



# SPAFID CONNECT

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*Testo del comunicato*

Vedi allegato.

**PRESS RELEASE IN ACCORDANCE WITH ARTICLE 114 PAR. 5 OF THE LEGISLATIVE  
DECREE 58/1998**

**INFORMATION DISCLOSED UPON CONSOB'S REQUEST DATED 21 DECEMBER 2018**

Siena, 28 December 2018 – In connection with the information disclosed by the Bank relating to the criminal proceeding no. 955/2016 and, more generally, with reference to the legal risks connected to the litigations arising from the financial information disclosed by the Bank to the market in the period between 2008 and 2015, upon CONSOB's request dated 21 December 2018, in accordance with Article 114 Par. 5. of Legislative Decree no. 58/1998 ("the Consolidated Financial Act"), the Bank hereby discloses the following information.

Request no. 1<sup>1)</sup> **Comprehensive amount of the *petitum*, arising from civil and criminal legal proceedings, including threatened litigations, relating to the purchase of securities, issued in connection with the capital increase transactions of 2008, 2011, 2014 e 2015, and/or in connection with trading activities based on allegedly incorrect information included in the offering circulars, financial statements and/or in other price sensitive information disclosed by the Bank in the period between 2008 and 2015 as of 30 September 2018, to the extent materially different from the information disclosed as of 30 June 2018.**

In connection with the *petitum*, arising from civil and criminal legal proceedings, including threatened litigations relating to the purchase of securities in the period between 2008 and 2015, preliminarily the Bank informs that as of 30 September 2018 no material changes occurred in respect of the information disclosed to the market as of 30 June 2018.

In particular, as of 30 September 2018 the comprehensive *petitum* is of approximately Euro 1,5 bn and it can be divided into the following categories.

(Euro Million)

<b>Categories</b>	<b>30/06/18</b>	<b>30/09/18</b>
Civil Litigation brought by the shareholders	763	764
Threatened Litigations	599	606
Admitted Civil Parts Proceeding no 29634/14	42	42
Admitted Civil Part Proceeding no 955/16	-	76
<b>Total</b>	<b>1.404</b>	<b>1.487</b>

In connection with the request of damages relating to the two criminal proceedings numbered 29634/14 and 955/16 it is worth to point out that the information is not complete. It relates only to the parties that in the filing form to be admitted as damaged civil party in the relevant criminal procedure have already quantified the damage suffered. It has to be considered that it is a right of each damaged civil party to quantify the request before the conclusion of the trial phase. The Bank discloses below the information concerning the number of the damaged civil parties admitted to participate to the criminal proceedings, including those who have already quantified the damage suffered.

	<b>Criminal Proceeding no.</b>	
	<b>29634/14</b>	<b>955/16</b>
Admitted Civil Parties	1.243	2.272
Civil Parties who quantified damages	480	349

<sup>1</sup> Please note that the Bank has translated into English Consob's requests that has been sent to the Bank in Italian language and this translation has to be considered a mere courtesy translation.

The Proceeding numbered 29634/14 includes, among others, Mr Mussari and Vigni as defendants. It relates facts concerning the period between 2008 and 2011. The proceeding numbered 955/16, where the Bank is defendant, relates alleged responsibilities of Mr Profumo, Mr Viola and Mr Salvadori. It relates to facts concerning the period between 2012 and 2015.

In connection with the filing of the damaged civil parties, it is worth to point out that, in the event of a conviction of the defendants, in this kind of articulated procedures, the criminal judge – without prejudice for the latter’s right to issue an immediately enforceable provisional judgment, upon request of one party – could issue a generic conviction to pay damages, sending the parties before the civil judge to discuss the concrete presence of damages and the relevant quantification and liquidation.

**Request no 2) Methodology used to account provisions in connection with civil litigations, criminal litigations and threatened litigations relating to the above mentioned transactions pursuant to the terms of the International Accounting Principle IAS 37, considering what has been declared by the Bank in the context of the conference call held in connection with the presentation to the Market of the financial result as of 30 September 2018 relating to the provisioning and the above mentioned press reports<sup>2</sup>.**

Generally speaking, and in accordance with the International Accounting Principle IAS 37, the Bank evaluated the risk of paying damages as “likely” in connection with the legal proceedings, the admitted damaged civil parties in the criminal proceeding numbered 29634/14, and the threatened litigation in connection with the facts of the period between 2008 and 2011 and, therefore, in the financial statements allocated funds for liabilities and charges. The Bank made proper provisioning accordingly. Such evaluations, concerning the risk to pay damages, reflect the decision of the Bank taken in March 2013 to commence civil liability actions against the former Chairman and General Manager as well as the foreign banks involved in certain transactions. They also take into account the positions taken not only by the Public Prosecutors’ Office of Milan, but also by the Regulators, who resolved to request to be admitted as damaged civil parties, and enforced specific administrative sanctions concerning those facts.

In connection with the proceedings relating to the period between 2012 and 2015, no provisioning has been made since the Bank has evaluated the risk of paying damages as “not likely”. The criminal proceeding 955/16 belongs to this group. In addition, the Bank recalls that on 12 July 2018, a press release had been issued through which the market has been informed concerning the decision of the Bank not to request to be a civil party in such criminal proceeding. Such decision has been based on the absence of the conditions as of that date reserving the right to commence civil liability actions against the defendants. Even in this case, the evaluations of the Bank that it may be ordered to pay damages took into consideration the position taken by the Regulators and, in particular, their common decision not to request to file as a damaged civil parties in this criminal proceeding, and not to enforce any administrative sanction against the defendants and the Bank. The position taken by the Public Prosecutors’ Office of Milan was also important given that – albeit compelled to proceed by the Judge for the Preliminary Investigations – reiterated their thought concerning the absence of grounds for the charges, requesting, in the context of the preliminary hearing, a decision not to proceed against the defendants.

In connection with the criminal and civil proceedings relating to information disclosed to the market only between 2008 and 2011, the provisioning was determined taking into consideration the amount

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<sup>2</sup> Corriere della Sera dated 2 November 2018: “The comprehensive amount of litigation is more than Euro 2 bn with Euro 250 million of accounted provisions. New requests of payment are now arriving. According to sources close to the Bank the latter has no intention to account new provisioning (affecting the economic and financial results of the Group) considering that it thinks that the condemnation is considered not likely”.

invested by the counterparties in specific periods of time characterized by the information deemed to be alleged incorrect (not considering any sale of securities in the same periods of time).

The payable compensation was then determined considering the criteria of the “*differential damage*” which identifies the damage as the lowest price that the investor should have paid if the set of information were true and accurate. In light of such determinations, econometric techniques were applied with the support of independent experts for the purposes of eliminating, *inter alia*, the component relating to the trend of the securities in the banking sector during the relevant period of time. In particular, firstly the damage arising from each event potentially aimed at generating the alteration of the information was quantified, then the amount theoretically connected with each plaintiff/civil party considering the capital held from time to time was calculated.

The differential damage criteria appear to be in line with the facts that are the grounds of the above mentioned legal proceedings. From a mere probabilistic and conservative stand point, different criteria (not shared by the prevalent jurisprudential trends, including that – as mentioned above – considered in the matter in question) concerning the “*comprehensive damage*” were also taken into account. This criteria stems from the argument that untrue or incomplete information can have such a serious causal effect on the investment decisions that, in the presence of correct information, the investor would not have made such investment at all. In this case, the damage is therefore proportional to the entire result of the investment made by the plaintiff/damaged civil party.

In connection with the threatened litigation connected to the period between 2008 and 2011, for the purposes of considering the probability that the same may turn into proper legal proceedings, the provisioning were determined applying an empirical factor to the request of the counterparties in line with the policies adopted by the Bank in similar situations.

As already set forth in the financial statements and in the semi-annual accounts, the Bank, in accordance with IAS 37, decided not to provide information concerning the accounted provisions considering that such information, to the extent disclosed, could seriously affect the position of the Bank in connection with the existing litigation and in the negotiations of potential settlement agreements.

In addition, to this end the Bank does not acknowledge, now and in the future, any further impact arising from different legal or accounting interpretations that may be provided by third parties and rendered available through the media.

**Request 3) Most recent updating available, even after the date of the approval of the quarterly accounts as of 30 September 2018, on the status of the above mentioned current civil and criminal legal proceedings.**

On 4 October 2018 the first three judgments relating to the litigation commenced by certain shareholders of the Bank were issued. The Court of Florence only accepted a small part the request for damages filed by the counterparts based on the incorrectness of the reports prepared by the Bank in connection with the share capital increases carried out in 2008 and 2011. The Court found that the plaintiffs were owed damages amounting to 10% of the invested amount (and not of the *petitum* argued in the case) and only in connection with the shares underwritten in the context of the 2011 capital increase (while the Court did not recognize any material alterations made to the information with regard to the report published at the time of the 2008 capital increase).

In addition, the same Court completely rejected the request of another shareholder on the basis that the latter sold the shares of the Bank on the market before the altered information was disclosed to the market.

In connection with the criminal proceeding numbered 955/2016, on 6 November 2018 the Judge ordered to exclude 390 damaged civil parties, admitting 2272 of which 349 quantified the damage



suffered. The discussion phase of the proceeding has commenced and the next hearing is scheduled for 18 March 2019.

*This press release is available on Bank's website [www.gruppomps.it](http://www.gruppomps.it)*

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