. The notice will be published in the ways and terms required by current law.

(B) The Offer on the Market

Any residual Shares Subject to Withdrawal that have not been sold at the end of the Pre-emptive Offer can be offered on the Italian MTA market (Mercato Telematico Azionario) organised and run by Borsa Italiana S.p.A. (the "**Offer on the Market**"), in compliance with art. 2437-*quater*, paragraph 4, of the Italian Civil Code and other applicable legal and regulatory provisions. All the required information

regarding this phase of the liquidation procedure will be communicated in due course in the ways and terms required by current law.

(C) Further steps in the liquidation procedure – Limitations on reimbursement of the Shares Subject to Withdrawal

The reimbursement of any Shares Subject to Withdrawal not taken up on completion of the Pre-emptive Offer and of the Offer on the Market will be borne by the company resulting from the Merger, Banco BPM, pursuant to art. 2437-*quater*, para. 5, of the Italian Civil Code, and the rules on the reimbursement of shares subject to withdrawal envisaged for cooperative banks, as already explained in detail in Paragraph 11.2 of the Explanatory Report of BPM's Management Board on the Merger, prepared under arts. 2501-*quinquies* of the Italian Civil Code and 70, para. 2, of Consob Regulation 11971/1999 (published on BPM's website www.gruppobpm.it in the "General Meeting of Members of 14/15 October 2016" section – the "**Explanatory Report**").

It is recalled that Decree Law no. 3 of 24 January 2015, converted into Law no. 33 of 24 March 2015, has amended certain provisions of Legislative Decree 385 (the Consolidated Banking Act or "**CBA**") on cooperative banks: *inter alia*, a new paragraph 2-*ter* was added to art. 28, under which: "*At "banche popolari" and "banche di credito cooperativo", the right of reimbursement in the event of withdrawal, also as a result of transformation, death or exclusion of the shareholder, is limited in accordance with the provisions of the Bank of Italy, even if this involves a derogation from statutory provisions, when this is necessary to allow the shares to be included in the bank's core capital for regulatory purposes. For the same purposes, the Bank of Italy can limit the right of reimbursement of any other equity instruments that have been issued*".

The regulatory framework established by the new version of art. 28, para. 2-*ter*, of the CBA was completed with the introduction of Chapter 4 of the Third Part of the Bank of Italy's Circular no. 285 of 17 December 2013, in particular regarding Section III, which provides that "*the articles of association of a "banca popolare" or "banca di credito cooperativo" gives the strategic supervisory body, on the proposal of the management body, having heard the control body, the power to limit or defer, in whole or in part and without any time limit, the redemption of the shares and any other capital instruments of the shareholder who is leaving because of withdrawal (also in the event of a transformation), exclusion or death, as provided for under the applicable supervisory regulations. This right is granted, pursuant to article 28, paragraph 2-ter, of the CBA, even in derogation from the applicable provisions of the Italian Civil Code and other statutory provisions*".

In compliance with the above regulations, BPM has amended its articles of association by introducing a new last paragraph in art. 39, according to which "[...] *after consulting the Supervisory Board, the Management Board can limit and/or postpone, in whole or in part and without any time limit, the redemption of shares and any other capital instruments attributable to the Bank's Common Equity Tier 1 (both in the case of withdrawal, also as a result of a transformation, and in cases of exclusion or death of the shareholder), even as an exception to the provisions of the Civil Code and other laws. [...]*". Banco Popolare has added a similar provision in its by-laws (see art. 15, paragraph 2, of the by-laws of Banco Popolare).

The reimbursement of BPM's shares (in the same way as Banco Popolare's shares), for which the Right of Withdrawal has been exercised, that remain once the Pre-emptive Right has been exercised and after their possible placement under the Offer on the Market, will be subject to the regulatory and statutory provisions mentioned above and, if not derogated, the specific Civil Code provisions on this matter. The decision regarding reimbursement of the remaining shares will be taken: (i) only after the Merger takes effect; and (ii) once the number of shares for which withdrawal has been exercised and the result of the Pre-emptive Offer and Offer on the Market have been published in order to know the residual amount that would have to be taken up by Banco BPM pursuant to art. 2437-*quater*, paragraph 5, of the Italian Civil Code.

As spelt out in greater detail in Paragraph 11.2 of the Explanatory Report (and in the Explanatory Report prepared by Banco Popolare) to which reference should be made for more information, neither BPM or Banco Popolare are in a condition to provide definitive guidelines on any limitation that could be applied by Banco BPM on the reimbursement of such residual shares, as the banks themselves do

not know – nor can they currently determine with any certainty – the effective capital ratios and overall prudential, financial, liquidity and solvency situation of Banco BPM, based on which it will have to decide on this matter according to applicable law and regulatory provisions. Nevertheless, in compliance with the Bank of Italy's requests in the report on the consultation for the issuance of new supervisory provisions, it was though opportune – in order to permit members and shareholders to exercise their Right of Withdrawal with as much awareness as possible – to indicate the criteria defined by the Management Board of BPM and the Board of Directors of Banco Popolare, after consulting the pertinent control bodies, with regard to the (partial or, if appropriate, full) limitation of the reimbursement of the Shares Subject to Withdrawal that have not been taken up by the other shareholders or by the market (without prejudice to the fact that, as explained before, the decision will be up to the competent bodies of Banco BPM).

More specifically, in light of the considerations made and explained analytically in Paragraph 11.2.2 of the Explanatory Report, the following criteria have been identified for limiting the reimbursement of any residual shares:

- (i) at the date on which the competent bodies of Banco BPM will have to decide whether to limit (partially or, if appropriate, fully) the reimbursement of the shares for which the right of withdrawal has been exercised, the "pro-forma" fully loaded CET 1 ratio of Banco BPM will be estimated. This estimate will be based on the latest capital ratios of BPM and Banco Popolare and will reflect the expected impacts in order to guarantee compliance with the conditions indicated by the European Central Bank, the impacts of accounting for the Merger in accordance with IFRS 3, and the impacts of the non-recurring charges and investments to be incurred in pursuit of the objectives of Banco BPM's strategic plan approved by the management bodies of the two banks and presented to the market on 16 May 2016 (the "**Strategic Plan**");
- (ii) the estimated fully loaded CET 1 ratio indicated in point (i) will then be compared with the "pro-forma" fully loaded CET 1 ratio that will be calculated by the competent bodies of Banco BPM as the minimum level below which it is deemed that this indicator should not fall as a result of reimbursing the Shares Subject to Withdrawal. In calculating this minimum level, the contents of Banco BPM's Strategic Plan – submitted to the ECB as part of its review prior to obtaining authorisation of the Merger and that, as already announced to the market, calls for a fully loaded CET 1 ratio of 12.9% at the end of 2019 – will be taken into due consideration, as will the overall economic, financial, liquidity and solvency situation at the time of the decision and the most up-to-date forecasts on its evolution, the market risks, any additional instructions that might be received from the Supervisory Authority, the expected impacts of any new and more challenging regulatory requirements announced by the Supervisory Authority, or otherwise foreseeable, and the levels of this indicator for the principal European and Italian banks that are of the same size or larger than Banco BPM.

Therefore, considering the number of shares for which the right of withdrawal will be exercised and the outcome of the Pre-emptive Offer and the Offer to the Market, Banco BPM will assess whether their reimbursement is compatible with the aim of maintaining the fully loaded CET 1 ratio indicated in point (i) over the minimum level of that indicator as calculated in accordance with point (ii) above.

On the basis of all the foregoing and the criteria mentioned above, we should point out that there may not be the conditions for Banco BPM to make its own resources available to reimburse the Shares Subject to Withdrawal and not taken up in the Pre-emptive Offer and Offer to the Market.

As regards the criterion that would be followed by Banco BPM to allocate – amongst the members and shareholders of the two banks taking part in the Merger who have exercised the Right of Withdrawal – any amount that might be made available to reimburse the Shares Subject to Withdrawal, not taken up by the other shareholders or by the market, Banco BPM will proceed on the basis of the Relative Contributions as mentioned in Paragraph 4.2 of the Explanatory Report, regardless of the total number

of withdrawals by shareholders and members of the two banks and the ratio between the number of withdrawals of the two banks. Once the amount available to each of the two groups of members and shareholders of the two banks that have exercised their right of withdrawal is known, the exact number of BPM and Banco Popolare shares to be reimbursed (exchanged for Banco BPM shares) will be determined. This will be calculated by dividing the amount available to the former members and shareholders of BPM that have exercised their right of withdrawal and to the former members and shareholders of Banco Popolare that have exercised their right of withdrawal, by the withdrawal price applicable to each of these two groups.

The shares that could be reimbursed in application of these criteria will be liquidated in full to those entitled – providing Banco BPM obtains the authorisations required to reduce its own resources for reimbursement of the Tier 1 core capital instruments envisaged in articles 77 and 78 of the (EU) Regulation no. 575/2013 (CRR) – while the shares that are not reimbursed – having been exchanged for Banco BPM shares – will again be made available to the shareholders that have exercised their right of withdrawal once the legal procedures have been concluded.

For more information on the restrictions on redemption of the shares subject to withdrawal, please see Chapter 11 of the Explanatory Report.

This notice has also been published on 26 October 2016 in the daily newspapers Il Sole 24 Ore and MF.

We will inform those concerned on the progress of the liquidation procedure, in the terms and in the manner prescribed by law and applicable regulations.

Milan, 25 October 2016

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Fine Comunicato n.0049-131

Numero di Pagine: 8