CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquiries of Investors
Annual Report 2010

Attention to the Complaints and Enquiries of Investors. Annual Report 2010

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1 Introduction

This Annual Report sets out information corresponding to the year 2010 on the steps taken by the CNMV to deal with the complaints and enquiries made by investors through its Investor Assistance Office (IAO).

The IAO is attached to the CNMV's Investors Division and serves as its relational channel with service users. Investors can approach the IAO to make enquiries and to seek guidance on securities market regulations, products and services and their legally protected rights. They can also can place complaints through the IAO when they feel their interests have been harmed or their rights undermined through the action of a provider of investment services.

For complaints to be accepted by the CNMV, they must first have been put to the respondent entity's Client Service Department and/or Client's Ombudsman. The investor can then choose to take them further if he disputes their decision or no reply is forthcoming within two months.

Complaints are resolved through a non binding report from the CNMV which states whether the entity has adhered to the good practices required of securities market participants. It will also inform the investor of his rights and the legal channels through which to pursue them.

Complaints can be either mailed or presented in person to the CNMV's General Registry. Enquiries can be directed to the CNMV via a dedicated telephone service or else in writing, by ordinary mail or using the online form on the regulator's Investor Portal.

The Report is organised into five chapters plus three annexes. Following this short introduction, chapter two offers a run-through of the IOA's 2010 activity as regards the number of enquiries and complaints received and, in the case of complaints, the resolutions issued, the kind of entities complained against and the follow-up of reports finding in the complainant's favour. The third chapter opens with a discussion of the criteria and recommendations applied in dealing with some of the year's complaints seen as most significant, either because they were frequent or because they raised new issues. Chapter four looks at the main subjects of complaints resolved in favour of the complainant. And finally, the last chapter examines the topics brought up most regularly in investor enquiries during 2010.

Of the three annexes, the first presents key statistics on complaints received, the second comprises a list of complaints classified by subject matter and the third offers an illustrative selection of complaints concluding in a report favourable to the service user.

2 IAO Activity in 2010

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2.1 Complaints

2.1.1 Volume and nature of complaints

A total of 2,296 complaints were received from investors in 2010. This was 6.6% more than in 2009, a year in which their number doubled.

2,086 complaints were accepted for processing by CNMV departments, 83.4% more than in 2009. Of this number, 1,774 were investigated and the conclusions written up in a report, an increase of 115.5% over complaints settled in 2009.

Total complaints filed and processed TABLE 1

	2008	2009	2010
Filed in the year	1,058	2,154	2,296
Processed	899	1,137	2,086
Resolved	722	823	1,774
Not accepted	177	314	312
In progress at year end	**393**	**1,410**	**1,620**

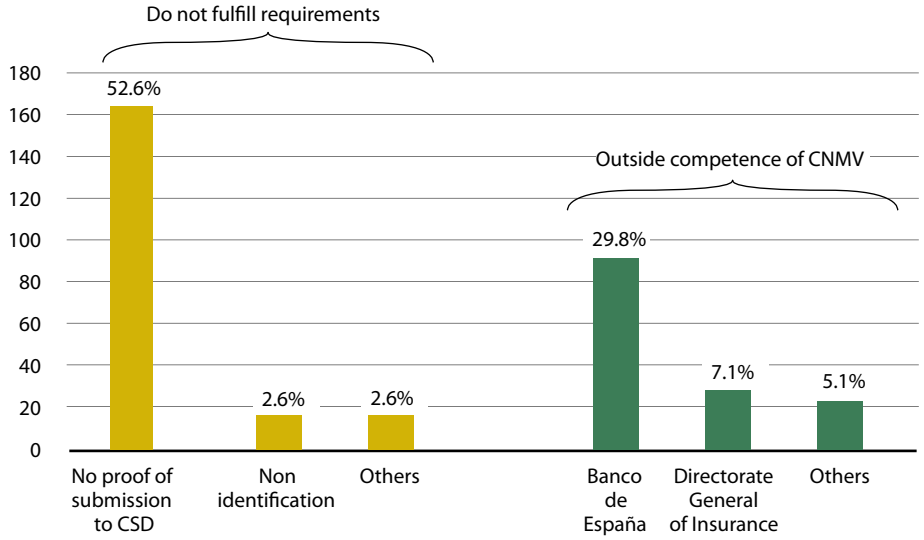
Source: CNMV.

The large quantity of complaints received, not just in 2010 but also the two preceding years, has lengthened the time required for settlement to 271 days, against a 2009 average of 179 days. Finally, 15.3% percent of complaints were resolved upon within four months of their presentation to the CNMV.

A second consequence of the volume of complaints received is that 1,620 files were still pending resolution at year-end 2010.

The number of complaints turned down was on a par with the previous year. A majority of non acceptance cases (164) were because the client could offer no proof of having placed the matter before the respondent's Client Service Department (CSD), while a further 131 (42%) were directly outside the competence of the CNMV and, where appropriate, were passed on to the responsible authority (Banco de España Complaints Service or the Directorate-General of Insurance and Pension Funds). Remaining non acceptances (17) were mainly due to defects of identification which were not corrected despite a request to this effect from the CNMV or other, diverse causes (e.g., reiteration).

Non accepted complaints and those outside the competence of the CNMV. Reasons FIGURE 1



Source: CNMV

2.1.2 The subject of complaints

The complaints resolved by the CNMV can be classified into two large groups: those arising from incidents in the provision of investment services and those to do with investment funds and other U.C.I.T.S. schemes. Although the first group tends to outnumber the second, the gap widened in 2010 with complaints about investment services being twice as frequent as those concerning U.C.I.T.S.

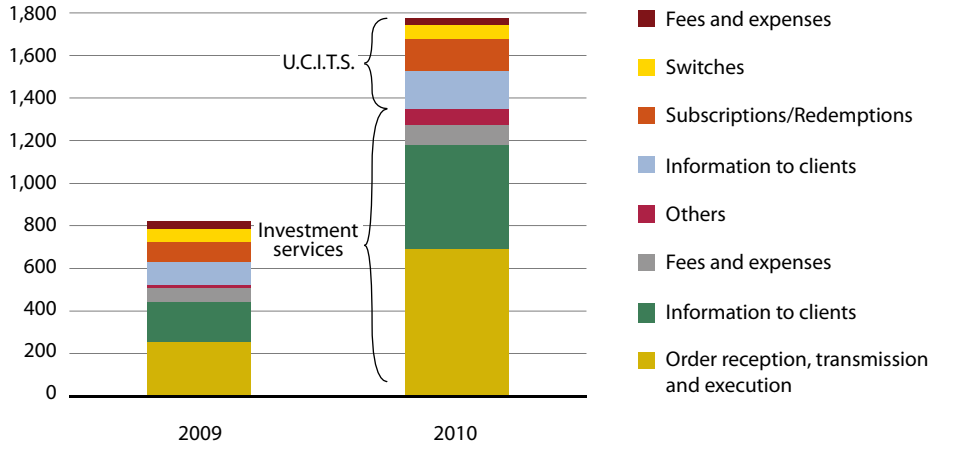
Complaints resolved in 2010. Distribution by subject TABLE 2

	2008		2009		2010	
	Number	% total	Number	% total	Number	% total
Investment services	**388**	**53.7**	**525**	**63.8**	**1,350**	**76.0**
Order reception, processing and execution	200	27.7	256	31.1	691	45.2
Information to clients	112	15.5	188	22.8	491	22.8
Fees and expenses	59	8.2	63	7.7	92	5.2
Others	17	2.4	18	2.2	76	2.7
Investment funds and other U.C.I.T.S.	**334**	**46.3**	**298**	**36.2**	**424**	**24.0**
Information to clients	95	13.2	108	13.1	181	10.3
Subscriptions/Redemptions	103	14.3	92	11.2	151	8.5
Switches	88	12.2	61	7.4	61	3.5
Fees and expenses	48	6.6	37	4.5	31	1.7
Total complaints resolved	**722**	**100**	**823**	**100**	**1,774**	**100**

Source: CNMV.

Table 2 and figure 2 go into greater detail on the subjects of complaints under these two headings. The increase in complaints regarding the provision of investment services traced primarily to informational deficiencies and, in second place, order processing and execution, which remained overall the largest group. In particular, 2010 brought a rush of complaints on the execution of sell orders on preference shares and the information supplied to and collected from clients during the sale of hedging derivatives.

Distribution of complaints resolved by subject FIGURE 2



Source: CNMV

2.1.3 Type of resolution

The proportion of complaints concluding with a report favourable to the complainant advanced significantly in 2010 as far as 38.6% of the total processed, against the 25.9% of unfavourable reports. In effect, the 805 reports favourable to complainants made this the most numerous group by a wide margin.

A total of 242 cases concluded with accommodations and a further 33 with the withdrawal of the complaint. Practically all withdrawals are the result of a previous agreement between the parties, with accommodation by the entity, so it makes sense to group them together statistically. The increase under this joint heading is as shown in table 3, though note that their percentage out of total complaints processed has decreased with respect to 2009 (13.2% against 19.3%).

Favourable reports, accommodations and withdrawals indicate entity conduct at odds with good practice, and together represent over half of all complaints processed (52%) compared to 45% in 2009.

Most of the accommodations and withdrawals registered in 2010 were related to incidents arising in investment services provision (86.9%), particularly in the transmission, execution and settlement of orders, which accounted for 55% of the total. Meantime, those referring to investment funds and other U.C.I.T.S. were down significantly compared to the prior year (see table A1.10 of Annexe 1).

One salient 2010 development was citizens' increased use of the one-stop shop facility allowing them to present complaints about financial services to any of the three sector supervisors, who take charge of sending them on to the competent authority. Complaints filed through this channel numbered 131, almost 50% more than in the previous year.

Finally, the reduction in complaints turned down for some failure of compliance indicates that investors are better informed and more familiar with the steps to follow in exercising their rights.

Distribution of complaints processed by type of resolution TABLE 3

	2008		2009		2010		% change
	Number	% total	Number	% total	Number	% total	10/09
Resolved	**722**	**80.3**	**823**	**72.6**	**1,774**	**85.0**	**115.6**
Report favourable to complainant	226	25.1	292	25.7	805	38.6	175.7
Report unfavourable to complainant	365	40.6	255	22.4	540	25.9	111.8
No opinion stated	10	1.1	57	5.2	154	7.4	170.2
Accommodation	112	12.5	198	17.4	242	11.6	22.2
Withdrawal	9	1	21	1.8	33	1.6	57,1
Non competence	**177**	**19.7**	**314**	**27.4**	**312**	**15.0**	**-0.6**
Competence of other bodies	41	4.6	86	7,4	131	6.1	48.8
Not accepted	136	15.1	228	20.1	181	8.8	-19.3
Total complaints processed	**899**	**100**	**1,137**	**100**	**2,086**	**100**	**83.5**
Total filed in the year	**1,058**		**2,154**		**2,296**		**6.6**

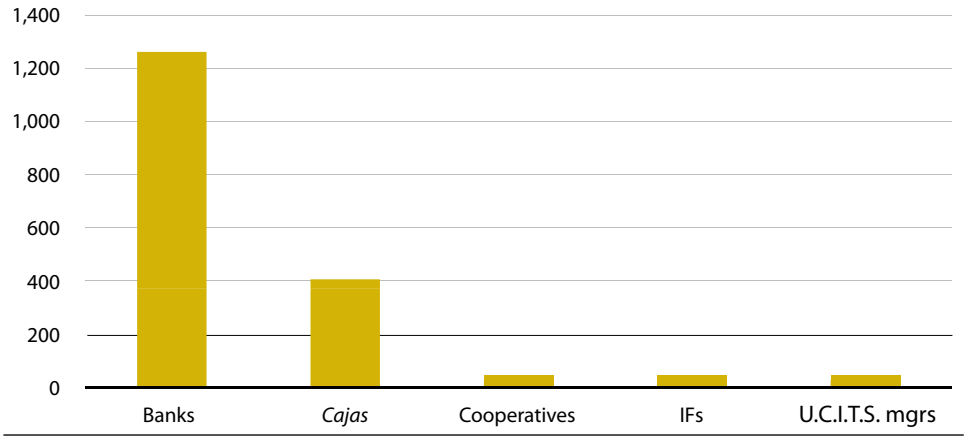
Source: CNMV.

2.1.4 Entities complained against

The distribution of complaints by respondent reflects each type of entity's relative weight in channelling the savings of Spanish residents (see figure 3). Accordingly it is the banks that attract the bulk of complaints, a total of 1,291 in the year (73% of all complaints resolved), followed by the *cajas de ahorro* (Spanish savings banks) with 406 (23% of the total).

Figure 4 shows the resolutions of complaints filed against banks and *cajas*, with the largest category being a report favourable to the complainant.

Distribution by entity complained against FIGURE 3

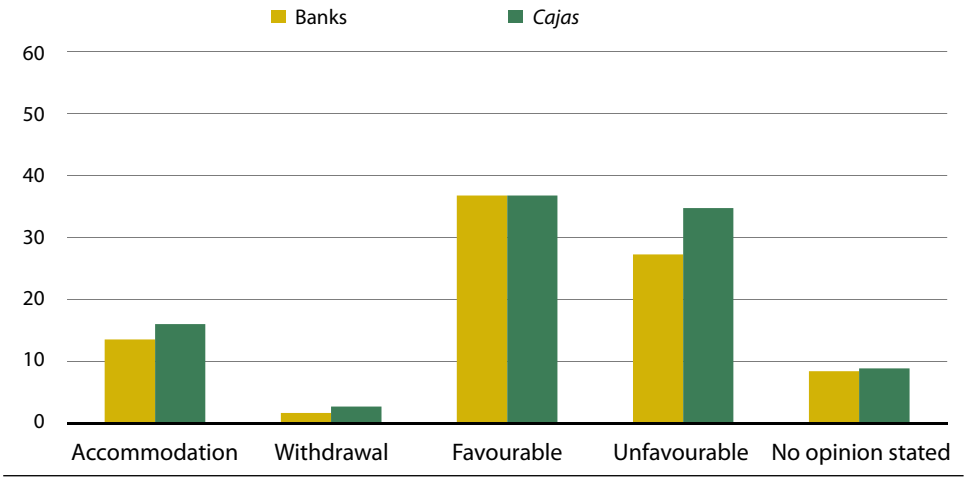


Source: CNMV.

The number of entities complained against increased in 2010, but what stands out more is the greater number of complaints directed against each.

Of the 117 entities complained against in 2010, 41 were banks, 36 *cajas de ahorros*, 11 cooperatives and 29 investment firms or U.C.I.T.S. management companies. In 2009 complaints were filed against 32 banks, 29 *cajas*, 8 cooperatives and 21 investment firms and U.C.I.T.S. management companies, making 90 entities in all.

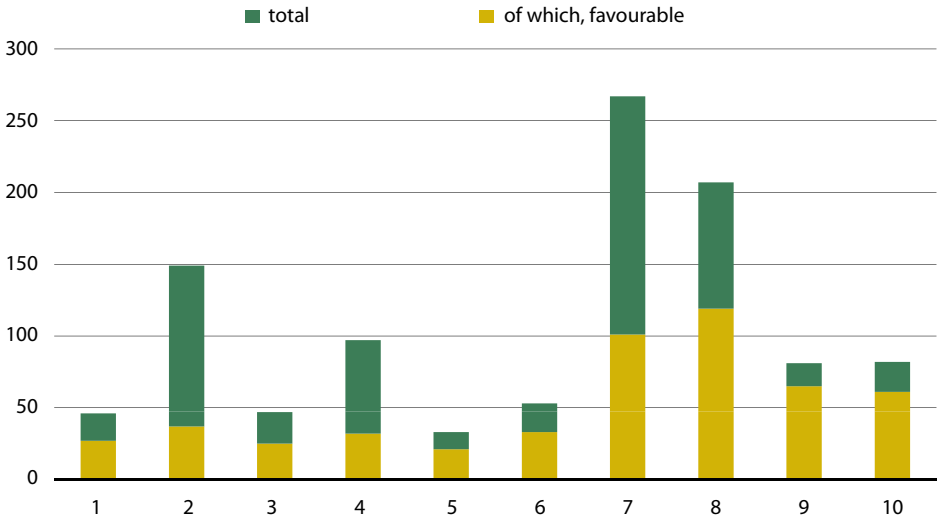
Distribution by type of report FIGURE 4
% out of total complaints received per type of entity



Source: CNMV.

As remarked, this year has seen a greater concentration of complaints per entity in terms of both the number received and those resolved by the CNMV with a report favourable to the complainant. In both cases, over 30% of complaints referred to two entities, with more than 200 complaints, of which over 100 concluded with a report favourable to the complainant. These figures, however, are partly a consequence of their large size. A better yardstick might therefore be to look at the percentage of all complaints concluding with a report favourable to the complainant (see figure 5), and then to consider this percentage as a function of the entity's size. A more detailed breakdown of complaints can be found in table A1.3. of Annexe 1.

Total complaints received and resolved with a favourable report FIGURE 5
At the ten banks with the highest number of reports favourable to the complainant



Source: CNMV.

In the case of the *cajas de ahorros*, of the 36 entities complained against, three received over 50 complaints each. Looking only at complaints resolved with a report favourable to the complainant, one *caja* received more than 42, while four others received over 15 (see table A1.4 of Annexe 1).

Complaints resolved by type of entity and subject matter

We can see from table 4 that complaints directed against banks and *cajas* turned mainly on investment services.

Among the banks, defects in the information supplied to clients and incidents with order execution were the most frequent causes of complaint, followed in importance by information deficiencies in investment fund marketing and fund subscriptions and redemptions.

Among *cajas de ahorros*, the bulk of complaints concerned the processing of client orders, followed by problems with the information supplied to clients (see table 4).

Subjects of complaints. 2010 TABLE 4

	Banks	*Cajas*	Coops	IFs	U.C.I.T.S. mgrs	TOTAL
Investment services	**993**	**321**	**17**	**18**	**1**	**1,350**
Order reception, processing and execution	464	209	10	8	0	691
Information to clients	415	71	5	0	0	491
Fees and expenses	57	32	1	2	0	92
Others	57	9	1	8	1	76
Investment funds and other U.C.I.T.S.	**298**	**85**	**6**	**6**	**29**	**424**
Information to clients	126	35	3	1	19	181
Subscriptions/Redemptions	107	35	1	2	6	151
Transfers	41	12	1	3	4	61
Fees and expenses	24	6	1	0	0	31
Total complaints resolved	**1,291**	**406**	**23**	**24**	**30**	**1,774**

Source: CNMV.

2.1.5 Follow-up of reports favourable to the complainant

The respondent entity is next asked to provide information, with supporting documents, on any corrective measures taken as urged in the report's conclusions.

A fault is deemed to have been rectified when the entity provides evidence of having dealt with the cause of the complaint, perhaps awarding the claimant compensation (whose amount the CNMV report will in no case go into), or when it accepts the arguments given in the said report and takes steps to prevent any future recurrence.

When a provider fails to respond before the deadline set, it is deemed not to have rectified the fault for statistical purposes.

This follow-up provides a check on how far entities are taking on board the criteria and recommendations derived from complaints analysis. It also has a dissuasive force against bad practices while encouraging the adoption of corrective and preventive measures.

In 14.6% of the 805 cases concluding in a report favourable to the complainant, the entity had rectified its procedures along the lines indicated. This is lower than the equivalent percentage in 2009 (18.2%), which itself was considerably down on the percentage for the preceding year.

Tables A1.7 and A1.8 of Annexe 1 offer a breakdown by entity of post-complaint rectifications.

2.2 Enquiries

The CNMV runs an enquiries service for retail investors, where they can get help finding and using the data held in its official registers or ask about securities market regulations, products and services, the rights they are entitled to and the channels available to defend them.

Enquiries each year are clearly influenced by market conditions and events. So while 2009 saw a surge in enquiries, many of them concerned with the sale of products to hedge against fluctuations in the interest rates associated to variable rate mortgages and other loans, enquiries made in 2010 were fewer in number but more diverse in their subject matter.

Enquiry and response channels

Enquiries can be made by phone (902 149 200), by letter addressed to the Investor Assistance Office, electronically through the Virtual Office and, since end-2009, by completing and submitting an online form.

Recurrent enquiries and those touching on matters considered of general interest are addressed in the "Frequently asked questions" section of the CNMV website.

A new guide published in 2010 and available from the Investor Portal section of the website seeks to clarify investors' most common doubts with regard to market trading, investment funds and how they operate, and investment activities and services.

Among the questions it broaches are the implications for unitholders of a change of investment fund distributor, the deadlines for switching investments between funds or securities between custodians, the grounds for stock delisting, and the coverage to which omnibus account holders are entitled under the investor compensation scheme.

Enquiry volumes and channels

The number of enquiries dropped by 25% in the year to a level more in keeping with those of the years preceding 2009 (see table 5).

Various factors contributed to this decrease. The most important, as remarked, is that 2010 was less prolific in events raising doubts among the investor public. A second factor was the definitive introduction of the enquiries form, which not only simplifies the procedure but also discourages the indiscriminate sending of emails without a clear-cut motive of enquiry.

The third factor explaining the fewer enquiries handled is statistical in nature, namely the decision not to compute enquiries dealt with at the stock exchange fairs attended by the CNMV.

The telephone was again the most popular enquiry channel (77.44%). Most calls were handled by call center operators: 92.70% against the 7.30% needing dealt with by specialists from the CNMV staff.

The next most popular was the online form (19.66%), with written enquiries (2.62%) occupying a low third place after last year's spate of letters on the suspension of redemptions at Santander Banif Inmobiliario, FII.

Distribution by channel of enquiries TABLE 5

	2009		2010		% change
	Number	% total	Number	% total	10/09
Tel.	9,556	67.07	8,219	77.44	-13.99
Email (*)	2,944	20.66	29	0.27	-99.01
Written	1,136	7.97	278	2.62	-75.53
Face-to-face (**)	574	4.3	0	0.00	-100
Form (*)	38	0.27	2,087	19.66	5,392.11
Total	**14,248**	**100.00**	**10,613**	**100**	**-25.51**

Source: CNMV.

(*) At end 2009, the email help desk inversores@cnmv.es was replaced by the enquiries form, after a short period of overlap.

(**) 2010 figures do not include enquiries dealt with at the stock exchange fairs attended by the CNMV.

2.3 International Cooperation Mechanisms

2.3.1 FIN-NET

FIN-NET is a network for the out-of-court resolution of cross-border disputes between consumers and financial service providers in the European Economic Area (EEA).

Through its offices, investment service users can rapidly channel any complaints they wish to direct against providers in another country. Any resident of an EEA country wishing to complain about a financial service provider domiciled elsewhere within the area can approach the complaints settlement scheme in their home country, which will help them identify the relevant complaints scheme in the service provider's country, and indicate the next steps that they should follow. The consumer can then choose to contact the foreign complaints scheme directly or else register the complaint with their home-country scheme, which will pass it on accordingly.

Dispute resolution schemes adhering to FIN-NET will resolve the disputes forwarded to them in accordance with the principles of Commission Recommendation 98/257/EC.

The CNMV did not receive any cross-border complaints in 2010 that required processing through FIN-NET.

At the time of writing (July 2011), FIN-NET has 50 members drawn from 24 EEA countries. Members are bound by a Memorandum of Understanding, which outlines the mechanisms and other conditions according to which they will cooperate to facilitate out-of-court settlement of cross-border disputes.

FIN-NET held two plenary meetings in 2010 in Brussels and Copenhagen, where discussions centred on the current economic crisis and its effect on disputes in the financial services sphere. Participants also spent time analysing the application of diverse EU regulations.

Among them was Commission Recommendation 2010/304/EU of 12 May on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries, with discussion turning on the best route map for compliance.

Finally, the CNMV attended the conference organised by Spain's Instituto Nacional de Consumo in concert with the European Commission's Directorate-General of Health and Consumer Protection to exchange information, views and comments on the organisation and working methods of the various complaint schemes operating in Spain.

FIN-NET MEMBERS

EEA countries	ALTERNATIVE DISPUTE RESOLUTION SCHEMES
GERMANY	Schlichtungsstelle bei der Deutschen Bundesbank
	Ombudsmann der privaten Banken
	Deutscher Sparkassen- und Giroverband (DSGV)
	Verband der Privaten Bausparkassen e.V. – Kundenbeschwerdestelle
	Ombudsmann der deutschen genossenschaftlichen Bankengruppe c/o Kundenbeschwerdestelle beim Bundesverband der Deutschen Volksbanken und Raiffeisenbanken BVR
	Ombudsmann der öffentlichen Banken Deutschlands (VÖB)
	Schlichtungsstelle der LBS
	Ombudsmann private Kranken- und Pflegeversicherung
	Versicherungsombudsman e.V.
AUSTRIA	Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft
BELGIUM	Ombudsman des assurances/Ombudsman van de verzekeringen
	Service de Médiation Banques – Crédit – Placements/Bemiddelingsdienst Banken – Krediet – Beleggingen
DENMARK	Pengeinstitutankenævnet
	Realkreditankenævnet
	Ankenævnet for Forsikring
	Ankenævnet for Fondsmæglerselskaber
	Ankenævnet for Investeringsforeninger
SPAIN	Oficina de Atención al Inversor, de la Dirección de Inversores de la Comisión Nacional del Mercado de Valores
	Dirección General de Seguros y Fondos de Pensiones, del Ministerio de Economía y Hacienda
	Servicio de Reclamaciones del Banco de España
ESTONIA	Tarbijakaebuste Komisjon
FINLAND	Arvopaperilautakunta
	Kuluttajariitalautakunta
	Vakuutuslautakunta
FRANCE	Médiateur de l´Autorité des Marchés Financiers (AMF)
	Médiateur de la Fédération Française des Sociétés d'Assurances (FFSA)
	Médiateur de l'Association française des Sociétés Financières (ASF)
GREECE	Hellenic Ombudsman for Banking – Investment Services (H.O.B.I.S.)
	Directorate of Insurance Enterprises and Actuaries of the Ministry of Development
NETHERLANDS	Klachteninstituut Financiële Dienstverlening (Kifid)
HUNGARY	Budapesti Békélteto Testület- Arbitration Board of Budapest
	Pénzügyi Békéltetö Testület (PBT)- Financial Arbitration Board
IRELAND	Biúró an Ombudsman um Sheirbhísí Airgeadais/Financial Services Ombudsman's Bureau
ITALY	Ombudsman Bancario
	Istituto di Vigilanza sulle assicurazioni private e di interesse collettivo (ISVAP)
LIECHTENSTEIN	Bankenombudsmann
	Schlichtungsstelle zur Beilegung von Streitigkeiten bei der Ausführung von Überweisungen
LITHUANIA	Valstybiné vartotojų teisių apsaugos taryba –State Consumer Rights Protection Authority
LUXEMBOURG	Commission de Surveillance du Secteur Financier (CSSF)
	Médiateur en Assurances
MALTA	'Manager' Ghall-Ilmenti tal-Konsumatur, Awtorità g?as-Servizzi Finanzjarji ta' Malta
NORWAY	Finansklagenemnda
POLAND	Bankowy Arbitraz Konsumencki
	Rzecznik Ubezpieczonych
	Sad Polubowny przy Komisji Nadzoru Finansowego
PORTUGAL	Centro de Arbitragem de Conflitos de Consumo de Lisboa
	Serviço de Mediação de Conflitos, CMVM
UNITED KINGDOM	Financial Ombudsman Service
CZECH REPUBLIC	Finanční arbitr České republiky
SWEDEN	Allmänna reklamationsnämnden (ARN)

3 General Criteria and Recommendations Applied in Resolving Complaints

3 General Criteria and Recommendations Applied in Resolving Complaints

Set out below are some of the main criteria applied in resolving complaints in the year 2010, focusing on those of a recurrent nature or touching on matters of qualitative importance.

3.1 Provision of investment services

3.1.1 Criteria applied in resolving complaints on swaps

The criteria below are applied in resolving the complaints about swaps that fall within the competence of the CNMV under its memorandum of understanding with Banco de España on the demarcation of supervisory powers.[1]

1- In all investment transactions involving complex products entered into after 19 December 2007, entities must first test them for appropriateness or suitability depending on the nature of the contractual relationship with the client.

Despite considerable cross-sector heterogeneity in the criteria applied, we can nonetheless cite the following rules of thumb for appropriateness testing:

Our view is that a product can be considered appropriate when it can be shown that the entity verified at the point of sale that the client complied with at least one of the following conditions:

- having enough actual investment experience in products with similar characteristics and risks,
- having a finance department or chief financial officer taking investment decisions on their behalf,
- holding an academic qualification in the financial domain.

For transactions entered into before 19 December 2007, i.e., pre-MiFID, the rules required firms to ascertain the client's financial situation, investment experience and investment objectives before proceeding to a sale, when this was germane to the service being provided.[2]

Investment experience in similar products to the one being proposed is accordingly a basic yardstick for deciding on the appropriateness of a transaction, both pre- and post-MiFID. This similarity must extend to both the nature of the product and the risks carried in order to reliably ensure that the investor understands its characteristics and possible future performance.

1 See Annual Report 2009 on Attention to the Complaints and Enquiries of Investors, chapter 3, section 3.1.5.

2 Article 4 of the General Code of Conduct of Securities Markets. Annexe to Royal Decree 629/1993 of 3 May on rules of conduct of securities markets and compulsory records.

Regarding whether or not an investor has sufficient experience, in the specific case of swaps acquired pre-MiFID, we consider that a client with a history of taking out floating-rate loans for substantial amounts can be presumed capable of understanding and assuming the risks attached to a simple swap.

2- Telephone purchases of swaps.

Regarding swap acquisitions after the entry to force of Royal Decree 217/2008 of 15 February, a number of complaints referred to a sales procedure consisting of a telephone conversation, recorded, with the client, who several weeks later was sent a document confirming the terms of the swap.

In most, though not all cases, these confirmations were signed then returned by the complainant.

The CNMV accepts the validity of the phone transaction insofar as clients were informed that the conversation was itself a contract to buy, binding on both parties, and that it was going to be recorded.

However they should also, we concluded, be informed as to whether or not they have the right to withdraw from the commitment once made.[3]

3- Regarding information on the nature and risks of swaps, the information firms provide should be clear, accurate, thorough, appropriate and delivered in good time, to avoid misleading clients, and should carefully specify the risks so they have no doubt about the effects of the target transaction.

In resolving complaints, any verbal information supplied will be taken into account provided it can be verified or confirmed, as will written material in the form of emails, advertising leaflets or the relevant contract and annexes signed by the parties.

The contents of these documents should suffice for clients to be aware of the main features of the transaction and have a true understanding of its nature. They should also emphasise any specific risks and/or adverse scenarios arising from the performance of the underlying assets.

4- Regarding voluntary early termination, term is a key component of what swap arrangements are about, so the option of early termination by the client will only be available if it figures explicitly among the contract clauses or has been expressly authorised by the parties.

A fair proportion of contracts envisage this possibility and refer to market conditions as the basis for payment – the bare minimum as an informational requirement. In our view, contracts should specify the elements or formula to be used in calculating the cancellation payment, and how they can be verified by the client.

In any event, on receiving a request for early termination, entities should first inform the client whether or not they are willing to cancel and, if so, forewarn them of the total cost of following their instructions and how this cost has been arrived at.

3 Article 62.4.b) of Royal Decree 217/2008 of 15 February regarding the application of article 7 of Law 22/2007 of 11 July on the distance marketing of consumer financial services.

3.1.2 Warning that an investment is not appropriate

In general, there are two ways a firm can warn a client that an investment is not appropriate:

1- Through a signed document separate from the order. In this case, steps should be taken to ensure the warning refers unequivocally to the transaction concerned. It is also a good idea if the said document contains only the inappropriateness warning and no other disclosures.

2- Through a warning printed in the order form itself. In this case, the warning must not be concealed, minimized or mixed in with other notes or disclaimers included in the document, but should be prominently displayed.

In any case, the firm should be able to provide evidence that it has given the client the relevant warnings as and when required.

It is not appropriate for such warnings to be placed alongside others intended as evidence of compliance with the obligation to inform the client about the risks of his investment.

Nor should the entity include clauses that make the client responsible for assessing the appropriateness of the product, when this is the job of the service provider.

3.1.3 Information to clients about fees and expenses

Aside from the obligation to levy fees as stated in their fee schedules, providers must advise their clients beforehand in some durable medium of the total cost accruing from executing their instructions, including all fees, commissions, expenses and associated charges, as well as taxes payable through the investment firm.

In the case of what are standard transactions for a client, this obligation can be met through delivery of the maximum fee schedule and, where appropriate, the disclosure statement drawn up at the start of the contractual relationship stipulating the actual fees to be applied, or when a client has been paying charges and fees on the same transaction over a substantial period of time, through delivery of the corresponding fee statements.

However, when a transaction cannot be considered standard for a given client and/or commits them to a high fixed cost – examples would be securities transfers, change of ownership by inheritance, the trading of subscription rights with a fixed fee per unit, etc. – we believe the provider should specifically advise them of all charges in a verifiable manner before going on to process their instructions.

Information on exchange rates

Banco de España Circular 8/1990 of 18 December says that entities are free to apply the exchange rates they choose in currency sales and purchases, both spot and forward, except in the case of currency – and foreign banknote – transactions of up to 3,000 euros, when they are obliged to apply their published rates.

However, when a retail client approaches a provider to take out a financial investment, investment service and/or ancillary service, the latter is obliged to inform them of all associated costs and charges in a durable medium. Accordingly, they

should also be advised beforehand of the applicable exchange rate and related costs and, failing this, of how it will be determined.

3.1.4 Changes in the investor profile of clients in receipt of advisory or portfolio management services

Some clients had maintained an advisory relationship with their provider prior to the entry of the MiFID, and had accordingly had a risk profile assigned which was obligatorily applied to the entire portfolio under advice.

At the same time firms providing portfolio management services must sign a contract with their clients which specifies, among other matters, the general risk profile of their future investments.

With the MiFID, however, suitability obligations come into play for both investment advice provision and portfolio management.

To test for suitability, a provider must procure information on the client's knowledge and experience in the investment field the products belong to, as well as their financial position and objectives to assess whether they are financially able to bear the investment risk.

It can then assign the client a determined investor risk profile on its in-house scale which will serve as a reference to delimit the kind of products they can be recommended or that can form part of their managed portfolio.

As a rule, the investor profile emerging from this test cannot override the profile stated in the client's portfolio management or investment advisory contract, which will continue to mark the limits within which the provider renders its services.

In cases where suitability tests detect a change of profile with respect to that figuring in the management or advisory contract, the provider must notify its client to this effect, since it alters a vital aspect of the arrangement between the parties.

3.1.5 Operational restrictions on the provision of investment services

It occasionally happens that entities providing investment services impose some sort of operational restrictions on their clients, using arguments that they consider reasonable and which are in no way legally prohibited. An example could be the impossibility of placing online orders to sell share subscription rights at market prices.

Without going into the rightness or otherwise of such constraints, we believe they constitute a limit on clients' ability to transact which they should have been informed about before entering a contractual relationship. In the case of investors who were clients before the existence of such restrictions, they should have been informed as soon as they were introduced.

In any event, firms ought to be able to provide evidence of having informed their clients in a timely and effective manner.

3.1.6 Management of clients' sell orders

3.1.6.1. AIAF fixed-income market

Here the incidents detected turned on the management of clients' orders, primarily the non execution of sell orders on preference shares sent to the AIAF fixed-income market. We should first of all distinguish between:

- Transactions executed by the firm for less than the price stated in the client's sell order:

  When a provider has brokered other market trades at prices below those stated on its clients' orders, we understand that it has not found a suitable match leaving them to expire on their deadline date.

- Transactions executed at the price stated in the client's sell order:

  When a provider has brokered other market trades at the price stated on its clients' orders, we understand that such trades enjoyed priority over the unexecuted orders, either because they were placed earlier or because they met some condition which the latter did not.

  In this case, the CNMV considers that entities should provide evidence to justify such priority of execution.

- Transactions executed at a price higher than that stated in the client's sell order:

  When a provider has closed other market trades at a price higher than that stated on clients' orders, we understand that the entity has given the executed orders priority over those of the complainants.

  This would go against the rules governing order handling and execution, which cite price as one of the variables that counts towards obtaining the best possible result for a client.

3.1.6.2. Liquidity contracts

A common practice in preference share issues is for the issuer to sign a liquidity contract with a series of entities known as liquidity providers.

These entities undertake to offer liquidity to preference shareholders by entering buy and sell orders in the AIAF fixed-income market.

Accordingly, upon receiving sell orders on preference shares for which no matching order is immediately available on the market, firms should approach these liquidity providers to ascertain the bid prices they are currently quoting and, if appropriate, fill the orders at that rate.

Firms must be able to substantiate that they have indeed contacted liquidity providers to find an adequate match for their clients' orders.

3.1.7 Actions in the event of overdraft

The standard contracts governing securities custody and administration or derivatives trading will usually have clauses whereby clients must keep sufficient funds on deposit to fill their orders, post margin and pay fees and commissions, failing which the provider may close out their positions partially or in full until collecting the minimum sum needed to meet these payment obligations.

Our view, is that before embarking on this enforcement procedure, the provider should advise the client of the situation by some certified means, offering them the opportunity to make up the shortfall before a determined date.

The providers of investment services must act with due diligence and transparency in the interests of their clients, looking after such interests as if they were their own and, especially, complying with the terms of Title VII, Chapter I of the Securities Market Law and its implementing regulations.[4]

Therefore, given that the resolutory condition of due payment or liquidation tends not to be automatically enforceable but simply optional for lenders subject to notice given to the client, it seems clear that entities should first advise their clients, indicating how they can regularise the situation and the time available to do so.

3.1.8 Provision of funds for the take-up of a capital increase

When a client instructs their provider to take up a capital increase during the preferential subscription period, we understand that the order can only be accepted and processed once the prospective subscriber has paid in the corresponding amount.

This indeed is the procedure specified in most capital increase notices, which state, *"Orders placed through the exercise of preferential subscription rights shall be considered to have been made on a firm, irrevocable and unconditional basis and shall carry the subscription of the new shares to which they attach (..). The subscription price of each new share subscribed for during the preferential subscription period must be paid in full by the subscribers at the time the subscription order is placed and through the Iberclear participating entity that submitted their order".*

Some firms, however, may specify otherwise in accordance with the terms of their custody and administration agreements or their own internal procedures, such that the funds to pay for new share subscriptions are provided or reserved not when the order is made but when the subscription is filled. If the funds are not on hand when the order is executed, it will automatically fall through.

Therefore the sum required is not automatically blocked in the client's current account when the order is generated, but only when it is forwarded for execution.

Our view in such cases is that the special procedure should take precedence over the general one, that is, that the rules set by the issuer should prevail over those in the agreement by virtue of their special nature. Firms, accordingly, should make the provision of funds a pre-condition for accepting a client's subscription order.

4 Article 79 of Securities Market Law 24/1988 of 28 July.

3.1.9 Investments in structured products affected by the Madoff case

Deposit-taking entities should inform clients in good time of any exceptional occurrences of relevance to their investments or circumstances that might affect their value, specifying the options at their disposal to defend their interests before the securities issuer.

When investigating complaints about investments in structured products linked to the performance of the Optimal fund basket, it became plain that this information was not conveyed to clients promptly enough.

On 16 December 2008, the board of directors of Optimal Multiadvisors decided to suspend calculation of the net asset value of the underlying funds whose investments were handled by Madoff Investment Securities, since this broker had been seized by the SEC and shut down after the arrest of its president. In January 2009, NAV calculations were suspended at the remainder of underlying funds linked to this company, which initiated an orderly process of compulsory liquidation.

These circumstances – the suspension of NAV calculations at underlying funds and their orderly liquidation – dictated the substitution or, in absence of substitute funds, the early termination of the structured products on objective grounds, as envisaged in the corresponding contract clauses. However, the fact that NAV calculations had been suspended meant there was no liquidation value available.

While accepting that the above circumstances were not the fault of the respondent entities in their capacity as product distributors, we believe it was their duty to apprise clients of the situation and the alternatives open to them.

3.2 U.C.I.T.S. schemes

3.2.1 Subscriptions and redemptions

As in previous years, incidents turned principally on delays in processing, execution failure, formal defects in orders or the imposing of requirements over and above those stipulated by law. In particular:

- The opening of a current account is not among the pre-conditions for purchasing U.C.I.T.S. units though a Spanish distributor. So when providers demand that such an account be opened for operational reasons, it must be without any charge to the investor.

- U.C.I.T.S. unitholders enjoy a free-of-charge exit right in the event of substantial changes in the scheme prospectus like, for instance, a change in its investment policy, a fund merger or the levying of new fees.

  At times, this free redemption right may coincide with the death of a unitholder, in which case entities must be diligent in formalising change of ownership, so the heirs, if they wish, can exercise their entitlement.
  However, given that a change of ownership under testamentary instrument takes some time – depending on how promptly the interested parties furnish the entity with all the necessary legal papers – heirs must issue an order under common agreement to exercise their exit right, which the management company is obliged to accept and process.

3.2.2 Notice periods in U.C.I.T.S. redemptions

The regulations governing U.C.I.T.S. allow management companies to require unitholders wishing to redeem amounts above 300,000 euros to notify their intention at least ten days prior to the actual request date.

Notwithstanding, the scheme may have enough liquidity on hand to dispense with this regulatory notice period or be able to obtain it before the notice period ends.

If management companies choose, in these circumstances, to be flexible about the 10 days' notice condition, unitholders should be informed of this possibility before entering their request, since it implies that the net asset value applicable to their redemption order may not be that of the day the notice period ends, but could respond to any of the days between the start and close of the notice period.

This disclosure requirement will be deemed to be met when the prospectus refers explicitly to the possibility of not utilising the full notice period when the fund has sufficient cash.

Even if the fund prospectus does not advise of this facility, it will suffice for the manager to publicise it in a significant event notice along with an undertaking to include it in the next updated version of the prospectus.

4 Reports favourable to the complainant

4 Reports favourable to the complainant

In this chapter we summarise the main complaints resolved in 2010 with a report favourable to the complainant. A list of complaints upheld by subject categories follows in Annexe 2, while in Annexe 3 we offer a brief description of a selection of the same.

Complaints thus resolved can be split into three large groups. These are: (i) complaints about the provision of investment services; (ii) complaints about investment funds and other U.C.I.T.S. schemes and (iii) complaints regarding testamentary execution.

Reports favourable to the complainant in respect of investment services include incidents with order reception, transmission and execution, information to clients, fees and expenses, issue subscriptions, securities custody and administration, portfolio management and other subjects. The most numerous correspond to client information and the handling of orders.

The section on U.C.I.T.S. schemes deals mainly with complaints regarding unit or share subscriptions and redemptions and inter-fund switches and the fees and expenses charged.

Finally, complaints about testamentary execution remain quantitatively significant and are accordingly given their own section regardless of the actual product or service involved.

4.1 Provision of investment services

4.1.1 Order reception, transmission and execution

Delays, non performance and formal errors

Entities are required to be diligent in their handling of clients' orders. This means, firstly, checking their viability and, having done so, executing them promptly in order to achieve optimal results for the client in accordance with their best execution policy. The entity must also report back swiftly if it encounters difficulties, so clients can take the appropriate decision or correct any errors found.

A number of complaints brought to light unwarranted delays in order processing, while another group turned on execution failures. Some of these incidents were due to errors made by clients which the provider had only reported for correction after a considerable time had passed. In other cases, entities were unable to execute a trade despite having accepted the order.

Complaints have come in about transactions that failed or were wrongly executed as a consequence of provider error. In some of these cases, the entity corrected its

mistake but did not compensate its clients for the damage or inconvenience caused. One example was a firm that charged clients for an overdraft caused by its own error.

Other complaints involved orders which the entity did not execute because they were confusingly worded, without approaching the client to clarify his intentions.

In one case, an order fell through for administrative reasons due to the company being involved in a corporate transformation, when this situation should in no way have affected its clientele.

Several complaints referred to the wording of buy orders, whose imprecision misled clients as to the outcome of the operation.

Trades executed without orders from the client

Several complaints resolved in 2010 concerned entities engaging in transactions without the client's consent. In one case, a provider made transactions recommended by a member of its staff, classed as the client's personal advisor, although it could produce no evidence of being authorised to perform either portfolio management or advisory services. In others, the entity claimed that the client had issued his instructions by telephone, without offering any recording or documents to back up this assertion.

However, more than one complainant had received the relevant trade confirmation without putting the matter before their provider, which may suggest their tacit acceptance.

On some occasions, providers had sold off securities because the client had insufficient funds or collateral to cover the purchase or because of the cancellation of the associated investment loan.

First of all, the power to act in this way must be contractually agreed on. And where such power has been conferred but its exercise is discretionary rather than automatic, the best course is for the entity to advise the client beforehand so he has the opportunity to regularise the situation.

Record-keeping

In some cases where the complainant alleged the existence of unauthorised transactions, providers were unable even to produce evidence that an order had existed. They were accordingly at fault either in transacting without the client's consent or in failing to keep the order on record for the minimum period stipulated for securities order filing and conservation.

In others, entities were unable to produce a copy of securities custody and administration agreements when requested by their clients, despite the fact that the rules then in place required such documents to be kept on record until six years after the end of the contractual relationship.

Information on the execution of orders and guarantees, and liquidation of positions

Firms must inform clients about their best execution policies so they are clear about, for instance, the market to which a buy order will be directed. In one complaint, the client was not told that a security was traded in eleven different venues, so depending on which exchange the information provider sourced its quotes from, different prices would be listed.

In another case, the OTC sale of a fixed-income product had the peculiarity that orders had to be grouped before being sent to the issuer for execution, which went through on the second or third month. The entity should have advised its client of this execution procedure.

Deficiencies in orders

A large number of complaints concluded with a report favourable to the complainant in view of deficiencies in orders.

These frequently involved the omission or misstatement of essential details, e.g., the type of security, name of the issue, the ISIN or the issuer ID. In some cases securities were shown as having a redemption date when they were in fact perpetual.

In others, failure to specify the order date, price details (ex or cum coupon) or the market to which the order was to be directed (in the case of securities purchases) meant the instructions were ambiguous. There were also instances of orders being made out on forms designed for an entirely different transaction.

Among other defects reported were the non identification of the account (and holders) where the bought securities were to be deposited. Note in this respect that ownership of securities is presumed to lodge with the holder of the securities account where they are deposited, such that the names figuring on a securities purchase order should be the same as those appearing in the custody and administration agreement underlying the transaction and as holders of the securities account where the movement is entered.

Incidents in online or distance trading

Favourable reports were also issued on a number of complaints concerning incidents in Internet trading.

Many investors complained of being unable to buy and sell financial instruments through the system provided or of transactions going through with unjustified delays of several days. At times the inability to trade was determined by the non availability of information pages that were a key input to decision-making.

Some entities contended that technical maintenance of the website, or provision of the associated information tools, had been entrusted to an outside supplier. However, providers cannot in all fairness disclaim responsibility for interruptions to online trading when they are selling this utility to clients as a transactional channel.

Entities should in any case inform about the causes of such incidents and their estimated duration.

Also, if the Internet is used as a supplement to face-to-face and telephone channels, the entity should post a notice on its website alerting to operational incidents in its online facility and the alternatives available for clients wishing to trade.

With regard to another complaint, the provider reported that a secondary market dealer in the U.S. was to blame for the failure to execute an online trade, since this activity had been outsourced. The CNMV, however, took the view that responsibility for the effective delivery of securities administration services cannot be transferred to the foreign market member acting as a sub-custodian, since it was with the Spanish entity that the complainant had signed a custody and brokerage agreement.

There were also cases where investors were unhappy about their provider changing the standard settlement procedure for online trades without any notification either through its website or some other means.

On other occasions, complaints turned on the exchange rates applied to trades on foreign markets. The response, again, was that entities are required to disclose the costs and charges of the services they offer in some kind of durable medium.

Transactional limitations

Some complaints referred to problems that clients had encountered in completing transactions due to different kinds of operational limitations.

In one case, these limitations were imposed by the client himself, who, as part of his marital dissolution, had imposed a confidentiality clause restricting transactions to three named branches. The entity, it was found, should have warned him beforehand, in a clear and specific way, about the impact this clause would have on his normal trading.

In another, some securities a client wished to sell had been pledged as collateral. In this instance, the entity should have explained why the sell order had not been processed and pointed out other ways in which the client might sell the shares if he wanted, such as depositing the proceeds of the sale which could then be pledged in place of the sold shares or used to extinguish the liability.

Incidents relating to orders on securities deposited in joint accounts

Incidents with joint accounts are a recurrent feature. In some cases the complaint revolved around the acceptance and processing of orders issued by only one co-holder when the signature of all holders was in fact mandatory.

It bears mention here that if signing authority is "all-to-sign" (in Spanish, *mancomunada*), the securities on deposit can only be sold with the prior consent of all co-holders. Conversely, if the account is operated on an "any-to-sign" basis (*indistinta*) , any of the co-holders can dispose of the securities without having to seek the others' express consent, such that one holder alone can order their sale. In the absence of a pact, the default arrangement should be that of an "all-to-sign" joint account.

Particularly grave was the sale of co-owned securities whose proceeds go to a cash account in the name of the order originator but not the other owner(s).

Another complaint of this kind involved a securities sale ordered by one of the holders of an "any-to-sign" account, specifying that the proceeds be deposited in an account held only by that person. In this case the entity was in error not in processing the sell order but in depositing the proceeds in an account other than that designated for cash movements in the corresponding custody and administration agreement. In effect, the change to a new cash account could only go through with the express authorisation of all parties to the said agreement.

In another case, the entity had removed the names of the other co-holders of a securities account at the request of the complainant in the absence of a contract attesting to their shared ownership. This was considered to be incorrect, in that when securities belong to several owners they must be held on deposit under a co-ownership regime which can only be dissolved as stipulated by law, which was not the case here.

Conditional orders

Clients intending to buy or sell securities frequently specify a price or volume condition for the order to go through.

A number of complaints in 2010 alleged that the conditions imposed had not been respected by the provider when executing the transaction. Frequently the problem arose because the buy or sell order specified a type of condition that was not within the repertoire of the market to which it was directed.

For instance, one client had issued an "at best" order which in the prevailing market circumstances had been converted into a "market" order. This kind of order is regulated in Circular 1/2001 of Sociedad de Bolsas on the operating standards for the Spanish Stock Exchange Interconnection System (SIBE). However, the security in question was not traded through the SIBE but on the electronic exchange for fixed-income instruments, regulated by Circular 6/1993 of 24 November on trading standards for fixed-income securities and book-entry public debt, subsequently modified by Circular 1/2005. The latter system did not admit "at best" orders, so the logical alternative would have been to introduce it as a "limit order". The entity did not inform its client correctly and the resulting order was ambiguous in its intentions.

In another case, an order on a security listed on the New York Stock Exchange went through as a market order despite carrying the condition "at best". The view taken was that if the entity used the same name for different types of orders, whatever market they were forwarded to, it should have added an explanatory note clarifying which restrictions applied in each market.

Finally, a series of complaints touched on "stop loss" instructions. With this kind of order the entity is obliged to keep up a steady stream of price information under standards of transparency, clarity, accuracy and relevance, since its execution requires constant vigilance. It is entirely remiss of firms accepting this kind of order to allow errors or delays in the information they provide.

Swaps

Complainants tended to be the holders of interest-rate swaps linked to the Euribor, though complaints also came in about swaps indexed to inflation or even commodity prices.

The CNMV exercises its competences in this matter – which also falls within the remit of Banco de España – according to the criteria set out in a Communication dated 20 April 2010 on the demarcation of competences between the CNMV and Banco de España regarding the control and resolution of complaints concerning hedging derivatives, in cases where the swap has no demonstrable link to a loan or financing agreement.[5]

A common cause of complaint was the difficulty of cancelling these products voluntarily and, by extension, the high costs to the investor of their early termination.

Analysis of contracts revealed that many of them had no clauses envisaging termination, which accordingly relied on the mutual agreement of the parties. Where the option did exist, the CNMV thought it reasonable to state that termination would be

5 Published 20/04/2010. Available for consultation in the CNMV Communications section of the CNMV website.

at market price, though entities were urged to be more specific about the formula used for its calculation and the means by which such calculation could be verified by the client.

In any event, entities agreeing to termination should advise clients beforehand of its total cost in accordance with the rules of conduct of investment service providers, which oblige them to state the precise amounts where feasible or, failing that, an estimate at least of the costs of the target service.

Another set of complaints turned on the claim that the product has been sold as an insurance product or a way to protect the borrower against rising interest rates. When this turned out not to be the case, many complainants remarked that they would never have acquired the product if they had understood it properly. In such cases, our analysis focused on whether the product was a suitable choice given investors' situations and whether they had been sufficiently informed about its characteristics and risks.

In most instances, referring to situations prior to the entry of the MiFID, entities were unable to substantiate having assessed the product's appropriateness for the complainants – natural persons or commercial companies – by reference to their investor profile and investment history. Remember we have two contrasting situations depending on the timing of the sale:

- Before the entry into force of MIFID rules (21 December 2007), entities were obliged to procure pre-sale information on the client's investment experience and, where appropriate, financial situation and investment objectives, in order to ensure that the product's characteristics matched reasonably with their expectations.

- Since the entry into force of the MiFID, firms must test the product's appropriateness for the client, assuring themselves that he has the experience and knowledge to understand the nature and risks of the product on offer. Three factors must be analysed to this end: investment history, referring to the amounts, frequency, nature and period of the client's previous transactions; his educational and professional level and the kind of products he is already familiar with.

In certain complaints, it was possible to surmise an advisory relationship between provider and client, in which case the former has to run a suitability assessment factoring the investor's experience and knowledge but also their investment objectives and financial situation. Often, the respondent entities could provide no proof of having conducted such tests in their submissions to the CNMV.

Regarding the content of disclosures about product characteristics and risks, they should include at least an explanation of how the product works and the possibility of incurring losses if interest rates go against the position. Among the yardsticks used in reviewing complaints was whether the information prepared the investor for the existence of risk and possibility of losses in certain circumstances, even if this possibility was not underlined (recommended). In order to demonstrate compliance with these obligations, entities must supply the information in some durable medium. Simple verbal information will not suffice unless corroborated by the client, so the CNMV will disregard it.

On some occasions, products were taken out by phone and, although the clients were aware that they were consenting to a contract and had been duly informed about its characteristics, it was found that important details were being omitted, as follows:

- Non applicability of the right of withdrawal from the contract pursuant to article 62.4.b) of the aforementioned Royal Decree 217/2008 of 15 February implementing article 7 of Law 22/2007 of 11 July on the distance marketing of consumer financial services.

- Specific reference to the risks attached to the contract.

- An indication of the possibility or otherwise of requesting early termination.

Finally, the contents of certain promotional materials were found to be insufficiently balanced. Although sufficiently informative about the product's characteristics, the texts stressed its advantages to the complete exclusion of disadvantages and/or risks, when in fact these were considerable.

Preference shares

Preference shares featured largely among the 2010 complaints resolved in favour of the complainant.

This is an instrument whose characteristics place it firmly in the category of complex products.

Many complainants contended that they had experienced difficulties in liquidating these investments due to providers' mishandling of sell orders.

In some cases, the entity had brokered trades on the market at a price higher than that of the client's sell order. This is not only a breach of the applicable provisions on order management and execution, which state price as a key variable in pursuing the best possible outcome, but also of entities' order execution policies which require them to deliver the best possible result for their clients.

In others, the entity had closed other trades at the same price as that figuring in complainants' orders, presumably on the grounds that they enjoyed sequential priority of execution. However this assumption was not borne out by evidence from the provider.

At times, also, the provider had failed to seek a counterparty beyond the branch where the client held his securities account.

In sum, it was judged that respondent entities should have been more diligent in fulfilling their informational obligations with clients, warning them that it might not be practically possible to sell their securities at par and that adjusting the minimum selling price and setting a longer term for the order would have exponentially improved their chances of completing the sale.

Some entities claimed that they had been unable to find counterparties but could offer no proof of having approached the liquidity provider in fulfilment of their search obligations.

The right course of action for entities, in furtherance of their best execution policies, would have been to seek a sell order counterparty by every available means while respecting the mandatory rules of conduct. This would mean searching for buyer positions within their own commercial networks and, if that failed to produce a buyer, approaching liquidity providers to see what bid prices they were quoting and if they could facilitate the transaction.

Preference shares were covered by liquidity contracts, whereby the issuer had engaged a series of entities to make a market for their holders by placing buy and sell orders in the AIAF fixed-income market. In many of the cases reviewed, complainants had placed their sell orders on dates when these liquidity providers were not exempted from their obligations.

One respondent was able to prove that it had approached a liquidity provider, which was nonetheless exempt from quoting prices on that date. But this was not true of remaining providers, whom it should also have approached to seek a counterparty for its clients' orders.

In other instances, the entities could provide no evidence of running a pre-sale check on the product's appropriateness for the complainants with regard to their financial situation, investment experience and investment objectives.

The legal provisions governing investment service providers state that on being approached by a client about the purchase of a "complex" product, they must first gather information about his knowledge and experience in the investment field to decide if the product in question is an appropriate choice.

In a number of cases, the purchase document contained a clause saying: *"having receiving all information which I consider necessary and having understood to my satisfaction the product's characteristics and risks, I consider it to be appropriate for my investment experience and objectives"*. This is clearly unacceptable since assessing appropriateness is the job of the broker and not the buyer.

4.1.2 Information to clients

Purchase of Lehman products

Numerous complaints had their origin in the collapse of the Lehman Brothers investment bank, whose products were carried by a large number of Spanish entities.

In some cases, investors claimed they had not been diligently informed by their providers about the bankruptcy of the Lehman Brothers group, its liquidation process and the channels open to them to exercise their creditor rights. The CNMV's indications in this kind of situation are that Spanish entities, in their role as securities custodians and administrators, must inform their clients promptly of the events unfolding, and of all relevant circumstances that may affect their investments, explaining the options at their disposal to defend their rights before the issuer.

Many complainants were evidently ignorant about the nature of the products in their possession, contending that had they known more they would not have acquired them and that their provider had presented or recommended them by reference to their supposed advantages, to the extent, in some cases, of characterising them as a low-risk investment.

The legal provisions governing the sales of such products have varied over time due to the changes worked in Securities Markets Law 24/1988 of 28 July by Law 47/2007, and the entry into force of Royal Decree 217/2008 dated 15 February on the legal regime of investment firms and other providers of investment services .

Distributor errors in this respect ranged from failure to accurately determine the client's risk profile, incomplete disclosures on the product, formal deficiencies in buy

orders, and stating the value of the investment in periodic statements in a potentially misleading manner.

Most Lehman acquisitions dated back to before the MiFID, and providers were mainly at fault in having failed to build up a sufficient picture of the complainant (like whether they had previously invested in products of comparable characteristics and risks) to decide if the investment was right for their needs.

On occasions (post-MiFID) the respondent submitted a brief questionnaire on the client's knowledge and experience in which he claimed to have understood the product on offer and to have had recent experience with similar investments. Again, this kind of declaration was deemed inadmissible since it shifts responsibility for determining appropriateness from the provider to the client .

There were also incidences of potentially misleading information in periodic statements – with products being carried at their nominal value when market value would be more informative – and omissions or misstatements in subscription forms, involving the date, product designation and, in come cases, even the client's signature.

From analysis of the documents furnished by complainants and the arguments of respondent entities, it could be presumed at times that the latter were providing investment advisory services without having built up the mandatory client profile.

On occasion entities had attempted to get round these obligations by adding contract clauses or appending declarations along the lines shown below.

This, for example, in an order document: *"The client acknowledges that he/she has been advised of the risks of the product and about whether investment in this product is appropriate for his/her investor profile. (..)"* which was nonetheless accompanied by the following clause in the sales material: *"The parties state that before closing any transaction, they will have assessed the legal, regulatory, accounting, financial and tax implications and that they have the knowledge and experience to do so, on their own behalf or with the aid of their advisors. The Bank cannot in any circumstances be considered as an advisor. In the abovementioned assessment, each party will take account of their own financial business situation and ability to evaluate risk"*.

These clauses were contradictory in their drafting as, in the first, the client declares that he/she has been advised on the risks and their investment profile has been assessed, while, in the second, it is claimed that the client had assessed the risk for themselves. Also, it is not good practice for orders to include generic disclaimers as evidence of compliance with informational requirements, when this is the entity's legal duty.

The Lehman products involved in the incidents giving rise to the above complaints were:

- *Bono Fortaleza* (ISIN XS0342637872) issued by Lehman Brothers Treasury Co. B.V. and guaranteed by Lehman Brothers Holding Inc.
- *Bono Bacom* (ISIN XS0306090423), likewise issued by Lehman Brothers Treasury Co. B.V.
- *EUR 50,000,000 Fixed Rate Guaranteed Non-Voting Non-Cumulative Perpetual Preferred Securities*, (ISIN XS0229269856).
- *Index-Linked Notes*, (ISIN XS0229584296).

- *Bono TARN Notes* (ISIN XS0224301571).
- *Bono Senior Lehman Brothers Cupón 6.375%* (ISIN XS0128857413).
- *EMTN cancelable ligado a acciones de Telefónica y ABN AMRO* (ISIN XS0288610016).
- High yield gap note linked to EuroStoxx 50 issued by Lehman Brothers Treasury Co. B.V (ISIN XS0241421089), without guarantee.
- *Bono Dólar 2.5 II* (ISIN XS0334693578).
- Preference shares 6.625% (ISIN XS0215349357).
- Preference shares 5.75% (ISIN XS0282978666).
- *Bono Cupón Eurostoxx 3* (ISIN XS0351390017).
- *Bono Inflación Española* (ISIN XS0348914606).
- Structured bond (XS0213416141).
- *Bono 65-65 II* (ISIN XS0283319837).
- *Bono 60-60 II* (ISIN XS0267365442), linked to DJ EuroStoxx 50.
- *Bono Semestre X 5* (ISIN XS0319193396), linked to DJ EuroStoxx 50 and Nikkei 225, with capital protection on maturity and *Bono Ibex Suma Absoluta.*
- *Bonus Certificate Plus Spanish Stocks* (ISIN ANN5214A1035).
- Other complaints referred to products with no identifiable ISIN code; for instance, R/335/2009, where only the coupon was available (3 month Euribor + 0.25%, paid quarterly) or R/478/2009, where the purchase order merely says Fixed Income P." with "interest % 5.09 %", "Maturity (Call L.B.) 13.03.2009", "Initial amount 750,000 euros" and "Amount at maturity depending on tax 788,232.50 euros".

Purchase of products issued by Icelandic banks

The year 2010 brought a spate of upheld complaints on products issued by the Icelandic banks Landsbanki Islands and Kaupthing Bank. These two entities were seized by the Icelandic authorities in October 2008, with the result that coupon payments on their securities were immediately frozen and the market value of such assets crippled.

The securities giving rise to these complaints were mostly of a comparable nature to preference shares and, in a few cases, structured bonds, principally:

- *Non-Cumulative Undated Fixed Rate Capital Note* (ISIN XS0244143961), issued by the company LANDSBANKI ISLANDS.
- *Non-Cumulative Undated 6.25% Capital Notes* (ISIN DE000A0E6B87), issued by the company KAUPTHING.
- Securities issued by Kaupthing Bank Hf, coded ISIN XS0308636157.

One group of complainants alleged that their providers were slow in informing them that the said entities had been taken over by the authorities and their debt securities suspended from trading, such that they would cease to collect coupon payments on their investments as of October 2008.

The securities affected were preference shares. Despite having a fixed return, this is in fact a risky product since payment is contingent on the issuer obtaining a dis-

tributable profit. It is also a perpetual instrument on which the issuer retains a call option.

In the vast majority of cases, the securities had been sold as risk-free fixed-income products for a conservative profile, based on the solvency of the issuing banks. Clients were not comprehensively informed about their characteristics and particularly the risks attached. This was substantiated in cases where the designation used in subscription forms and periodic statements was simply the word "BON".

Misselling was also implied by entities' failure to prove that they had previously verified the investor's experience. Although some claimed to know their clients through earlier investments, it was felt that the nature of these investments (a variety of lower risk products) and their frequency (often a one-off occasion) did not offer sufficient background to assess the Icelandic products' appropriateness for their particular investor profile.

Other entities had acted incorrectly in failing to retain evidence that the client had been fully informed beforehand about the nature of the investment, and its attendant risks.

Finally, the CNMV detected errors in the content of securities subscription orders. It was shown that these omitted some basic information required for orders sent to a secondary market, such as the price or market to which the orders were to be submitted.

Purchase of autocallable structured products

Complaints about this sale of this kind of product centred on a lack of disclosure of basic characteristics, such as the possibility of early redemption subject to the performance of the underlying shares, coupon payments likewise dependent on underlying prices, and the absence of capital protection at maturity.

These characteristics would class them as complex products in the case of sales transacted post-MiFID, while pre-MiFID, the lack of capital protection would trigger their treatment as a risk product.

In most cases, entities could provide no evidence of having taken the mandatory steps to check that the product aligned well with the buyer's investor profile or of having informed clients fully about its nature and risks.

Some had also sent out statements on these structured bonds that failed to identify the issuer. One entity, moreover, continued to state the investment only at face value until December 2008, instead of offering a more reliable, dynamic valuation by reference, for instance, to market price.

Deficiencies in pre-sale information

Many complaints about investment products were the result of poor information in the sales process. Some of the main faults detected are listed below:

1- Failure to check the product's appropriateness for the complainant's financial situation, investment experience and investment goals before proceeding to a sale.

As we have said, the time a product was taken out is important since Law 47/2007 of 19 December, writing MiFID investor safeguards into Spanish legislation, brought new rules into play.

Before the entry to force of Law 47/2007, firms were obliged to gather pre-sale information on the client's financial situation, investment experience and investment objectives when this was pertinent to the proposed service, to ensure that its characteristics matched with the buyer's expectations. The securities involved in the above complaints can be classed as risky products by virtue of the possibility of zero returns and, in some cases, the absence of a maturity date.

Under the transposing legislation, before selling complex products to retail clients, the entity must first assess their appropriateness (or suitability in the case of an advisory service), procuring sufficient data to ascertain whether the client has the knowledge and experience to understand the nature and risks of the product on offer, and warning him when it might be outside the bounds of his tolerance.

Three factors must be analysed to this end: investment history, referring to the amounts, frequency, nature and period of the client's previous transactions; his educational and professional level; and the kind of products he is already familiar with. In the case of advisory services, the entity must also obtain information on his financial situation and investment goals, from its own records or else direct from the client by means of a questionnaire or test.

2- Another common failing was not supplying clients with written information on the characteristics and risk of the proposed product, either in the lead-up to the sale or in the body of the purchase document.

Among the complex products affected by this apparent disclosure failure were:

- *Callable Fixed Rate/Index Linked Notes due 15 February 2045* (ISIN XS0224333939),
- *Bono Bienvenida* (ISIN XS0359252797) issued by SGA Societé Generale Acceptance NV,
- *Certificado Bienvenida 2* (ISIN XS0360825268).

Other products complained about were a combination of an autocallable structured bond with a fixed-term deposit and a loan. In the case of such packages, entities are duty-bound to inform their clients about the risk of the whole transaction and not just one of its parts.

In one instance, the way past performance was treated in the investment proposal furnished by the complainant was contrary to the requirements of Royal Decree 217/2008, which state:

a) This indication must not be the most prominent feature of the communication.

b) Performance should refer to the preceding five years or to the whole period for which the financial instrument has been offered, the financial index has been established or the service has been provided, if less than five years, or such longer period as the firm may desire, if it extends beyond five years. In any event, performance information must be based on and show complete twelve-month periods.

c) The reference period and source of information must be clearly stated.

d) The communication must bear a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results.

e) When figures are expressed in currencies other than that of the member state in which the retail client is resident, including prospective clients, the currency being

used should be clearly stated, with a warning that the return may increase or decrease as a result of currency fluctuations.

f) When the indication is based on gross performance, the effect of commissions, fees or other charges should be disclosed.

3- Further, formal deficiencies were identified in various of the securities orders processed by entities on behalf of the complainants.

Securities orders containing clients' instructions should be made out in such a way that both the originator and the firm charged with their reception and transmission have a clear, precise picture of their scope and effects. Irregularities observed included orders that gave the commercial name of the product but not the issuer, missing information which could mislead the client as to the maximum term of the investment or orders lacking information such as the type of security, order price, ISIN or intended market (primary or secondary).

Information deficiencies during the investment

In some cases, the regular statements sent to clients on the status of their investments were found to contain misleading information.

Current legislation stipulates that clients operating under a provision of investment services agreement valid for over one year or an indefinite period must be furnished with a clear and specific statement of the balance of their investments, sent to their home address, at least once a year, or quarterly in the event of intervening changes in the make-up of their designated portfolio. The purpose of this statement is so they can keep track of their investments and arrive at informed decisions.

The CNMV found a number of providers to have been remiss in not offering clients reliable information on their assets in these regular statements, either because the value stated was out of step with market price or because the products held were wrongly identified.

Some statements showed only the security's face or acquisition value and not its current market price. In others, although the product was denominated in a foreign currency, the exchange rate was not updated. The result in both cases was that clients were prevented from knowing the real value of their investments.

There were also instances of entities failing to inform a client about a sale option on shares in his possession or about the deadline date for taking up a takeover bid.

Another incident involved an entity which had sent its client incorrect tax information and, on realising its mistake, had not gone on to amend the information furnished to the tax authorities. The tax information entities send their clients is is a key help to them in fulfilling their tax declaration obligations. And the result in this case was that the tax authorities sent him a parallel statement showing discrepancies with the figures provided.

4.1.3 Subscribing for issues

Incidents regarding preferential subscription rights

Complaints continue to come in regarding incidents with preferential subscription rights. Again, it bears mention that the steps entities take with regard to these rights will depend on their ownership circumstances:

1- Investors holding rights by reason of previous share ownership in the context of a paid capital increase. In this case, failing instructions from the client, the custodian entity, of its own accord, should proceed to sell the rights before the end of the trading period.

In bonus issues, failing investor instructions, the custodian should subscribe for the new shares.

2- Investors acquiring rights through a buy order in the secondary market. In this case, the client should specifically instruct his custodian about the course to follow. The entity, in turn, is obliged to warn clients in an effective and timely manner that by not issuing supplementary instructions to exercise their rights before the end of the trading period, they run the risk of losing their investment.

If no instructions are received, the custodian can simply do nothing, leaving the rights to expire with the resulting loss to the investor. This is generally the case, unless the entity has established some other procedure and publicised it appropriately.

A large number of complaints received in 2010 concerned the following share subscription rights:

- Gas Natural rights
- Banco de Santander rights
- Jazztel rightsl

From an analysis of these complaints it was clear that many entities were neglecting to warn their clients pre-sale about the risks of trading in this investment product.

On occasion, the respondent entity was found to have shortened the time available for clients to enter their subscription orders for the issue.

The subscription period in any capital increase must be that figuring in the agreement adopted by the issuing company or in the registration statement filed with the supervisory authority. Custodian entities have no right to unilaterally shorten this period for reasons of procedure or convenience.

That said, bringing forward the instruction deadline by up to two days can have liquidity benefits for rightsholders by reducing the likelihood of overselling on the last trading day, a not infrequent problem with this kind of security. However, any larger cut must be deemed an unreasonable constraint on investors' decision-making capacity.

In many cases custodians had not only failed to inform clients about these shorter periods but also about the existence of additional or discretionary allocation rounds, and the terms and conditions in which shareholders could take them up.

Note that entities are not relieved of this informational obligation by the fact that orders are placed online without the direct intervention of any operator or employee.

Some incidents referred to the requirement to pay in the corresponding sum when filling out subscription orders, as specified in the issue prospectus, and failure by the entity taking and processing the order to warn the investor of the consequences of not following this instruction.

Finally, some entities were found to have taken unilateral decisions without reasonable grounds; for instance, selling the rights that a client had acquired on the market, or forcing a rightsholder to subscribe for an issue with all the rights assigned and not just a percentage of the same.

Purchase of Santander convertible notes

The purchase of Santander convertible notes was the cause of several complaints.

The conditions of this unrated issue were that in the event of the failure of Banco de Santander's takeover bid for ABN AMRO, formulated jointly with Royal Bank of Scotland, the securities would be redeemed on 4 October 2008 at a coupon of 7.5% AER. Conversely, if the bid went through, the securities would be mandatorily exchangeable for convertible bonds, without repayment of nominal value, with the reference price for conversion purposes set at 116% of the bank's share price when the convertibles were issued. The exchange option would be voluntary for bondholders on 4 October 2008, 2009, 2010 and 2011, and mandatory in 2012.

Complainants all contended that they had subscribed the notes in the assurance that what they were buying was a risk-free fixed-term deposit with capital protection, features that were corroborated by the bank's employees in response to enquiries by the prospective purchasers.

The entity argued that in its procedural handbook for the marketing of investment products Banco Santander had classed the issue as a "Yellow Product" on its scale of risk, meaning it could be acquired by retail banking clients *"only insofar as sales staff believed that its characteristics were sufficiently aligned with the client's risk and investment profile"*.

The entity, however, could give no proof of having procured sufficient information from its clients pre-sale to check whether the notes were right for persons of their investment experience and profile.

Also, in several cases it could not be established that complainants had been given written information pre-sale setting out the products' characteristics and risks or that these disclosure failures had been offset in the corresponding order form. On the contrary, a number of buy orders omitted the name of the securities issuer.

Complex products

The entity was also judged to be at fault in classing the notes as a conservative rather than complex product, permitting their marketing to a wide investor public.

4.1.4 Securities custody and administration

Complaints in this field concerned matters like unwarranted delays in making securities available to the owner, stretching in one case to three months.

At other times, entities were found to have fallen short in their informational obligations.

In one case, a firm could provide no evidence of complying with or even replying to a client's request for copies of his contracts and a record of all transactions made.

It bears mention that entities should keep their clients properly informed at all times and respond promptly to enquiries about their transaction records. In the event of some special circumstance like the issuer of designated securities going bankrupt (e.g., General Motors Corporation), the entity should communicate it at once to all those affected, in its capacity as securities custodian and administrator, advising them of the implications for their investment and the resources they command to uphold their rights against the issuer.

Another failure identified was not informing clients about certain peculiarities in dividend payments, as notified by the securities issuer.

4.1.5 Fees and expenses

Current legal provisions authorise investment firms to freely set the fees and charges applied to each service effectively rendered, within the limits established in their fee schedules. In any event, they must inform clients pre-transaction of the total consideration, including fees, commissions, costs and associated charges as well as taxes payable through the service provider. Moreover this information must be delivered to them in a durable medium.

Post-transaction, entities must clearly indicate the interest rates and fees or expenses applied in the confirmation statement, indicating the calculation basis and accrual period, taxes withheld and, generally, any details that can help the client to verify the settlement.

One instance of bad practice was the delivery of this information over two months after the transaction went through.

In another case, the amount charged by the dealer on the American market where the trades were executed was higher than the fees applied by the custodian. Clearly, this charge should have been included in the total consideration pre-estimated for that transaction. The same is true of an entity's failure to advise about the exchange rate applicable to trades involving conversion into a foreign currency.

Another client was unhappy about being charged a custody fee on shares delisted from the London Stock Exchange. In this case, although the amounts charged were found to be correct, the provider, as custodian and administrator, should have informed the complainant about the legal situation of his securities and about the steps to take to have them derecognised, rather than urging him to take his portfolio elsewhere.

In a number of incidents reported, the provider was found to have applied higher fees than those appearing in the relevant fee schedule, in what was a clear instance of overcharging. Other cases turned on the misapplication of established fees, like, for instance, charging securities custody and administration fees on the basis of face rather than market value; applying transfer fees on the cash rather than nominal amount; calculating the administration fee on a set of securities without weighting for their months under custody, in accordance with the fee schedule; or using calculation formulas other than those stated.

In other cases, the client alleged a verbal agreement with his provider to charge fees below the maximums stipulated, which the latter had subsequently reneged

on. Although normally there were no records documenting this agreement, there were at least pointers to its existence in certain cases – the fact that the lower costs appeared in statements, the existence of regular cost refunds, and evidence that the entity in question was consistently applying cheaper fees to clients trading with a set frequency.

Whether or not the tacit agreement was subsequently modifiable, the entity should have notified the change in a specific communication, giving the client at least two months to decide whether to discontinue the contractual relationship, during which time the new fees would not be levied. In the absence of evidence to this effect, the provider was considered to be at fault.

4.1.6 Portfolio management

While reviewing complaints on the subject of portfolio management, it was clear that many entities were managing their clients' assets by reference to conditions and constraints other than those specified in the corresponding agreement, making investments, for instance, that were clearly at odds with their investor profile and stated limits. In several cases, the portfolios of clients opting for a conservative profile were found to be entirely composed of a complex structured product.

One complainant referred to a change in his contractual risk profile from *"moderate"* to *"balanced"*, implying an increase in his authorised equity exposure. The entity, however, could provide no evidence of having formalized this change with the client, so was deemed to have overstepped its management mandate when acting on the new definition.

In another complaint, the percentage of equity investment had surpassed the ceiling set in the portfolio management agreement, but only for a brief period of time – a circumstance permitted by the contract. Here the entity's fault lay in not reporting this overrun to the client in his monthly statements.

Finally, discrepancies were detected between the investor profile stated in the portfolio management contract and the profile emerging from the suitability test completed by the same client. On these occasions, what providers should do is approach their clients to discuss and clarify the discrepancy.

4.2 Investment funds and other U.C.I.T.S. schemes

4.2.1 Information to clients

Complaints continued to flood in regarding schemes' non compliance with the informational requirements of U.C.I.T.S. regulations, particularly the prior delivery of a copy of the simplified prospectus and latest semiannual report and accounts or, at the client's request, the full prospectus and latest quarterly statement, setting out all the details the investor needs to arrive at an informed decision.

Similar pre-subscription requirements apply to foreign U.C.I.T.S., where the prospective investor must be given copies of the simplified prospectus and latest quarterly statement, translated into Spanish. Some complainants reported incidents with this material, such as the omission of the scheme's name or of the category to which it

belonged – information of vital importance for the client's understanding of the true nature of his investment.

Hedge funds merit a rather different treatment since they are considered complex products and must therefore be analysed pre-sale to gauge their appropriateness for the investor, procuring to this end all necessary information on their knowledge and experience in the relevant investment field. If the entity considers, in view of the results, that the product or service is not right for the client, it should warn him to this effect. In a number of complaints concerning hedge funds, the provider was unable to substantiate having run this test or having advised the client about the product's risks. In one case, the entity had sold its client a hedge fund investment despite having assigned him a conservative profile.

When proposing investment funds in the frame of a contractual investment advisory relationship, the entity must take steps to ensure that its recommendations are *suitable* for the client, by obtaining the necessary information regarding his investment knowledge and experience and financial situation. It can then direct him to the services and instruments that best fit the bill. In the complaints resolved upon in 2010, this step was frequently omitted.

Disclosure requirements extend across the life of the investment. For instance, in the event of changes in the characteristics of a collective investment scheme with respect to its current prospectus, the entity should inform unitholders sufficiently in advance. This would be the case, for instance, with fees or other costs, or changes in the guarantee.

In one case, the entity denied that there was any obligation to notify unitholders of the early expiry of a guarantee, since this possibility was stated in the fund prospectus. However, the CNMV concluded that it was part of a provider's duty of diligence to inform its clients that an early expiry condition had been triggered.

In another, the entity was found to be at fault for not notifying the complainant about one such material change, namely the merger of his fund, as a result of which he involuntarily became a unitholder in a new scheme denominated in a different currency.

Entities should be diligent in dealing with their clients' enquiries. Hence the upholding of complaints where the provider had failed to answer its clients' questions about the make-up of fund portfolios.

In the case of foreign schemes that are not registered with the CNMV for marketing in Spain, there is no obligation to notify the regulator of changes in the fund prospectus. However, firms are still bound by disclosure requirements by virtue of the service contracts signed with clients. In some cases, providers could not prove that such requirements had been met, while a review of their submissions found errors, for instance, in periodic statements.

A number of complaints showed firms to be failing in their informational duties with regard to foreign collective investment schemes. Indeed many had been tardy in advising clients about important matters, like the effect on their investments of the Bernard Madoff fraud.

Incidents with redemptions were particularly common, ranging from unclear information to a lack of transparency in the provider's explanation of how withholding tax was calculated.

At times, also, the statements furnished by the complainant showed a price or NAV for the fund concerned that was not that of the stated date. The entity explained that the figure appearing in periodic statements corresponded to the latest available NAV rather than that of the statement date, although clearly this fact should have been indicated.

4.2.2 Subscription and redemption of units and shares

Procedural deficiencies

A number of complaints brought to light deficiencies in the subscription process.

One example is that of the investment fund subscription forms which not only misstated the name of the fund, but were also vague about the category it belonged to, to potentially misleading effect. Another is that of the firm that wrote to a client to interest him in a fund with a guaranteed return, when this was not what was stated in the prospectus.

A number of subscription forms were found not to bear the signature of the investor, while in one complaint the entity had changed the account associated to an investment fund from that designated in the original subscription form without being able to provide evidence that the unitholders had ordered this novation. As a result, the proceeds of a redemption ordered by the joint holders of a collective investment scheme were paid into an account in the name of some of them only.

Order executions without evidence of the unitholder's consent

More complaints reached the CNMV in 2010 about providers supposedly subscribing investment fund units on clients' behalf but without their consent.

In one case, the entity said that the client had ordered the subscription verbally, but was unable to substantiate this claim. Another entity contended that this was normal practice with that particular client, based on their mutual trust and understanding, thus admitting of course that it had subscribed the fund units without an express order to this effect.

Change of distributor

The change of a scheme's distributor has major implications for the client, since it can mean signing new contracts, agreeing to new fees and conditions, getting used to new transactional platforms, etc. So it is important that they are advised of the switch, although they cannot oppose it, and offered reasonable alternatives.

Faults identified in this respect were failure to notify the change and also sending out notices informing the client that their transaction routines would suffer no alteration when this was clearly not the case.

Redemption conditions

Numerous complaints turned on incidents with U.C.I.T.S. redemption processes, ranging from delays to execution failures.

In one case, the provider alleged that it had not executed the order because it had mislaid the document from the owner authorising the ordering party to transact in his investment fund units – a clear breach of its record-keeping obligations.

Many cases showed that entities were failing to inform clients properly about fund redemption conditions, especially the settlement period. A common cause of complaint, for instance, was that the entity has rejected orders or filled them under conditions other than those specified by the unitholder, with the excuse that they were issued at a such-and-such a time, stating a cut-off time that did not coincide with that figuring in the prospectus.

Net asset value

The net asset value (NAV) applied to redemptions was frequently contested, with complainants alleging that the settlements practised did not conform to the fund prospectus in either their calculation method, the date applied or some other aspect specific to the fund in question. On one occasion, the entity had been reporting NAV in euros when the fund was denominated in dollars, as the investor discovered on redeeming his units.

Special redemption conditions

Some complaints concerned special redemption situations. For example, one hedge fund facing liquidity difficulties had decided to initiate a *"transparent, orderly and simultaneous"* redemption process affecting all unitholders. The entity in this case had failed to inform its client, despite his requests, with the result that his redemption order could only be filled in part.

Another entity was deemed to be at fault for not apprising its client of the pertinent redemption conditions (NAV, result of the investment, redemption fees applicable, notice requirement, etc.) before processing his order, the more so since they had recently been subject to modification.

4.2.3 Switches between collective investment schemes

Formal deficiencies. Errors. Non performance

Investment fund switches were again a common source of complaints. Although some fell through because of errors in the fund or ownership data supplied by clients, in a not inconsiderable proportion of cases it was providers that had made the mistakes, with the result that the client's wishes could not be fulfilled.

Good practice in cases where switches are rejected due to defective orders is to advise the client so he can correct them rather than simply letting the order fail. On one occasion an order failed because the receiving fund imposed a minimum investment higher than the investment in the delivering fund. Again the client should have been advised that this was the case.

Incidents where entities had inadmissibly failed to execute clients' switch requests involved supposed errors in the order form where none existed, the relaying of a switch request to a delivering fund that was no longer registered in the SNCE (National Electronic Clearing System), instead of to its new distributor, ambiguous instructions in telephone orders, and the wrongful blocking of a client's fund units.

In several cases, the switch only went through after unwarranted delays, in others it was cancelled unfilled without letting the client know. There were even upheld complaints where the entity made the switch into the wrong fund.

Delays

The length of time taken to switch investments was again a cause of dispute in 2010, with many entities failing to comply with the time limits stated in the regulations.

Absence of documented consent

In a number of cases, firms were found to have completed switches without express instructions from the client. The explanation given by one such provider was that this was an established practice based on the relations of trust existing with the client.

Special conditions

Switches are in reality a redemption from one fund and the simultaneous subscription of another with deferral of taxes, and are accordingly subject to the fees and other conditions of the delivering and receiving schemes. The delivering fund, for instance, may impose a notice period for redemptions or operate liquidity windows.

Entities were considered at fault in a number of cases for lack of diligence in processing orders which sought to take account of special redemption conditions. Thus, for example, a bank had redeemed fund units outside the liquidity window despite instructions to the contrary, while in another case the entity argued that the notice requirement had not been honoured even though the redemption order had been issued sufficiently in advance.

Distributor conduct

At times switch instructions are channelled through the fund distributor. Many complainants expressed their discontent with delays in processing switches when the distributor of the delivering and receiving funds was one and the same, especially since checking the data must be far easier than when two distributors are involved.

In the case of foreign U.C.I.T.S., switch orders must invariably go through the distributing entity. So when the delivering fund is registered abroad it will be its local distributor that receives the request. However, it is also possible for distributors to delegate this function to a third party, as long as such delegation is publicised through the National Electronic Clearing System (SNCE). On this point, one receiving entity was found to be at fault for transmitting an order to the wrong delivering fund, when the change had been correctly notified by the SNCE.

4.2.4 Fees and expenses

Numerous incidents in 2010 concluding in a report favourable to the complainant concerned the charging of maintenance fees on accounts opened in parallel to the client's fund investment, i.e., linked or associated accounts.

Opening such an account is not mandatory, although it may facilitate the management of scheme subscriptions and redemptions. When the account's only purpose is to provide operational support for securities transactions, i.e., is optional and not obligatory, it may not carry maintenance charges.

In some cases, providers were at fault in charging fees without first warning investors of their existence, event though the relevant changes in the fund prospectus had been notified to the CNMV.

On one occasion, the cause of complaint was a fee levied in connection with an U.C.I.T.S. merger, when the prospectus said the allocation of shares under the merger process would carry no initial charges.

On another, the respondent firm had rounded the number of units acquired down to the nearest thousandth when it had been reporting them to the nearest ten thousandth in the unitholder's portfolio statements. This was considered inadmissible since the fund prospectus said units could be purchased in fractions of a thousandth, and the entity could give no reason why the complainant should not benefit from the units assigned being rounded up instead of down.

A number of investors also complained about lack of information on the tax withholdings applied by their provider.

4.3 Testamentary execution

Most complaints under this head involved firms acting contrary to the instructions of a testamentary instrument.

In one case, the entity changed the ownership of securities held in deposit on the basis of a private document presented by one of the heirs, in contravention of the deceased's wishes as expressed in the legal document of reference – his will. What it should have done was check first with all the heirs whether the private document amended the will with legal effect.

In another, a firm registering change of ownership recorded securities in the name not only of the legitimate heirs, as their separate property (not belonging to the marital estate), but also of their respective spouses.

Complaints frequently involved firms processing securities orders after the death of one of their co-owners.

Several times, for instance, firms had sold securities despite the order not being signed by all co-owners, one of whom had died. This was clearly wrong since transfer of ownership had yet to be executed.

Signing arrangements should be specified in the opening agreement for the account where the securities are to be deposited. Failing this, the usual practice is to consider it a restricted joint account (*mancomunado*), such that all holders must give their signed consent to any operation. This means the firm in question should have sought authorisation from all co-holders before the sale, the more so knowing that one of the original co-holders had died.

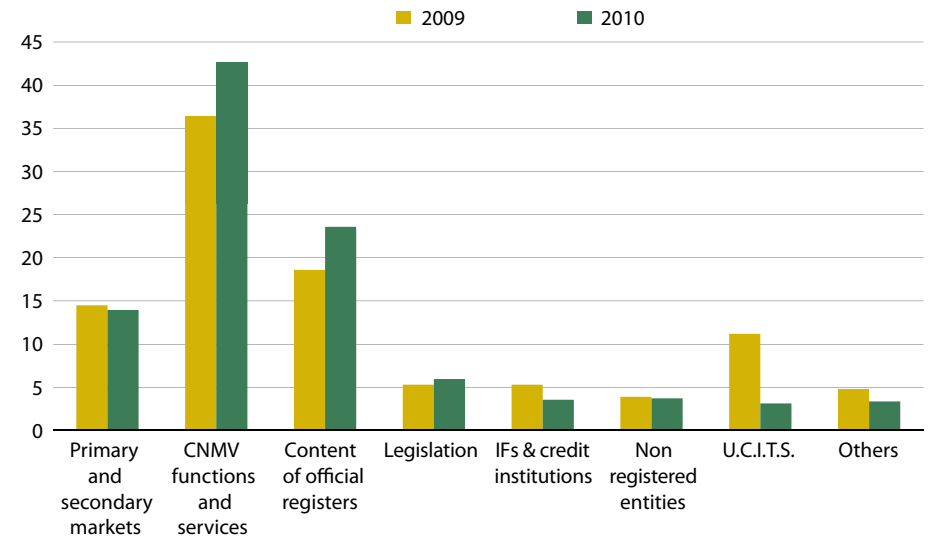
In another case, the firm had redeemed fund units inherited by the complainant before recording change of ownership, when the correct course would have been to first obtain and examine the relevant documentation and, once these steps had been taken, change the title of the units to the legitimate heir or heirs, who could then order the redemption in their own names.

5 The main subjects of enquiries

5 The main subjects of enquiries

Investors again tended to primarily approach the CNMV with enquiries about its official registers (firm registration data, investment service contracts and tariffed fees, and significant event notices, among other public access data) or the functions and services within its remit (status of complaints in progress, investor guides and factsheets, CNMV communications, statistics and other publications, etc).

Enquiries by subject FIGURE 6



Source: CNMV.

There follows a run-through of the main subjects enquired about in 2010:

5.1 Seizure and suspension of activities at Sebroker Bolsa, Agencia de Valores, S.A.

On 5 March 2010, brokerage firm Sebroker Bolsa announced that it had filed for voluntary bankruptcy. The CNMV ordered the seizure of the company's assets and suspension of its activities in order to maximise investor protection.

From the moment the announcement was made, the brokerage firm's clients began enquiring about its situation and the fate of their investments, and about whether they could transfer cash or securities to another provider, close out open positions or apply for coverage from the Investors Compensation Scheme (FOGAIN).

On 26 March 2010, Mercantile Court No. 8 of Barcelona ordered the winding-up of Sebroker Bolsa, Agencia de Valores, S.A., fulfilling one of the qualifying conditions stipulated in Royal Decree 948/2001 of 3 August for the broker's clients to be entitled to coverage from the Investors Compensation Scheme. From this point on, the Investor Assistance Office was able to inform enquirers about how to claim compensation from FOGAIN if they believed they were entitled to as a consequence of the firm's actions.

On 12 July 2010, the broker was removed from the CNMV's official registers.

5.2 Suspension and resumption of redemptions at Santander Banif Inmobiliario, FII

Complaints continued to come in throughout the time redemptions were suspended at the Santander Banif Inmobiliario real estate fund, with investors voicing concerns about not being able to access their cash and about the decline in the net asset value of fund units.

In a significant event filing of 3 December 2010, it was announced that Grupo Santander had decided to contribute resources to the fund through the subscription of new units, in order to meet the redemption requests outstanding and avoid the dissolution of the fund. In addition, the fund would have a liquidity guarantee granted by Grupo Santander for a period of two years, which would ensure that unitholders could redeem their units in that period.

This meant unitholders would have the chance to withdraw their funds under the stipulated terms without having to sit out the often lengthy process of dissolution and disposal of fund assets. The fund, meantime, could resume its normal activity, without focusing on the orderly liquidation of its assets, and interested unitholders could choose to maintain, totally or partially, their investments in the fund.

The Investor Assistance Office informed enquirers about the new situation and the steps they should take depending on whether or not they wished to stay in the fund.

5.3 Issues and initial public offerings

The conditions governing certain issues and initial public offerings attracted a significant number of enquiries:

- The stock market listing of Amadeus IT Holding, S.A. through an initial public offering, which caused confusion and not a little annoyance among shareholders of Amadeus IT Group (the subject of a delisting bid in 2005) who believed it was this company that was being admitted to trading, giving them the chance to sell their shares.

- The retail bond issue of the Catalan and Valencian regional governments. The nature of the issue meant no prospectus need be registered with the CNMV under the exceptions contemplated in Royal Decree 1310/2005 of 4 November, partially implementing Securities Markets Law 24/1988 of 28 July as regards admission to trading on official secondary markets, initial public offerings and the mandatory prospectuses.

- A series of listed company capital increases, including those of BBVA, S.A., Gestevisión Telecinco, S.A., Promotora de Informaciones, S.A. or the three-way transaction of SOS Corporación Alimentaria, S.A.

  A common denominator of all these issues was the numerous doubts expressed about procedures for take-up and for trading in subscription rights.

  The three-way operation conducted by SOS Corporación Alimentaria, S.A. merits separate attention, since it included a non-cash capital increase via conversion of preference shares. This gave rise to diverse enquiries regarding (i) the value assigned to the preference shares in the exchange transaction, and (ii) the time given to make the conversion.

5.4 Incidents in the payment of dividends on preference shares

Investors also enquired about why SOS Corporación Alimentaria Preferentes, S.A. had failed to make dividend payments to preference shareholders on the appointed dates.

In fact the company published several significant event notices announcing that it would not pay the cumulative return, under the condition stated in the relevant securities note of there being insufficient earnings available for distribution.

5.5 Other subjects

As every year, enquiries were received about the fees and other charges payable on investment services, about unregistered firms offering investment advice, with special regard to the forex market, and about the disposition of inherited securities and investment fund units.

Another frequent topic was the rules of conduct governing the relations between investment service providers and their clients. Specifically, investors had doubts about their information rights on taking out a product as well as firms' responsibilities with regard to appropriateness and suitability testing.

The implications of using global accounts and clarifications about fees charged or delays in the execution of sell orders on fixed-income securities and preference shares were among remaining enquiry subjects in the year.

5.6 Non registered entities

Many investors consult the Investor Assistance Office about the legality of companies that have approached them offering investment returns above the going market rates. To all enquirers, the CNMV stresses that investing with a non registered entity leaves them strongly exposed to capital loss, since such firms operate outside the control of the supervisory authorities. To aid them in their enquiries, the CNMV website www.cnmv.es includes a search facility listing all authorised providers.

Some investors sought advice about the legal channels for recovering their investments. The Investor Assistance Office points out in this respect that the CNMV's competences are confined to administrative matters, and that their only recourse is through the courts. However, it also records the information facilitated by such enquirers. The CNMV issues regular warnings about firms suspected of rendering investment services without due authorisation. These warnings may be generated internally or have been communicated by a foreign regulator.

In 2010, warnings were issued about the following companies without authorisation to provide investment services in Spain, in accordance with article 13 of the Securities Markets Law which commends it to safeguard investor interests by broadcasting all relevant information.

CNMV public warnings on non registered entities

TABLE 6

Date	Company
11/01/2010	DIVIDIUM CAPITAL, S.L.
11/01/2010	AFFIRMO GRUPO INVERSOR, S.L.
01/02/2010	EL TORO CONSULT, S.L.
18/10/2010	FIB TRADING, S.L. WWW.FIB-TRADING.ES
18/10/2010	WINDSOR EXCHANGE WWW.WINDSOREXCHANGE.EU.COM
08/11/2010	CONSULTRADING SOLUTIONS GROUP WWW.CFDIVISAS.COM WWW.HISPATRADERS.COM
08/11/2010	FOREX GLOBAL FX WWW.FOREXGLOBALFX.COM
22/11/2010	CLUB DE INVERSIÓN DE ALTO RENDIMIENTO (CIAR) CIAR INVESTMENT CORP.
22/11/2010	BLUESTAR MANAGEMENT
27/12/2010	TRAMITA FUNDS

A list of entities figuring on the warning lists of other regulators can be consulted on the CNMV website.

Annexes

Annexe 1 Statistical tables

Monthly distribution of complaints filed and resolved in 2010

TABLE A1.1

Month	Complaints filed	Complaints processed	Complaints resolved
January	95	122	99
February	166	132	105
March	290	136	108
April	343	148	124
May	203	207	169
June	170	165	125
July	253	154	138
August	166	205	177
September	118	163	137
October	157	171	154
November	159	262	243
December	176	221	195
TOTAL	**2,296**	**2,086**	**1,774**

Source: CNMV.

Geographical distribution of complaints resolved in 2010

TABLE A1.2

Provenance	No. of complaints	Percentage
ANDALUSIA	197	11.1
ARAGÓN	49	2.8
CANARY ISLANDS	68	3.8
CANTABRIA	22	1.2
CASTILLA LA MANCHA	60	3.4
CASTILLA Y LEÓN	110	6.2
CATALONIA	268	15.1
CEUTA	1	0.1
MADRID REGION	464	26.2
NAVARRA	21	1.2
VALENCIA REGION	166	9.4
EXTREMADURA	22	1.2
GALICIA	108	6.1
BALEARIC ISLANDS	13	0.7
LA RIOJA	21	1.2
MELILLA	3	0.2
BASQUE COUNTRY	110	6.2
ASTURIAS	26	1.5
MURCIA REGION	35	2.0
EU COUNTRIES	7	0.4
OTHERS	3	0.2
TOTAL	**1,774**	**100**

Source: CNMV.

Distribution by entity of complaints against banks

TABLE A1.3

Bank	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ALTAE BANCO, S.A.	-	1	-	3	-	4
BANCO BANIF, S.A.	1	13	-	27	5	46
BANCO BILBAO VIZCAYA ARGENTIARIA, S.A.	36	53	8	37	15	149
BANCO CAIXA GERAL, S.A.	-	1	-	3	-	4
BANCO COOPERATIVO ESPAÑOL, S.A.	-	-	-	-	1	1
BANCO DE FINANZAS E INVERSIONES, S.A.	-	-	-	3	-	3
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA, S.A.	-	2	-	14	-	16
BANCO DE MADRID, S.A.	1	7	-	6	-	14
BANCO DE SABADELL, S.A.	8	11	-	25	3	47
BANCO DE VALENCIA, S.A.	-	-	-	-	2	2
BANCO ESPAÑOL DE CRÉDITO, S.A.	9	39	-	32	17	97
BANCO ESPIRITO SANTO, S.A., SUCURSAL EN ESPAÑA	-	2	-	2	-	4
BANCO FINANTIA SOFINLOC, S.A.	-	1	-	-	-	1
BANCO GALLEGO, S.A.	-	2	-	-	-	2
BANCO GUIPUZCOANO, S.A.	1	10	1	21	-	33
BANCO INVERSIS, S.A.	6	14	-	33	-	53
BANCO PASTOR, S.A.	-	4	-	4	1	9
BANCO POPULAR ESPAÑOL, S.A.	13	12	-	13	12	50
BANCO SANTANDER, S.A.	41	98	8	101	19	267
BANCO URQUIJO SABADELL BANCA PRIVADA, S.A.	-	2	-	3	-	5
BANCOPOPULAR-E, S.A.	-	1	-	-	-	1
BANKINTER, S.A.	28	26	2	119	32	207
BANQUE PRIVEE EDMOND DE ROTHSCHILD EUROPE, SUCURSAL EN ESPAÑA	-	-	-	1	-	1
BARCLAYS BANK, S.A.	5	11	-	65	-	81
BNP PARIBAS ESPAÑA, S.A.	-	1	-	6	-	7
CITIBANK ESPAÑA, S.A.	11	5	2	10	-	28
CORTAL CONSORS, SUC EN ESPAÑA	-	2	-	2	-	5
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, SUCURSAL EN ESPAÑA	-	1	-	-	-	1
CREDIT SUISSE AG, SUCURSAL EN ESPAÑA	-	1	1	2	-	4
DEUTSCHE BANK, S.A.E.		18	-	61	1	82
FORTIS BANK, S.A., SUC EN ESPAÑA	2	-	-	1	-	1
ING BELGIUM, S.A., SUCURSAL EN ESPAÑA	-	-	-	1	-	1
ING DIRECT, N.V., SUCURSAL EN ESPAÑA	-	4	-	4	-	14
LLOYDS TSB BANK PLC, SUCURSAL EN ESPAÑA	6	-	-	4	-	4
OPEN BANK, S.A.	2	7	-	11	-	20
POPULAR BANCA PRIVADA, S.A.	1	1	-	9	-	11
RBC DEXIA INVESTOR SERVICES ESPAÑA, S.A.	2	1	-	-	-	3
SELF TRADE BANK, SUCURSAL EN ESPAÑA	-	-	-	2	1	3
SOCIETE GENERAL, SUCURSAL EN ESPAÑA	-	-	-	1	-	1
UBS BANK, S.A.	-	-	-	2	-	2
UNOE BANK, S.A.	1	2	-	4	-	7
TOTAL	**175**	**352**	**22**	**633**	**109**	**1,291**

Source: CNMV.

Distribution by entity of complaints against *cajas de ahorros*

TABLE A1.4

Caja	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
BILBAO BIZKAIA KUTXA, AURREZKI KUTXA ETA BAHITETXEA	2	-	-	-	-	2
CAIXA D´ESTALVIS COMARCAL DE MANLLEU [1]	-	1	-	-	-	1
CAIXA D´ESTALVIS DE CATALUNYA [2]	2	7	-	15	2	26
CAIXA D´ESTALVIS DE GIRONA [3]	-	1	-	-	-	1
CAIXA D´ESTALVIS DE MANRESA [2]	-	1	-	4	-	5
CAIXA D´ESTALVIS DE SABADELL [1]	2	-	4	1	-	7
CAIXA D´ESTALVIS DE TERRASSA [1]	1	-	-	2	-	3
CAIXA D´ESTALVIS DEL PENEDES	19	-	-	-	3	22
CAIXA DE AFORROS DE VIGO, OURENSE E PONTEVEDRA (CAIXANOVA) [4]	1	2	-	-	-	3
CAJA DE AHORROS DE ASTURIAS	1	1	-	1	-	3
CAJA DE AHORROS DE CASTILLA-LA MANCHA [5]	1	2	-	1	1	5
CAJA DE AHORROS DE GALICIA [4]	5	22	1	42	5	75
CAJA DE AHORROS DE LA INMACULADA DE ARAGON	-	1	-	-	1	2
CAJA DE AHORROS DE MURCIA	1	2	-	-	-	3
CAJA DE AHORROS DE SALAMANCA Y SORIA [6]	-	1	-	2	-	3
CAJA DE AHORROS DE SANTANDER Y CANTABRIA	-	1	-	1	-	2
CAJA DE AHORROS DE VALENCIA, CASTELLON Y ALICANTE, BANCAJA [7]	3	6	1	6	2	18
CAJA DE AHORROS DE VITORIA Y ALAVA-ARABA ETA GASTEIZKO AURREZKI KUTXA	-	1	-	-	-	1
CAJA DE AHORROS DEL MEDITERRANEO [8]	2	3	1	18	2	26
CAJA DE AHORROS MUNICIPAL DE BURGOS [9]	-	1	-	-	-	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE CORDOBA [10]	1	-	-	-	-	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE EXTREMADURA	-	-	-	1	-	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE GIPUZKOA Y SAN SEBASTIAN	1	2	-	3	-	6
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID [7]	8	31	1	18	10	68
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA [9]	-	1	-	-	-	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA [7]	-	1	-	-	-	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGON Y RIOJA (IBERCAJA)	-	6	-	7	1	14
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CIRCULO CATOLICO DE OBREROS DE BURGOS	-	-	-	1	-	1
CAJA DE AHORROS Y PENSIONES DE BARCELONA [3]	7	31	-	16	5	59
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD [6]	2	9	1	3	-	15
CAJA GENERAL DE AHORROS DE CANARIAS [9]	-	1	-	1	-	2
CAJA GENERAL DE AHORROS DE GRANADA	1	1	-	-	-	2
CAJA INSULAR DE AHORROS DE CANARIAS [7]	-	2	1	6	3	12
MONTE DE PIEDAD Y CAJA DE AHORROS SAN FERNANDO DE GUADALAJARA, HUELVA, JEREZ Y SEVILLA [9]	4	-	-	2	-	6
MONTE DE PIEDAD Y CAJA GENERAL DE AHORROS DE BADAJOZ	-	-	1	-	-	1
MONTES DE PIEDAD Y CAJA DE AHORROS DE RONDA, CADIZ, ALMERIA, MALAGA Y ANTEQUERA [11]	1	3	-	2	1	7
TOTAL	**65**	**141**	**11**	**153**	**36**	**406**

1 A 30/09/11, CAIXA D'ESTALVIS UNIO DE CAIXES DE MANLLEU, SABADELL Y TERRASA
2 A 30/09/11, CAIXA D'ESTALVIS DE CATALUNYA, TARRAGONA I MANRESA
3 A 30/09/11, CAIXABANK, S.A.
4 A 30/09/11, CAIXA DE AFORROS DE GALICIA, VIGO, OURENSE E PONTEVEDRA
5 A 30/09/11, BANCO DE CASTILLA-LA MANCHA, S.A.
6 A 30/09/11, CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, CAJA DE AHORROS Y MONTE DE PIEDAD
7 A 30/09/11, BANKIA, S.A.
8 A 30/09/11, BANCO CAM, S.A.
9 A 30/09/11, BANCA CÍVICA, S.A.
10 A 30/09/11, BBK BANK CAJASUR, S.A.
11 A 30/09/11, MONTE DE PIEDAD Y CAJA DE AHORROS DE RONDA, CADIZ, ALMERÍA, MÁLAGA, ANTEQUERA Y JAEN (UNICAJA)

Source: CNMV.

Distribution by entity of complaints against credit cooperatives

TABLE A1.5

Credit cooperative	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
CAJA DE ARQUITECTOS SOCIEDAD COOPERATIVA DE CREDITO	-	-	-	1	-	1
CAIXA DE CREDIT DELS ENGINYERS-CAJA DE CREDITO DE LOS INGENIEROS	-	-	-	1	-	1
CAJA LABORAL POPULAR COOPERATIVA DE CREDITO	1	3	-	-	-	4
CAJA RURAL ARAGONESA Y DE LOS PIRINEOS, SOCIEDAD COOPERATIVA DE CREDITO	-	-	-	1	-	1
CAJA RURAL DE BURGOS, SOCIEDAD COOPERATIVA DE CREDITO	-	1	-	-	-	1
CAJA RURAL DE GRANADA, SOCIEDAD COOPERATIVA DE CREDITO	-	-	-	-	2	2
CAJA RURAL DE NAVARRA, SOCIEDAD COOPERATIVA DE CREDITO	-	-	-	-	6	6
CAJA RURAL DE SORIA, SOCIEDAD COOPERATIVA DE CREDITO	-	2	-	-	-	2
CAJA RURAL DE TOLEDO, SOCIEDAD COOPERATIVA DE CREDITO	-	1	-	-	-	1
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CREDITO	-	1	-	2	-	3
CREDIT VALENCIA, CAJA RURAL COOPERATIVA DE CREDITO VALENCIANA	-	-	-	1	-	1
TOTAL	1	8	0	6	8	23

Source CNMV.

Distribution by entity of complaints against IFs, U.C.I.T.S. managers and others

TABLE A1.6

IF or U.C.I.T.S. manager	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ABANTE ASESORES DISTRIBUCION, AV, S.A.	-	-	-	1	-	1
AHORRO CORPORACION FINANCIERA, S.A. SV	-	-	-	1	-	1
AHORRO CORPORACION GESTION, S.G.I.I.C., S.A	-	1	-	-	-	1
AXA IBERCAPITAL, , AV,, S.A.	-	1	-	2	-	3
B.MADRID GESTION DE ACTIVOS, S.G.I.I.C., S.A.	-	2	-	-	-	2
BANCAJA FONDOS, S.G.I.I.C., S.A	-	1	-	-	-	1
BANESTO BOLSA, S.A., SV	-	1	-	-	-	1
BANSABADELL INVERSION, S.A., S.G.I.I.C.	-	2	-	-	-	2
BBVA ASSET MANAGEMENT, S.A., S.G.I.I.C.	-	2	-	1	-	3
BNP PARIBAS INVESTMENT PARTNERS, S.G.I.I.C., S.A	-	-	-	2	1	3
CMC MARKETS UK PLC, SUCURSAL EN ESPAÑA	-	1	-	-	-	1
ESPIRITO SANTO GESTION, S.A., S.G.I.I.C.	-	1	-	-	-	1
EURODEAL , AV,, S.A	1	-	-	-	-	1
FINANDUERO, SV, S.A.	-	-	-	1	-	1
FONDITEL GESTION, S.G.I.I.C., SA	-	1	-	-	-	1
GESCONSULT, S.A., S.G.I.I.C.	-	-	-	1	-	1
GESMADRID, S.G.I.I.C., S.A.	-	-	-	1	-	1
GVC GAESCO VALORES, SV, S.A.	-	2	-	-	-	2
IB-KAPITAL VERMÖGENSVERWALTUNG GMBH	-	1	-	-	-	1
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA	-	2	-	-	-	2
INTERDIN BOLSA, SV, S.A.	-	1	-	1	-	2
KUTXA GESTION PRIVADA, SGC, S.A.	-	1	-	-	-	1
MIRABAUD FINANZAS SV, S.A.	-	1	-	1	-	2
PREVISION SANITARIA NACIONAL GESTION, S.A., S.G.I.I.C.	-	1	-	-	-	1
RENTA 4 GESTORA, S.G.I.I.C., S.A.	-	1	-	-	-	1
RENTA 4, SV, S.A	-	2	-	2	-	4
SANTANDER ASSET MANAGEMENT, S.A., S.G.I.I.C.	-	6	-	-	-	6
SANTANDER REAL ESTATE, S.A, S.G.I.I.C.	-	6	-	-	-	6
TRESSIS, SV, S.A	-	1	-	-	-	1
TOTAL	**1**	**38**	**0**	**14**	**1**	**54**

Source CNMV.

Rectifications following reports favourable to the complainant

TABLE A1.7

Entity	Reports favourable to complainant	Rectified	Unrectified
ABANTE ASESORES DISTRIBUCION, AGENCIA DE VALORES, S.A	1	0	1
AHORRO CORPORACION FINANCIERA, S.A. SOCIEDAD DE VALORES	1	0	1
ALTAE BANCO, S.A.	3	1	2
AXA IBERCAPITAL, AGENCIA DE VALORES, S.A	2	0	2
BANCO BANIF, S.A.	27	0	27
BANCO BILBAO VIZCAYA ARGENTIARIA, S.A.	37	12	25
BANCO CAIXA GERAL, S.A.	3	0	3
BANCO DE FINANZAS E INVERSIONES, S.A.	3	1	2
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA, S.A.	14	0	14
BANCO DE MADRID, S.A.	6	0	6
BANCO DE SABADELL, S.A.	25	16	9
BANCO ESPAÑOL DE CRÉDITO, S.A.	32	1	31
BANCO ESPIRITO SANTO, S.A., SUCURSAL EN ESPAÑA	2	1	1
BANCO GUIPUZCOANO, S.A.	21	0	21
BANCO INVERSIS, S.A.	33	3	30
BANCO PASTOR, S.A.	4	0	4
BANCO POPULAR ESPAÑOL, S.A.	13	2	11
BANCO SANTANDER, S.A.	101	28	73
BANCO URQUIJO SABADELL BANCA PRIVADA, S.A.	3	2	1
BANKINTER, S.A.	119	0	119
BANQUE PRIVEE EDMOND DE ROTHSCHILD EUROPE, SUCURSAL EN ESPAÑA	1	0	1
BARCLAYS BANK, S.A.	65	1	64
BBVA ASSET MANAGEMENT, S.A., S.G.I.I.C.	1	1	0
BNP PARIBAS ESPAÑA, S.A.	6	0	6
BNP PARIBAS INVESTMENT PARTNERS, S.G.I.I.C., S.A.	2	0	2
CAIXA D´ESTALVIS DE CATALUNYA [1]	15	1	14
CAIXA D´ESTALVIS DE MANRESA [1]	4	0	4
CAIXA D´ESTALVIS DE SABADELL [2]	1	0	1
CAIXA D´ESTALVIS DE TERRASSA [2]	2	0	2
CAIXA DE CREDIT DELS ENGINYERS-CAJA DE CREDITO DE LOS INGENIEROS, SOCIEDAD COOPERATIVA	1	0	1
CAJA DE AHORROS DE ASTURIAS	1	0	1
CAJA DE AHORROS DE CASTILLA-LA MANCHA [3]	1	1	0
CAJA DE AHORROS DE GALICIA [4]	42	0	42
CAJA DE AHORROS DE SALAMANCA Y SORIA [5]	2	1	1
CAJA DE AHORROS DE SANTANDER Y CANTABRIA	1	0	1
CAJA DE AHORROS DE VALENCIA, CASTELLON Y ALICANTE, BANCAJA [6]	6	1	5
CAJA DE AHORROS DEL MEDITERRÁNEO [7]	18	1	17
CAJA DE AHORROS Y MONTE DE PIEDAD DE EXTREMADURA	1	1	0
CAJA DE AHORROS Y MONTE DE PIEDAD DE GIPUZKOA Y SAN SEBASTIAN	3	0	3
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID [6]	18	6	12
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGON Y RIOJA (IBERCAJA)	7	1	6
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CIRCULO CATOLICO DE OBREROS DE BURGOS	1	1	0
CAJA DE AHORROS Y PENSIONES DE BARCELONA [8]	16	8	8
CAJA DE ARQUITECTOS SOCIEDAD COOPERATIVA DE CREDITO	1	0	1
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD [5]	3	0	3
CAJA GENERAL DE AHORROS DE CANARIAS [9]	1	0	1
CAJA INSULAR DE AHORROS DE CANARIAS [6]	6	6	0
CAJA RURAL ARAGONESA Y DE LOS PIRINEOS, SOCIEDAD COOPERATIVA DE CREDITO	1	1	0
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CREDITO	2	0	2
CITIBANK ESPAÑA, S.A.	10	0	10
CORTAL CONSORS, SUCURSAL EN ESPAÑA	2	0	2
CREDIT SUISSE AG, SUCURSAL EN ESPAÑA	2	0	2
CREDIT VALENCIA, CAJA RURAL COOPERATIVA DE CREDITO VALENCIANA	1	0	1

DEUTSCHE BANK, S.A.E.	61	7	54
FINANDUERO, SOCIEDAD DE VALORES, S.A.	1	0	1
FORTIS BANK, S.A., SUCURSAL EN ESPAÑA	1	0	1
GESCONSULT, S.A., S.G.I.I.C.	1	1	0
GESMADRID, S.G.I.I.C., S.A.	1	0	1
ING BELGIUM, S.A., SUCURSAL EN ESPAÑA	1	0	1
ING DIRECT, N.V., SUCURSAL EN ESPAÑA	4	1	3
INTERDIN BOLSA, SOCIEDAD DE VALORES, S.A.	1	1	0
LLOYDS TSB BANK PLC, SUCURSAL EN ESPAÑA	4	0	4
MIRABAUD FINANZAS SOCIEDAD DE VALORES, S.A.	1	0	1
MONTE DE PIEDAD Y CAJA DE AHORROS SAN FERNANDO DE GUADALAJARA, HUELVA, JEREZ	2	0	2
MONTE DE PIEDAD Y CAJA DE AHORROS DE RONDA, CADIZ, ALMERIA, MALAGA, ANTEQUERA Y JAEN (UNICAJA)	2	1	1
OPEN BANK, S.A.	11	2	9
POPULAR BANCA PRIVADA, S.A.	9	2	7
RENTA 4, SOCIEDAD DE VALORES, S.A.	2	0	2
SELF TRADE BANK, SUCURSAL EN ESPAÑA	2	1	1
SOCIETE GENERAL, SUCURSAL EN ESPAÑA	1	1	0
UBS BANK, S.A.	2	1	1
UNOE BANK, S.A.	4	2	2
TOTAL	**805**	**118**	**687**

1 A 30/09/11, CAIXA D'ESTALVIS DE CATALUNYA, TARRAGONA I MANRESA
2 A 30/09/11, CAIXA D'ESTALVIS UNIO DE CAIXES DE MANLLEU, SABADELL Y TRRASSA
3 A 30/09/11, BANCO DE CASTILLA-LA MANCHA, S.A.
4 A 30/09/11, CAIXA DE AFORROS DE GALICIA, VIGO, OURENSE E PONTEVEDRA
5 A 30/09/11, CAJA ESPAÑA DE INVERSIONES, SALAMANCA Y SORIA, CAJA DE AHORROS Y MONTE DE PIEDAD
6 A 30/09/11, BANKIA, S.A.
7 A 30/09/11, BANCO CAM, S.A.
8 A 30/09/11, CAIXABANK, S.A.
9 A 30/09/11, BANCA CIVICA, S.A.

Source: CNMV.

Rectification by type of entity complained against

TABLE A1.8

	Reports favourable to complainant	Rectified		Unrectified	
	Number	Number	%	Number	%
Credit institutions	**791**	**108**	**13.6**	**683**	**86.3**
Banks	632	85	13.4	547	86.6
Cajas de ahorros	153	29	19.0	124	81.0
Credit cooperatives	6	1	16.7	5	83.3
Investment firms	**9**	**1**	**11.1**	**8**	**88.9**
U.C.I.T.S. managers	**5**	**2**	**40.0**	**3**	**60.0**
TOTAL	**805**	**118**	**14.6**	**688**	**85.4**

Source: CNMV.

Distribution of non accepted complaints by motive for rejection

TABLE A1.9

No. of complaints	2009	2010	% Change 10/09
Outside competence of CNMV	86	131	52.3
No evidence of submission to CDS	192	164	-14.6
Unidentified	20	9	-55.0
Others	16	8	-50.0
TOTAL	**314**	**312**	**-0.6**

Source: CNMV.

Distribution of accommodations and withdrawals by subject of complaint

TABLE A1.10

Subject	2009 complaints		2010 complaints	
	Number	%	Number	%
Provision of investment services	**150**	**68.5**	**239**	**86.9**
Order reception. transmission and execution	84	38.4	151	54.9
Information to clients	35	16.0	55	20.0
Fees and expenses	26	11.9	29	10.5
Others	5	2.3	4	1.5
Investment funds and other U.C.I.T.S.	**69**	**31.5**	**36**	**13.1**
Information to clients	13	5.9	12	4.4
Subscriptions/redemptions	25	11.4	15	5.5
Switches	23	10.5	4	1.5
Fees and expenses	8	3.7	5	1.8
Total	**219**	**100.0**	**275**	**100.0**

Source: CNMV.

Annexe 2 List of complaints with report favourable to complainant

A2.1 Provision of investment services

A2.1.1 Order reception, transmission and execution

Entity	Complaints
Banco Banif, S.A.	R/0068/2009; R/1918/2009
Banco Bilbao Viacaya Argentaria, S.A.	R/0111/2009; R/0313/2009; R/0661/2009; R/0658/2009;R/0662/2009; R/0667/2009; R/0762/2009; R/0802/2009; R/0885/2009; R/1017/2009; R/1018/2009; R/1295/2009; R/1325/2009; R/1526/2009; R/1596/2009; R/1983/2009; R/2001/2009; R/1212/2009; R/1805/2009; R/2038/2009; R/2043/2009; R/2071/2009; R/2107/2009; R/0058/2010; R/0064/2010; R/0066/2010; R/0389/2010; R/0647/2010; R/1477/2010
Banco de Finanzas e Inversiones, S.A.	R/1184/2009
Banco de la Pequeña y Mediana Empresa, S.A.	R/1716/2009; R/1123/2010
Banco de Sabadell, S.A.	R/0402/2009; R/0548/2009; R/0676/2009; R/1067/2009; R/1115/2009; R/1414/2009; R/1485/2009; R/1703/2009; R/1850/2009; R/1851/2009; R/1981/2009; R/2141/2009;
Banco Español de Crédito, S.A.	R/0415/2008; R/0854/2008; R/0220/2009; R/0549/2009; R/0850/2009; R/0968/2009; R/1103/2009; R/1178/2009; R/1188/2009; R/1395/2009; R/1401/2009; R/1494/2009; R/1502/2009; R/1609/2009; R/1649/2009; R/1667/2009; R/1775/2009; R/1783/2009; R/1802/2009; R/1919/2009; R/1977/2009; R/2108/2009; R/2121/2009; R/1032/2010; R/1071/2010
Banco Espirito Santo, S.A. Suc en España	R/1308/2009
Banco Guipuzcoano, S.A.	R/0796/2009; R/1019/2009; R/1020/2009; R/1040/2009; R/1243/2009; R/1326/2009; R/1377/2009; R/1495/2009; R/1693/2009; R/1933/2009; R/2128/2009; R/0325/2010; R/0479/2010; R/1047/2010; R/1062/2010; R/1195/2010; R/1572/2010
Banco Inversis, S.A.	R/0091/2009; R/0554/2009; R/0731/2009; R/1037/2009; R/0433/2009; R/2082/2009
Banco Pastor, S.A.	R/0147/2009
Banco Popular Español, S.A.	R/0297/2009; R/0518/2009; R/0528/2009; R/0632/2009; R/0725/2009; R/1559/2009; R/1602/2009; R/1777/2009; R/2018/2009

Banco Santander, S.A.	R/0380/2009; R/0450/2009; R/0637/2009; R/0829/2009; R/0875/2009; R/0980/2009; R/1105/2009; R/1174/2009; R/1356/2009; R/1459/2009; R/1512/2009; R/1528/2009; R/1570/2009; R/1637/2009; R/1640/2009; R/1675/2009; R/1680/2009; R/1681/2009; R/1754/2009; R/1760/2009; R/1828/2009; R/1838/2009; R/1839/2009; R/1953/2009; R/1972/2009; R/1973/2009; R/1984/2009; R/1986/2009; R/1913/2009; R/2055/2009; R/2028/2009; R/2133/2009; R/2134/2009; R/2146/2009; R/2151/2009; R/0009/2010; R/0024/2010; R/0069/2010; R/0119/2010; R/0153/2010; R/0222/2010; R/0250/2010; R/0332/2010; R/0472/2010; R/0474/2010; R/0541/2010; R/0592/2010; R/0974/2010; R/1022/2010
Bankinter, S.A.	R/0808/2008; R/0358/2009; R/0522/2009; R/0551/2009; R/0566/2009; R/0573/2009; R/0664/2009; R/0702/2009; R/0703/2009; R/0770/2009; R/0775/2009; R/0846/2009; R/0864/2009; R/0956/2009; R/1082/2009; R/1083/2009; R/1084/2009: R/1091/2009; R/1095/2009; R/1156/2009; R/1290/2009; R/1366/2009; R/1388/2009; R/1405/2009; R/1409/2009; R/1519/2009; R/1621/2009; R/1638/2009; R/1643/2009; R/1659/2009; R/1715/2009; R/1746/2009; R/1713/2009; R/1718/2009; R/1761/2009; R/1877/2009; R/1899/2009; R/2098/2009; R/0179/2010; R/0626/2010; R/0998/2010; R/1049/2010
Barclays Bank, S.A.	R/1043/2009; R/0962/2010
BNP Paribas España, S.A.	R/0101/2010
C.A. de Galicia	R/0104/2009; R/0109/2009; R/0567/2009; R/0870/2009; R/0919/2009; R/0958/2009; R/1165/2009; R/1167/2009; R/1203/2009; R/1204/2009; R/1225/2009; R/1332/2009; R/1382/2009; R/1397/2009; R/1413/2009; R/1590/2009; R/1616/2009; R/1648/2009; R/1678/2009; R/1742/2009; R/1751/2009; R/1867/2009; R/1869/2009; R/1916/2009; R/1945/2009; R/1989/2009; R/1998/2009; R/2039/2009; R/2126/2009; R/2136/2009; R/0092/2010; R/0098/2010; R/0412/2010; R/0490/2010; R/0669/2010; R/0865/2010; R/1147/2010; R/1198/2010; R/1230/2010; R/1451/2010
C.A. de Salamanca y Soria	R/1161/2009
C.A. de Santander y Cantabria	R/1400/2009
C.A. de Valencia, Castellón y Alicante, Bancaja	R/0949/2009; R/1516/2009; R/1529/2009; R/1532/2009
C.A. del Mediterráneo	R/0624/2009; R/1256/2009; R/1506/2009; R/1860/2009; R/1885/2009; R/2064/2009; R/1130/2010;
C.A. y Monte de Piedad de Extremadura	R/0641/2009
C.A. y Monte de Piedad de Madrid	R/0082/2009; R/0507/2009; R/0620/2009; R/1014/2009; R/1146/2009; R/1311/2009; R/1515/2009; R/1545/2009; R/2063/2009; R/2068/2009;
C.A. y Pensiones de Barcelona	R/0812/2008; R/2046/2009
Caixa d'Estalvis de Catalunya	R/1338/2009; R/1058/2009; R/1183/2009; R/1242/2009; R/1291/2009; R/1458/2009; R/1510/2009; R/1644/2009; R/1725/2009; R/1780/2009; R/2132/2009; R/0420/2010;
Caixa d'Estalvis de Manresa	R/0475/2010; R/0460/2010; R/0828/2010; R/1233/2010
Caixa d'Estalvis de Sabadell	R/1524/2009
Caixa d'Estalvis de Terrassa	R/0824/2010; R/0914/2010;
Caja España de Inversiones, C.A. y Monte de Piedad	R/0938/2009
Caja General de Ahorros de Canarias	R/0377/2009
Caja Insular de Ahorros de Canarias	R/1656/2009; R/0390/2010; R/0957/2010; R/1133/2010; R/1385/2010; R/1695/2010;
Cajamar Caja Rural, Socidad Coop de Crédito	R/1871/2009
Credit Valencia, Caja Rural Coop de Crédito Valenciana	R/2122/2009
Deutsche Bank, SAE	R/1446/2009
Interdin Bolsa, Sociedad de Valores, S.A.	R/2104/2009
Mirabaud Finanzas, S.V. S.A.	R/0639/2009
Monte de Piedad y C.A. San Fernando de Guadalajara, Huelva, Jerez	R/1231/2009; R/2045/2009
Open Bank, S.A.	R/0159/2009; R/0569/2009; R/0745/2009; R/1121/2010
Popular Banca Privada, S.A.	R/0243/2009
Self Trade Bank, S.A.	R/2148/2009
Societe General, Sucursal en España	R/2101/2009

A2.1.2 Information to clients

Entity	Complaints
Altae Banco, S.A.	R/0525/2009
Banco Banif, S.A.	R/1051/2008; R/0218/2009; R/0240/2009; R/0296/2009; R/0335/2009; R/0438/2009; R/0478/2009; R/0533/2009; R/0580/2009; R/0629/2009; R/0726/2009; R/0747/2009; R/0808/2009; R/0874/2009; R/1674/2009; R/1956/2009
Banco Caixa Geral, S.A.	R/0849/2009
Banco de Finanzas e Inversiones, S.A.	R/1090/2009; R/0307/2009
Banco de la Pequeña y Mediana Empresa, S.A.	R/1404/2009; R/0820/2009; R/0510/2009; R/0973/2009; R/2075/2009; R/0327/2009; R/2017/2009; R/0295/2009; R/0290/2009; R/1722/2009; R1442/2009; R/1187/2009
Banco de Madrid, S.A.	R/0556/2009; R/1794/2009; R/1469/2009
Banco de Sabadell, S.A.	R/0437/2009; R/0909/2009; R/1303/2009; R/1562/2009; R/2025/2009
Banco Español de Crédito, S.A.	R/0824/2009
Banco Inversis, S.A.	R/0651/2009; R/1544/2009; R/1963/2009; R/2105/2009; R/2106/2009
Banco Santander, S.A.	R/0294/2009; R/0350/2009; R/0718/2009; R/0893/2009; R/0933/2009; R/1170/2009
Banco Urquijo Sabadell Banca Privada, S.A.	R/1102/2009; R/1842/2009
Bankinter, S.A.	R/0808/2008; R/1000/2008; R/1052/2008; R/0119/2009; R/0168/2009; R/0183/2009; R/0209/2009; R/0308/2009; R/0411/2009; R/0412/2009; R/0414/2009; R/0421/2009; R/0590/2009; R/0728/2009; R/0748/2009; R/0848/2009; R/0898/2009; R/1051/2009; R/0692/2009; R/0730/2009; R/0734/2009; R/0780/2009; R/0781/2009; R/0793/2009; R/0914/2009; R/0917/2009; R/0928/2009; R/0940/2009; R/0981/2009; R/0988/2009; R/1035/2009; R/1068/2009; R/1104/2009; R/1109/2009; R/1140/2009; R/1142/2009; R/1143/2009; R/1176/2009; R/1202/2009; R/1209/2009; R/1333/2009; R/1339/2009; R/1374/2009; R/1391/2009; R/1507/2009; R/1527/2009; R/1535/2009; R/1542/2009; R/1744/2009; R/1792/2009; R/2086/2009; R/2155/2009
Barclays Bank, S.A.	R/0019/2009; R/0024/2009; R/0249/2009; R/0291/2009; R/0305/2009; R/0309/2009; R/0310/2009; R/0311/2009; R/0408/2009; R/0482/2009; R/0531/2009; R/0563/2009; R/0586/2009; R/0600/2009; R/0630/2009; R/0652/2009; R/0660/2009; R/0677/2009; R/0706/2009; R/0755/2009; R/0826/2009; R/0852/2009; R/0892/2009; R/0896/2009; R/0925/2009; R/0934/2009; R/0986/2009; R/1003/2009; R/1036/2009; R/1044/2009; R/1092/2009; R/1153/2009; R/1455/2009; R/1171/2009; R/1200/2009; R/1222/2009; R/1244/2009; R/1268/2009; R/1269/2009; R/1281/2009; R/1287/2009; R/1289/2009; R/1292/2009; R/1343/2009; R/1438/2009; R/1461/2009; R/1579/2009; R/1591/2009; R/1608/2009; R/1653/2009; R/1655/2009; R/1695/2009; R/1773/2009; R/1865/2009; R/2080/2009; R/0007/2010; R/0194/2010; R/0458/2010;
BNP Paribas España, S.A.	R/0342/2009; R/0351/2009; R/0543/2009; R/0562/2009; R/0079/2010;
C.A. de Valencia, Castellón y Alicante, Bancaja	R/0128/2009
C.A. del Mediterráneo	R/0008/2009; R/0716/2009; R/0785/2009; R/1136/2009; R/1456/2009; R/2014/2009; R/0004/2010
C.A. y M.P. de Zaragoza, Aragón y Rioja (IberCaja)	R/0246/2009; R/0271/2009; R/1278/2009
C.A. y M.P. del Círculo Católico de Obreros de Burgos	R/0179/2009
C.A. y Monte de Piedad de Guipuzkoa y San Sebastián	R/0668/2009; R/1566/2009; R/1959/2009
C.A. y Monte de Piedad de Madrid	R/760/2009
C.A. y Pensiones de Barcelona	R/0389/2009; R/0911/2009; R/1039/2009; R/1892/2009
Caixa de Credito dels Enginyers-Caja de Crédito de los Ingenieros, S. Coop.	R/1910/2009
Citibank España, S.A.	R/0457/2009; R/0479/2009; R/0498/2009; R/0918/2009; R/1076/2009; R/1177/2009;
Cortal Consors, Suc en España	R/0922/2009
Credit Suisse AG, Sucursal en España	R/0837/2009; R/0861/2009

Deutsche Bank, SAE	R/0146/2009; R/0318/2009; R/0332/2009; R/0390/2009; R/0396/2009; R/0404/2009; R/0417/2009; R/0435/2009; R/0466/2009; R/0495/2009; R/0511/2009; R/0512/2009; R/0534/2009; R/0558/2009; R/0585/2009; R/0627/2009; R/0649/2009; R/0683/2009; R/0712/2009; R/0723/2009; R/0724/2009; R/0742/2009; R/0786/2009; R/0792/2009; R/0795/2009; R/0847/2009; R/0856/2009; R/0871/2009; R/0906/2009; R/0936/2009; R/0946/2009; R/0998/2009; R/1006/2009; R/1088/2009; R/1119/2009; R/1133/2009; R/1158/2009; R/1214/2009; R/1273/2009; R/1274/2009; R/1300/2009; R/1302/2009; R/1305/2009; R/1310/2009; R/1368/2009; R/1503/2009; R/1504/2009; R/1508/2009; R/1558/2009; R/1620/2009; R/1673/2009; R/1705/2009; R/1706/2009; R/1807/2009; R/1964/2009; R/1965/2009; R/2054/2009
Lloyds TSB Bank PLC, Sucursal en España	R/1041/2008; R/0274/2009; R/0825/2009; R/1118/2009
Open Bank, S.A.	R/1266/2009
Popular Banca Privada, S.A.	R/0233/2009; R/0424/2009; R/0445/2009; R/0593/2009; R/0646/2009

A2.1.3 Subscribing for issues

Entity	Complaints
Banco Bilbao Viacaya Argentaria, S.A.	R/1825/2009
Banco Inversis, S.A.	R/1557/2009; R/0102/2010
Banco Pastor, S.A.	R/0232/2009; R/1759/2009
Banco Santander, S.A.	R/0747/2008; R/0224/2009; R/0369/2009; R/0475/2009; R/0614/2009; R/0647/2009; R/0902/2009; R/1005/2009; R/1071/2009; R/1111/2009; R/1238/2009; R/1342/2009; R/1379/2009; R/1450/2009; R/1245/2009; R/1266/2010; R/1573/2009; R/1592/2009; R/1762/2009; R/1823/2009; R/1824/2009; R/1884/2009; R/1895/2009; R/2073/2009; R/0041/2010; R/0182/2010; R/0476/2010; R/0717/2010; R/0966/2010; R/1320/2010; R/1594/2010
Bankinter, S.A.	R/0409/2009; R/0500/2009; R/0679/2009; R/0764/2009; R/0926/2009; R/1078/2009; R/1357/2009; R/1460/2009; R/1473/2009; R/1257/2009; R/1489/2009; R/1817/2009; R/1831/2009; R/0033/2010; R/0095/2010; R/0680/2010; R/0731/2010; R/1010/2010; R/1020/2010; R/1404/2010;
C.A. del Mediterráneo	R/0080/2009; R/0336/2009; R/1497/2009; R/1819/2009;
C.A. y Pensiones de Barcelona	R/1360/2009; R/2066/2009; R/1210/2009
Caixa d'Estalvis de Catalunya	R/0587/2009
Caja España de Inversiones, C.A. y Monte de Piedad	R/1518/2009
Cortal Consors, Sucursal en España	R/0800/2009
ING Direct, N.V. Sucursal en España	R/0746/2009; R/1547/2009; R/1896/2009
M.P. y C.A. de Ronda, Cádiz, Almería, Málaga, Antequera y Jaén (Unicaja)	R/1492/2009
Unoe Bank, S.A.	R/1396/2009

A2.1.4 Securities custody and administration

Entity	Complaints
Ahorro Corporación Financiera, S.A., S.V.	R/1752/2009
Banco Bilbao Viacaya Argentaria, S.A.	R/0712/2010
Banco Guipuzcoano, S.A.	R/2015/2009
Banco Santander, S.A.	R/0272/2010
C.A. y Pensiones de Barcelona	R/1031/2009
Citibank España, S.A.	R/1834/2009
Open Bank, S.A.	R/2153/2009

A2.1.5 Fees and expenses

Entity	Complaints
Banco Banif, S.A.	R/0231/2009
Banco de Madrid, S.A.	R/0456/2015; R/0655/2010
Banco de Sabadell, S.A.	R/1309/2009
Banco Español de Crédito, S.A.	R/1500/2009
Banco Inversis, S.A.	R/1799/2009
Banco Santander, S.A.	R/1572/2009; R/1024/2010
Bankinter, S.A.	R/0227/2010
C.A. de Salamanca y Soria	R/0959/2009
C.A. de Valencia, Castellón y Alicante, Bancaja	R/1477/2009
C.A. y M.P. de Zaragoza, Aragón y Rioja (IberCaja)	R/1213/2009
C.A. y Monte de Piedad de Madrid	R/1670/2009; R/0080/2010;
Caja Rural Aragonesa y de los Pirineos, S. Coop de Crédito	R/0416/2009
Citibank España, S.A.	R/1363/2009
Deutsche Bank, SAE	R/0827/2009
Open Bank, S.A.	R/1685/2009
Self Trade Bank, S.A.	R/0657/2009

A2.1.6 Portfolio management

Entity	Complaints
Altae Banco, S.A.	R/0571/2009
Banco Banif, S.A.	R/0103/2009; R/0331/2009; R/0904/2009
Banco Bilbao Vizcaya Argentaria, S.A.	R/1191/2009; R/2137/2009
Banco de Madrid, S.A.	R/1697/2009
Banco de Sabadell, S.A.	R/1743/2009
Bankinter, S.A.	R/0157/2009
Finanduero, S.V., S.A.	R/1125/2009
Popular Banca Privada, S.A.	R/1564/2009
Renta 4, Sociedad de Valores, S.A.	R/1949/2009

A2.2 Investment funds and other U.C.I.T.S.

A2.2.1 Information to clients

Entity	Complaints
Axa Ibercapital, Agencia de Valores, S.A.	R/0628/2009
Banco Banif, S.A.	R/0564/2009; R/0021/2010
Banco Caixa Geral, S.A.	R/1472/2009; R/1248/2010
Banco de Sabadell, S.A.	R/0850/2010
Banco Español de Crédito, S.A.	R/0326/2009; R/1800/2009
Banco Inversis, S.A.	R/0097/2009; R/0098/2009; R/0105/2009; R/0129/2009; R/1081/2009; R/1410/2009; R/1493/2009; R/1604/2009; R/2143/2009; R/2152/2009;
Banco Popular Español, S.A.	R/0537/2009
Banco Santander, S.A.	R/0961/2008; R/0609/2009; R/1030/2009; R/1042/2009; R/1364/2009; R/1583/2009; R/1593/2009
Banco Urquijo Sabadell Banca Privada, S.A.	R/1004/2009
Bankinter, S.A.	R/0891/2009
Banque Privee Edmond de Rothschild Europe, Sucursal en España	R/2154/2009
Barclays Bank, S.A.	R/0453/2009; R/0568/2009; R/1561/2009
BNP Investement Partners, S.G.I.I.C., SA	R/0854/2009
C.A. de Galicia	R/0953/2010
C.A. y Monte de Piedad de Madrid	R/1055/2009
C.A. y Pensiones de Barcelona	R/1100/2009
Caixa d'Estalvis de Catalunya	R/1939/2009
Fortis Bank, S.A. Sucursal en España	R/0523/2009
Gesmadrid, S.G.I.I.C., S.A.	R/0817/2009
Open Bank, S.A.	R/0921/2009
UBS Bank, S.A.	R/0423/2009

A2.2.2 Suscription and redemption of units and shares

Entity	Complaints
Axa Ibercapital, Agencia de Valores, S.A.	R/0799/2009
Banco Bilbao Vizcaya Argentaria, S.A.	R/1597/2009; R/1598/2009
Banco Español de Crédito, S.A.	R/1708/2009; R/0985/2010
Banco Inversis, S.A.	R/0783/2009; R/0867/2010
Banco Popular Español, S.A.	R/1075/2009
Banco Santander, S.A.	R/0910/2009; R/1402/2009
Barclays Bank, S.A.	R/2008/2009
C.A. de Castilla-La Mancha	R/1888/2009
C.A. de Galicia	R/0972/2009
C.A. y M.P. de Zaragoza, Aragón y Rioja (IberCaja)	R/0994/2009
C.A. y Monte de Piedad de Madrid	R/1259/2009; R/2119/2009
C.A. y Pensiones de Barcelona	R/0672/2009; R/1249/2009; R/0340/2010
Caixa d'Estalvis de Catalunya	R/2060/2009
Caja de Arquitectos, S. Coop de Crédito	R/1452/2009
Citibank España, S.A.	R/1955/2009
Deutsche Bank, SAE	R/0885/2010
ING Belgium, S.A. Sucursal en España	R/0362/2009
ING Direct, N.V. Sucursal en España	R/0579/2009; R/0819/2010;
Monte de Piedad y C.A de Ronda, Cádiz, Almeria, Málaga, Antequera y Jaén (Unicaja)	R/0521/2009
Open Bank, S.A.	R/0579/2009
Unoe Bank, S.A.	R/0616/2010

A2.2.3 Switches between collective investment schemes

Entity	Complaints
Abante Asesores Distribución, A.V., S.A.	R/0078/2009
Altae Banca Privada, S.A.	R/0696/2009
Banco Banif, S.A.	R/1874/2009; R/0187/2010; R/0198/2010
Banco Guipuzcoano, S.A.	R/0638/2009
Banco Inversis, S.A.	R/0050/2009; R/0272/2009; R/0253/2009; R/1769/2009
Bankinter, S.A.	R/0029/2009; R/0210/2009; R/0603/2009
BBVA Asset Management, S.A., S.G.I.I.C.	R/0052/2009
BNP Paribas Investment Partners, S.G.I.I.C., SA	R/1358/2009
C.A. de Asturias	R/1615/2009
C.A. y M.P. de Zaragoza, Aragón y Rioja (IberCaja)	R/0853/2010
C.A. y Monte de Piedad de Madrid	R/0053/2009; R/0931/2009
C.A. y Pensiones de Barcelona	R/0968/2008; R/0545/2009; R/0727/2009; R/0337/2010
Citibank España, S.A.	R/0264/2009
Deutsche Bank, SAE	R/0352/2009
Gesconsult, S.A., S.G.I.I.C.	R/0880/2010
Open Bank, S.A.	R/0155/2009
Popular Banca Privada, S.A.	R/0193/2009; R/0318/2010
Renta 4, Sociedad de Valores, S.A.	R/0375/2009
UBS Bank, S.A.	R/0494/2009
Unoe Bank, S.A.	R/0071/2009; R/0899/2009; R/1686/2009

A2.2.4 Fees and expenses

Entity	Complaints
Banco Bilbao Vizcaya Argentaria, S.A.	R/0817/2008
Banco de Sabadell, S.A.	R/2090/2009
Banco Español de Crédito, S.A.	R/0851/2009
Banco Inversis, S.A.	R/0330/2009; R/0693/2009; R/1962/2009
Banco Popular Español, S.A.	R/1734/2009
Barclays Bank, S.A.	R/1215/2009
C.A. y M.P. de Zaragoza, Aragón y Rioja (IberCaja)	R/1994/2009
Cajamar Caja Rural, S. Coop de Crédito	R/0299/2009
Open Bank, S.A.	R/1753/2009

Annexe 3 Summary of selected complaints with report favourable to complainant

A3.1 Investment services

A3.1.1 Order reception, transmission and execution

Delays, non performance, errors

R/1338/2009 – Caixa D'Estalvis de Catalunya

The client requested the transfer of some securities at the receiving entity on 2 January 2009. The transfer was only executed on 26 March 2009.

The securities were traded on the Spanish Spanish Stock Exchange Interconnection System (SIBE) and so, under Iberclear's transfer procedures, the process should have been completed within 3 or 4 business days, provided that the request was correctly filled out, the data from the delivering and receiving entities tallied, and the owner had sufficient funds in his current account to cover the associated fees.

The entity claimed that until 24 February 2009 the client did not have the funds in his current account to cover the transfer fees. However, while this may justify its non performance until 24 February 2009, Caixa Catalunya offered no explanation for the subsequent delay from 24 February until 26 March 2009 and was therefore found to be at fault.

R/2046/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The complainant requested a transfer of ASEFA S.A. securities on 26 June 2009 but the transfer only went through a month later.

La Caixa gave two technical reasons for its delay in processing and executing the transfer to Investimo, an entity located abroad.

First, it said it did not start the transfer process until the complainant's positions had been migrated from one of its branches to La Caixa's Corporate Office in Madrid. Secondly, that the transfer process was only completed on 30 July 2009 due to problems communicating with Investimo, which were not the fault of La Caixa.

Analysis of the documents show that the entity failed to inform the complainant, before he complained to its Customer Service Department, about its difficulties in transferring the positions outside the Spanish system.

R/358/2009 - Bankinter, S.A.

On 15 December 2006, the client requested the transfer of 100,879 Tubacex, S.A. shares deposited at another entity, and received a letter from Bankinter saying that the transfer had been successfully completed. However, this was untrue and on 29 December 2006 Bankinter said that it had not accepted receipt of the shares.

In this case it was found that the bank failed in its duty of diligence by accepting the instruction from its client but failing to complete the transfer successfully. Any reasons preventing the transfer or administration of the shares should have been reported to the client. It was also shown that the bank was slow to make available the recordings that the client had asked for.

R/91/2009 – Banco Inversis, S.A.

Having inherited units in "Himalaya Note 0407 10" the complainant asked that they be transferred to another entity. However, the transfer order could not be executed because Inversis had wrongly distributed the product among the heirs.

The entity was found to be clearly at fault for failing to execute the transfer order and also for having misreported the number of the client's units in its monthly statement.

R/1037/2009 – Banco Inversis, S.A.

The client placed an order to sell 36 Proshares ETFs: Ultrashort Financials – SKF on 30 March 2009, setting a minimum price of 136 U.S. dollars. The order was executed on 16 April 2009.

After the proceeds had been paid into the associated current account and after a number of further transactions by the client, Inversis unilaterally cancelled the ETF sale executed eleven days previously, restoring the 32 sold ETFs to the client's portfolio and deducting the sum credited from his current account. This left the account overdrawn and cost him heavily in interest expenses.

The bank admitted its mistake in processing the order to sell the securities, but should not have billed the client for interest on the overdraft caused by rectifying its original mistake.

R/554/2009 – Banco Inversis, S.A.

The complainant held a trading account containing 20 shares in Fomento de Construcciones y Contratas, S.A. (FCC) with the entity and in November 2007 mailed a written order to sell these shares at best. The same instruction asked the entity to cancel all contractual relations ending the relationship between the two parties.

Inversis asked the client to provide a copy of his national identity document (DNI), saying this was essential to carry out his instructions. However, the sale was still not executed even though the client said he had sent the document by fax.

He sought an explanation from Inversis as to what had happened, receiving various and contradictory replies: that his account was inactive, that there was no record of the order or that the DNI copy had not been received.

The firm alleged the failure to execute was due to the process of migrating clients from Eurosafei, S.V.B., the complainant's group, to Inversis after the takeover of its parent company Safei.

We therefore found Inversis to have been at fault in the process of migrating clients from Eurosafei, as it failed to inform the client correctly about the process of changing bank and failed to put in place new contracts in the name of Inversis as the company taking over the business.

Inversis was also found to be at fault for failing to execute the client's instructions on the grounds that he had not produced an identification document, an unnecessary demand as Eurosafei already had a copy of his DNI.

R/1446/2009 – Deutsche Bank, Sociedad Anónima Española and R/1311/2009 – Caja de Ahorro y Monte de Piedad de Madrid

In the first case, the client complained that Deutsche Bank failed to execute an order to accept a takeover bid by Gas Natural SDG, S.A. for Unión Fenosa, S.A. shares which he had placed at one of the bank's branches.

The entity said that the order placed was not to accept but to reject the offer, although instead of putting an X by the option "Do not accept offer", the client put a line through it, raising doubts as to whether it was deliberate or accidental, which would have been avoided if the order had been correctly filled in.

Analysis of the documents led to the conclusion that the bank had been wrong not to seek a clear order from the client, that would assure them as to the true nature of his instructions. As a general requirement, securities orders containing such instructions must be completed in such a way that both originator and receiving firm fully understand their scope and effects.

Complaint R/1311/2009 also concerned a failure to execute an order to accept the same bid.

On 12 April 2009, the client placed an online order to sell his shares despite having previously, on 1 April 2009, handed in at a Caja Madrid branch a correctly completed response form to accept the takeover bid.

The entity was found to have acted wrongly in cancelling the order accepting the bid without receiving an express instruction to this effect. The subsequent order did not automatically revoke the acceptance of the offer, which would need to be done in writing as required by the bid prospectus.

R/1043/2009 – Barclays Bank, S.A.

The complainant, an employee of the firm, complained that after contacting Barclays' telephone banking service intending to place an order for shares, he was told that he would have to transfer cash from a high-interest account into a current account linked to his securities account. This he did, only to be told that he could still not place a securities order as he had not signed the "Basic Contract", a prerequisite for trading on the stock market according to the Spanish transposition of the MiFID directive, even though he already had a securities custody and administration contract with the bank.

The client refused to sign this new contract and asked the operator to transfer his funds back to the high-interest account. He was then told that this could not be done as the system would not allow it.

We found that Barclays failed to act with the requisite speed and diligence to sort out the complainant's contractual situation and had also failed to adequately inform him

that he needed to make a transfer between accounts to fund his securities trading, since they ought to have requested this transfer after and not before the signature of the basic contract.

R/402/2009, R/1067/2009 – Banco de Sabadell, S.A.

The complainants held preference shares issued by Banco de Sabadell itself (ISIN ES0113860003) and traded on the AIAF market.

Evidence showed that they had signed a written order subscribing for preference shares up to a particular value. The instruction was irrevocable.

The clients subsequently gave instructions revoking the orders which Sabadell ignored because of the abovementioned irrevocable nature of the instructions. The bank was found to have acted wrongly for failing to inform its clients about the consequences of this irrevocability.

Trades executed without orders from the client

R/1400/2009 - Caja de Ahorros de Santander y Cantabria

It was found that the complainant had not placed any specific instruction to buy securities for 8,021.70 euros.

The entity acknowledged its mistake and rectified the situation, although only after the client had lodged a complaint with its Customer Service Department. It was accordingly found to have acted incorrectly.

R/2122/2009 – Credit Valencia. Caja Rural Cooperativa de Crédito Valenciana

The complainant alleged that Credit Valencia, the entity through which he usually traded, offered to have his portfolio managed by a personal advisor. Under this arrangement, every few months he would be presented with securities orders placed in the last few months for signature, which he would sign because he had confidence in Credit Valencia. However, a number of securities trades were carried out without his consent, resulting in losses to the capital entrusted to the entity's management.

The documents presented showed the entity's formalisation of the transactions to be defective, as there was no record that it had been contractually empowered to propose or recommend securities transactions, nor to manage the portfolio discretionally, trading securities on the client's behalf. Also, the securities orders had not been signed by the client.

That said, the fact that the complainant had received settlement statements of the trades at his registered address, and that nearly three months had passed between the last of the transactions and the complaint to Credit Valencia, led us to conclude that the transactions were tacitly accepted by the complainant.

R/1184/2009 – Banco de Finanzas e Inversiones, S.A.

The client complained about Fibanc's sale of some shares acquired under an agreement for intraday leveraged share trading. He claims that he was not warned in advance that the entity could sell securities at its discretion if the client had not posted funds to cover his purchases at 9:00 the next day.

As the securities were sold under a discretionary rather than an automatic contractual clause, it was found that Fibanc should have notified its client of the decision in advance giving him a deadline and instructions for providing the funds required.

R/159/2009 – Open Bank, S.A.

The complainant took out an investment loan agreement, under which he could borrow to invest in the stock market after posting collateral in either cash or shares. The agreement stated that the value of the assets posted must always be 110% more than the loan taken out or they would be sold on the market to guarantee payment.

Accordingly, the client bought 1,233 shares in Iberdrola, S.A., posting as collateral 233 shares in Bolsas y Mercados Españoles, the holding company for Mercados y Sistemas Financieros, S.A. (Bolsas y Mercados).

Subsequently, he received two SMS messages, the first on 19 September 2008, warning that the collateral was inadequate and that the shares posted against the investment loan could be sold, which duly happened on 27 October 2008.

The client contended that between 19 September and 27 October 2008, there were 15 occasions where the lack of adequate collateral would have justified Open Bank selling the assets. However, it did not do so. He therefore claims that Open Bank acted arbitrarily on this occasion, allowing the value of the assets to decline after the first possible sale date (19 September 2008).

The bank was within its rights not to sell the securities on previous occasions when the collateral was insufficient. It was, however, found to be remiss in failing to notify its client, before selling the securities posted as collateral, of the deadline and procedure for making good the inadequate collateral, given that the condition precedent in the loan contract was not triggered automatically but only at the discretion of the lender.

R/745/2009 – Open Bank, S.A.

In this case, the entity sold securities acquired by the complainant when his 20,000 euros investment loan with Open Bank was not renewed.

Open Bank claimed that the sale was contractually provided for if the contract was cancelled due to a breach by the client. However, it failed to prove that this was the cause, and in fact it seems that the cancellation was not due to a breach but rather to a decision on the entity's part not to renew the loan.

Open Bank was found to be at fault as it could not show it had legitimate grounds to sell the securities and had also failed to notify the client that his investment loan would not be renewed and the securities would then be sold.

R/2148/2009 – Self Trade Bank, S.A.

The client complained about the sale of shares in Sacyr Vallehermoso, S.A. by Self Bank to comply with a contractually agreed ratio between the assets/liabilities in his account which, according to the fee schedule, should be at or below 1.15. At the time, its asset/liability ratio was 1.133 [(41,549.20 + 56,579.20)/86,585.40].

Self Bank was found to be at fault in this case for closing out without warning some of the positions of Share Investment, S.L. and failing to show that the sales of Sacyr

Vallehermoso, S.A. shares were necessary to reduce the liabilities or restore the asset/liability ratio to the levels specified in the disputed clause, which could also have been rectified by reducing liabilities.

R/1231/2009 – Monte de Piedad y Caja de Ahorros de San Fernando, Guadalajara, Huelva y Jerez

The client had a securities account at Cajasol containing shares in Mapfre, S.A.. Cajasol unilaterally, without his knowledge or approval, sold these shares claiming that a payment was due on a loan.

In this case, the two parties offered diametrically opposed versions of events. While the complainant alleged that the caja acted unilaterally to meet an unnotified payment obligation on a loan, Cajasol claimed that it had been given authority to sell a Mapfre share by telephone and that the sell order was subsequently sent to a branch close to the client's home so that he could sign and confirm it, although in fact he did not do so.

In these circumstances, with contradictory versions being put forward by complainant and entity, and the lack of objective evidence to support either statement - recordings or documents - the CNMV considered it was unproven that there was an instruction to sell and, therefore, found against Cajasol.

R/179/2010 - Bankinter, S.A.

The complainant had acquired preference shares issued by Bankinter Emisiones, S.A.U. (ISIN ES0113549002), traded on the AIAF market.

Documents submitted showed that the bank had processed a sell order on the securities concerned at a limit price of 90% of their face value. Although the order was signed by the complainant, he claimed not to have authorised it.

Bankinter then bought back the preference shares that had been sold. Although the client had expressed his disagreement with the sale of the securities, it was not shown that the entity had obtained his consent to buy them back.

Record-keeping

R/639/2009 – Mirabaud Finanzas Sociedad de Valores, S.A.

Without having placed an order or authorised their purchase, the client found himself owning shares in Ercros, La Seda and Fersa. He received no reply to repeated requests that the broker produce the corresponding buy orders.

Unable to show that any purchase orders had been placed, the broker was therefore found to be at fault, if not for its share dealing procedures then for its filing and conservation of order documentation, which must be kept on record for at least 5 years.

R/101/2010 – BNP Paribas España, S.A.; R/389/2010 - Banco Bilbao Vizcaya Argentaria, S.A.; R/1871/2009 – Cajamar Caja Rural, Sociedad Cooperativa de Crédito; R/1388/2009 – Bankinter, S.A.

In these cases the entities concerned failed to produce certain trade orders signed by their clients and were therefore found to be at fault, if not for their share dealing procedures then for their filing and conservation of order documentation which should have still been on record.

R/313/2009, R/1212/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

In these cases, the entity failed to deliver the custody and administration contracts requested by its clients. BBVA admitted that it had failed to locate the securities custody and administration contract between the parties, even though regulations at the time required that they be kept for six years after expiry of the contractual relationship.

R/956/2009 - Bankinter, S.A.

It was found that on an undetermined date in June 2007, the complainant signed a written order to buy a structured bond *"Bono Estructurado SANTEF 4"* for 65,000 euros. In processing this purchase order, even though only one person had signed it, three others were also identified as originators and therefore owners of the bonds.

Bankinter could only produce the copy of the contract opening the current account which was indeed opened under co-ownership, with either party having signing authority over the assets.

However, the CNMV considered that the only relevant document evidencing who should be credited with ownership of a bond was the contract opening the securities account, as this is what defines the ownership of the assets in the account and the terms on which they can be disposed of.

Bankinter failed to produce a copy of this contract, and was therefore found to be in breach of its obligation to keep contracts with its clients for the whole period of its relationship with them, under the regulations in force at the time.

Information on the execution of orders and guarantees, and liquidation of positions

R/1308/2009 – Banco Espirito Santo, S.A., Sucursal en España

The complainant placed an order to sell securities on 5 May 2009, valid until 8 May 2009, for 19,500 shares in AIG, at a limit price of 2.08 US dollars. On 7 May 2009, AIG shares opened in the market at 2.12 dollars but the sell order nevertheless went through at 2.08 dollars even though the opening price was 2.12 dollars not 2.08 dollars as the entity claimed. The entity argued that the sale took place on 7 May at the price stipulated by the client in the securities sell order, which coincides with the opening price on the market where the international broker traded the order, i.e., 2.08 dollars.

The CNMV found that the information provided to the client was inadequate as he was not told that AIG shares were traded in 11 different venues and different prices could therefore be quoted, depending on which market the information provider used as a reference.

R/731/2009 – Banco Inversis, S.A.

On 29 October 2008 the complainant placed an order to redeem in full 2 securities in a corporate fixed-income product called *"CSFB ZCP 200510"* (ISIN XS0213568750), issued by Credit Suisse Group. The redemption was delayed and this resulted in the client receiving less than expected from the sale.

The bank explained that this corporate fixed-income product could not be sold immediately. Rather, redemption requests would be sent to the issuer at the start of

each month and the issuer would then group the orders by structures for trading, normally offering NAV at the second month or, depending on market conditions, the third month as happened in this case.

Inversis was at fault for not providing detailed information on the reasons for the delay in executing the sell order, and failing to explain the reasons for the redemption price, despite having been explicitly asked to do so.

R/569/2009 – Open Bank, S.A.

This case involved several complaints from the client, some of which concerned trades in Nokia shares carried out in 2008. Open Bank was found to be at fault for the late delivery of settlement documentation on a number of securities trades.

Deficiencies in orders

R/632/2009 R/528/2009 – Banco Popular Español, S.A.

The complainant placed an order to sell preference shares, but without completing a specific securities sale order that would have defined the terms of the transaction: securities concerned, minimum price, term of validity, etc. Instead he signed a "transfer request" document for 15,000 euros to a particular current account, specifying in the reference "sale of 600 shares in Endesa Capital Finance".

Leaving aside the matter of whether this document and its contents should have allowed the entity to divine the client's intention – to sell the preference shares at a minimum price of face value – it would clearly have been preferable for the sell instructions to be submitted in the correct format. Branch staff should also have alerted the complainant to some important issues, such as the decentralised nature of the market, the absence of any market price as such for the shares and the fees charged for carrying out his instructions.

In another case, while it was shown that the complainant had submitted and signed subscription orders, these failed to clearly identify the class of security, a formal shortcoming.

R/702/2009, R/1899/2009, R/2098/2009, R/1409/2009 – Bankinter, S.A.

The complainants had bought preference shares issued by Bankinter Emisiones, S.A.U., specifically series I and II (ISINs ES0113549002 and ES0113549028), listed for trading on the AIAF fixed-income market.

The buy orders that were submitted failed to adequately identify the name of the issues of which the preference shares formed a part. Also, the order date was missing from the subscription order for series II preference shares. On both these grounds the CNMV found against the bank.

R/846/2009 - Bankinter, S.A.

The complainant had bought Series I preference shares issued by Bankinter Emisiones, S.A. (ISIN ES0113549002), traded on Spain's AIAF fixed-income market.

The bank presented a signed copy of the buy order for the securities concerned. This order, dated 14 May 2007, only contained the following information on the securities to buy: *"Buy Bk preference shares"*.

The securities order, while it did state the type of asset to buy (i.e., preference shares) omitted other basic information needed for this type of instruction such as the market in which the order should be placed, the type of market (primary or secondary), purchase price and ISIN of the securities. The entity was therefore found to be at fault.

R/1715/2009 - Bankinter, S.A.

The complainant bought Series I preference shares issued by Bankinter Emisiones, S.A.U., ISIN ES0113549002, traded on the AIAF market.

Statements and documentation submitted showed that on 1 July 2004 the complainant had signed an order setting out his intentions unambiguously and correctly identifying the type of security to be bought as well as its yield terms.

However, there were flaws with the order. The company issuing the preference shares was not fully and correctly identified and neither were the holders of the destination securities account. Since the custody and administration agreement was one of co-ownership, it was wrong to use the expression *"Mr .... and wife"* to identify the securities account concerned.

R/962/2010 – Barclays Bank, S.A.

This case concerned preference shares issued by Popular Capital, S.A., ISIN DEOOOAOBDWlO, which are perpetual securities callable by the issuer at preset dates. The securities were not traded on any Spanish secondary market.

The buy order, dated 7 November 2005, was missing the most basic information required for an instruction, such as the full and identifiable name of the issuer (Popular Capital, S.A.) and the ISIN, which made it impossible to identify the investment.

R/1032/2010, R/1071/2010 – Banco Español de Crédito, S.A.

The complainants had bought some of Banesto's own preference shares, ISIN DEOOOAODE4Q4, Series II, traded on the Frankfurt stock exchange and Euronext Amsterdam.

Reviewing the buy orders we found that they showed a redemption date (5 November 2009) even though these were perpetual securities and therefore had no known redemption date, notwithstanding the issuer's early redemption option.

R/624/2009, R/1860/2009 – Caja de Ahorros del Mediterráneo

The complainants had bought Series A preference shares issued by Popular Capital, S.A., ISIN DE0009190702, traded on the Frankfurt and Luxembourg exchanges.

The purchase documents submitted give the name of the securities as "Subordinated debt" issued by Banco Popular. The name does not match the securities bought, which were preference shares. Also, the issuer was given as Banco Popular while in fact Popular was only the guarantor and the issuer was its subsidiary, Popular Capital, S.A.

R/1877/2009 - Bankinter, S.A.

The complainant bought Series II preference shares issued by Bankinter Emisiones, S.A.U., ISIN ES0113549028, traded on AIAF.

Statements and documentation submitted show that on 28 March 2005 the complainant had signed an order to buy 500,000 euros worth of "Bankinter preference shares".

The order was clear as to the purpose of the securities to buy, but did not adequately identify the preference share issue concerned nor the issuer. It merely included the above generic description.

R/1918/2009 – Banco Banif, S.A.

The complainant bought preference shares issued by Santander Finance Preferred, S.A.U., (ISIN XS0202197694), traded on the Luxembourg and Euronext Amsterdam exchanges.

Statements and documentation submitted revealed that on 29 April 2005, the complainant had signed a written order to buy *"SCH Finance CMS 10 + 5 bp"* to a value of 189,500 euros.

This order was clear in its intent to buy securities but lacking in details such as: the class of asset to be acquired, adequate identification of the issuer, the redemption date, etc.

R/1366/2009 - Bankinter, S.A.

In this case, the complainant ordered the purchase of 174,000 euros nominal of fixed-income bonds issued by Repsol International Finance, B.V. and deposited 179,884.75 euros in his account, which he expected would amply cover the 176,488.20 euros estimated cost based on the price quoted in the order (101.43%).

Prices of fixed-income securities can be given in two ways, either ex-coupon (not including the accrued coupon) or cum coupon (including the accrued coupon).

Analysing the documents, the CNMV found that the bank was wrong to quote the ex-coupon price on the buy order without mentioning the existence of an accrued coupon and how this would affect the price of the order. In this case it added 1.952% to the cost of the transaction to cover that part of the coupon already accrued at the transaction date and to which the complainant was therefore not entitled.

R/433/2009 – Banco Inversis, S.A.

The bank was found to be at fault for having allowed the same client to open two securities accounts with the same tax ID number but different tax addresses, and for failing to spot the anomaly.

Incidents with online or distance trading

R/1014/2009 – Caja de Ahorros y Monte de Piedad de Madrid

The complainant alleged that on 16 April 2009, he placed two orders to buy 2,400 and 600 Citigroup shares, respectively, but the execution of these trades was not recorded until three days later, preventing him from further trading in the meantime. This resulted in a large loss as Citi's share price fell. He further claimed that the USD/EUR exchange rate applied was prejudicial to his interests.

The caja argued that the client could not see the execution on the website until 20 April – three business days after its execution – as this was the settlement date applied on the US market.

Having examined the submissions, the CNMV found that the entity failed to inform its client in a proper and timely manner about either the execution of his orders to buy Citigroup shares or the exchange rate that would be applied to these transactions. This, despite Bank of Spain Circular 22/1992, of 18 December, which establishes the freedom to set exchange rates for currency trading on spot and term markets.

R/111/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The complaint concerned problems with an online warrant-trading tool provided by BBVA to its clients. As a result, warrant prices were not updated and it was impossible to trade in some warrants for a period.

BBVA argued that market prices could always be obtained from the issuer and that the client was told he could trade through Línea BBVA. The client could also have found the prices on Warrantslive or by calling the warrants information line.

In this case, while the CNMV considers that the Internet should be seen as an additional and not an exclusive trading platform, it still found against the entity for failing to post any alerts on its website about the problems it was experiencing with the online tools or the alternatives available.

R/1746/2009 – Bankinter, S.A.

The complainant regularly traded Mini Ibex futures through Bankinter's online service. However, on 16 July 2009, a fault in the interactive chart and screens reporting the client's position meant that he was unable to close out his contracts until 29 July, causing a substantial loss.

The CNMV found that Bankinter was responsible for the "interactive chart" as it was offered to its clients as its own tool, even though the information may have been processed and provided by a third party. In addition, it was advertised as a useful tool for making investment decisions and a comparative advantage over other trading channels and other brokers.

Accordingly, the CNMV dismissed the bank's claims that it was not liable, finding that it should have informed its clients about the fault, the estimated time it would take to resolve it and, where appropriate, the other channels available for them to get the information they needed.

R/2045/2009 – Monte de Piedad y Caja de Ahorros de San Fernando, Guadalajara, Huelva y Jerez

On 28 March 2009, the client placed two online buy orders for 1,000 and 700 shares in Grupo Ferrovial, S.A., respectively, both with a maximum price of 16.50 euros.

On applying his digital signature and confirming his instructions a message appeared saying that the transactions could not be executed at that time since the stock market was closed.

Even though in subsequent days, while the orders remained valid, the shares reached 15.25 euros, they still failed to execute.

Cajasol reported this incident to its client by automatic means, but this notification gave no information on the reasons behind the error, its estimated duration or the possibility of placing instructions through alternative channels.

R/2082/2009 – Banco Inversis, S.A.

The complainant claimed that at 7:43 on 8 July 2009 he placed a 50,000 euros order via the Inversis website to buy fixed-income securities issued by Obrascón-Huarte and that at 9:24 he received an email telling him that the order had failed to execute.

Hours later, having checked the trading price with Inversis over the phone, he placed another limit buy order with a maximum price of 76.25% of face value. This order too failed to execute at that time and for several days thereafter, whenever he checked its status, the message "in progress" appeared.

It was not until 15 July that he got an email telling him that it had not been possible to execute the order, according to Inversis "because it was outside the price range". He also considers that the 7 days taken to notify him that the order had failed was excessive, given that buy orders were only valid for one day at most, during which time the cash for the trade remained locked in the associated current account.

Inversis failed to adequately inform the complainant about the reasons for the non performance of his instruction and its website failed to show the true status of the order for several days after it had expired.

R/1405/2009 and R/1621/2009 – Bankinter, S.A.

In these cases, orders submitted by clients went unfilled because of problems with the systems. The bank considered itself to be blameless for the problems and that it was exonerated of any liability by the terms of the contracts in force.

The CNMV took the view that Bankinter could not exempt itself of responsibility for an interruption of its online service, without providing evidence of the reason for the breakdown. Nor was it shown that the bank's website provided the complainant with adequate information about the incident or his trading alternatives.

R/1643/2009 – Bankinter, S.A.

On 1 July 2009 the complainant tried to place an online order to sell 3,000 shares in American International Group (AIG). However, the company carried out a reverse stock split (1 new for 20 old shares) that very morning before the start of trading and the order was therefore converted to 150 shares with a value of 22.78 dollars each.

The system then stopped him from executed the order, reporting that "the stock in the order is not currently quoted" which prevented him from trading the shares in the usual way.

Bankinter said that it was not a member of any secondary market in the U.S. and therefore subcontracted this function to Goldman Sachs. The CNMV takes the view that responsibility for the effective running of Bankinter's securities administration services cannot be transferred to a member of a foreign market which it appoints as sub-custodian, but remains with Bankinter as the original signatory to the complainant's contract. The entity is therefore liable for all consequences arising from the provision of this service except in cases of accidents and *force majeure* which were not its fault, which would still have to be proved.

For all these reasons, it was found that Bankinter should have been able to provide the client through its website with all necessary information about changes to his portfolio following AIG's reverse split and should have taken steps to make sure AIG shareholders were able to trade their shares normally.

R/1121/2010 – Open Bank, S.A.

On 14 May 2010 the client tried to buy Banco Santander shares but was unable to do so as the screen flashed up an alert saying "insufficient funds".

He telephoned the entity but it could not explain why he was unable to put through any buy orders. The only alternative they suggested was to wait until Monday 17 May and try again.

On 17 May, having accessed his securities account online, he was able to confirm that he had been charged for a buy trade on Banco Santander shares which had been executed at 9:09 on 14 May.

Although Open Bank confirmed that clients' accounts were normally debited on the same day as the transaction, a different procedure was followed on this occasion. The settlement and the corresponding debit to the current account did not happen until the start of business on Monday 17 May.

As a result, the CNMV found that Open Bank failed to adequately inform the client either through its website or during the telephone conversation held with him to clarify what was happening.

R/1178/2009 – Banco Español de Crédito, S.A.

The client said that at 14:00 on 6 January 2009, he placed a telephone order to sell 3,000 Gestevisión Telecinco, S.A. call warrants with an exercise price of 9.5 euros, expiring 20 March 2009 and issued by Société Générale Acceptance, N.V.. The order was unfilled for technical reasons, according to the bank.

Since the value of the warrants later fell, he felt that Banesto's actions had caused him a loss.

The bank, for its part, admitted that it did not know why the order was not sent to market but said that since the last trade in these warrants on the stock market was on 27 November 2008, it would have been impossible to sell them anyway as there was no market. This defence by Banesto was considered to be incoherent as the key issue was not the trades completed but the buy and sell positions for the warrants available on the market during its life.

The CNMV concluded after analysing the evidence that Banesto was in the wrong, having offered no explanation for its failure to process the sell order and having failed to report back on the incident that might have impeded its processing and what alternatives were available to the client.

Transactional limitations

R/938/2009 – Caja España de Inversiones

The complainant cited a number of incidents with placing buy or sell orders via the telephone trading service.

In all these cases, based on the documentation provided, the CNMV found that the caja received and processed the transactions correctly and that they were executed in the same trading sessions that the complainant placed them.

The unusual factor in this case was that the orders were not settled immediately after execution, which meant that the client was unable to dispose of his securities.

According to the Customer Service Department, this was because of a request for confidentiality he had made to the entity in light of an ongoing marital dissolution, which authorised only three different branches to act and which he had been warned "could lead to limitations and trading inconveniences for dealers".

However, it was felt that the entity should have informed the client in advance, in a clear and specific way, about the impact that this confidentiality clause would have on his normal trading.

R/1602/2009 - Banco Popular Español, S.A.

The complainant ordered the sale of 15,060 shares in Banco Popular itself, but the order was not filled on the grounds that the shares were pledged. The client thought that this refusal to sell the shares caused him a serious loss as the share price subsequently fell considerably.

The pledging or encumbrance of securities to guarantee payment for a loan or provide commercial collateral automatically restricts the free transferability and mobility of the shares (unless the encumbrance is lifted in accordance with the terms of the loan or the reason for the encumbrance is extinguished). However, the CNMV thought that Banco Popular should have explained in detail the reasons why the order could not be filled and should have pointed out other ways in which the client might sell the shares if he wanted, such as depositing the proceeds of the sale which could then be pledged in place of the sold shares or used to extinguish the liability.

Incidents relating to orders on securities deposited in joint accounts

R/812/2008 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

According to the complainant, on 4 March 2003, she and her ex-husband asked La Caixa to make any disposition of the deposits, funds and securities they jointly owned subject to the signature of both owners, as they were in the course of separation.

The "*gananciales*" arrangement (where spouses share assets) was suspended and the securities split between the two parties. In March 2008, the complainant decided to sell some shares held in her name only to find they had already been sold. On seeking explanations, the entity said that the signature of the ex-husband was still recorded as an authorised signature to sell the securities in question.

Documents submitted in evidence clearly show that as from 2005 the originator of the order no longer appeared as an owner of the securities nor as an authorised person. Accordingly, the entity processed and executed an order to sell securities from an account not belonging to the person placing the order and failed to establish that he had the necessary authorisation. It was therefore found to have been at fault.

R/980/2009 – Banco Santander, S.A.

The firm sold a portfolio of shares (Endesa, Banco Santander, Telefónica and Repsol) which were jointly owned by the complainant and his two brothers. The entity failed to inform him of the transaction or seek his signature, even though the proceeds of the sale were to go to an account that was not in his name.

In this case, the entity submitted an internal document which listed the three holders of the securities account but without saying if signing authority was "all-to-sign"

(*mancomunada*) or "any-to-sign" (*indistinta*). In the absence of any mandate to this effect, accounts should by default be treated as requiring all holders to sign and the bank was therefore wrong to allow just one of the co-owners to sell the securities.

As for the savings account, ownership law is different than that for securities accounts. The named holder of a cash deposit account is not considered to have legal title over what is deposited, as he would have over securities held under the book-entry system, without this impairing in any way the ownership rights of the owners of the item on deposit, in this case an irregular cash deposit.

R/147/2009 – Banco Pastor, S.A.

This case concerned a securities account co-owned by four people, who had acquired a total of 1,000 Jazztel shares in February 2005. In August 2006, they acquired another 250 shares in the same company.

In December 2006, the complainant asked Banco Pastor to give him the securities deposit contract on which his children appeared as co-owners or, if this was not possible, to remove them. Banco Pastor answered that it could not find the contract in question and could not verify if the mistaken inclusion of his children as owners of the securities account was its fault or the complainant's, but it saw no objection to removing his children as co-owners since they had never made use of the account.

Regarding the removal of two co-owners of a securities account, the law says that a securities deposit is co-owned or in condominium when the ownership of an item belongs to more than one person. Regulations allow for the condominium to be dissolved, but Banco Pastor's actions did not meet any of the cases in which this is allowed.

The bank was therefore found to have acted wrongly in removing the two co-owners from a securities account outside the circumstances allowed by regulations and without considering the legal and tax implications of the change.

R/1777/2009 - Banco Popular Español, S.A.

On 17 March 2000, a securities custody and administration agreement was made in the name of two owners, specifying that each would have individual signing authority over the associated account.

Documents show that on 29 October 2004, one of the co-owners ordered the sale of 99 shares in AC Tecnocom, S.A., asking that the proceeds be placed in an account that was in his name alone. In other words, one of the co-owners of the securities account ordered the sale of securities on deposit and also asked for a change to the current account linked to the securities account.

Banco Popular acted entirely correctly in executing the order to sell the shares, as it had been agreed that either owner could dispose of the assets on his/her sole signature, nothing had happened to alter this, and the shareholder placing the order was therefore fully empowered to do so.

However, the bank should not have allowed the change to the destination current account as it was the parties to the original contract that had specified the account to be credited and debited with the results of their securities trading and, therefore, only the same contracting parties could agree to change it.

Conditional orders

R/770/2009 – Bankinter, S.A.

The client placed two stop loss sell instructions for 10,000 and 5,000 Banco Santander shares, respectively, with a limit price of 10.59 euros triggered at or below 10.60 euros. The order was not executed by the entity due to a technical hitch.

Banco Santander shares touched 10.60 euros at 15:52:31 but Bankinter has accepted that, due to an incident with its information provider, it only received this data 21 seconds later. This was when the conditional sell orders were activated and sent to the market, but by then the share price was already below 10.59 euros and they therefore failed to execute.

The CNMV rejected the bank's disclaimer of liability for the delay in an information flow that ought to be transparent, clear, accurate and sufficient and was especially important for those trading with conditional stop losses that require constant vigilance. The report therefore concluded that Bankinter was at fault for the delay in activating the complainant's sell instructions.

R/641/2009 – Caja de Ahorros y Monte de Piedad de Extremadura

The complainant owned 357 Audasa securities, deposited at the caja, and wanted to sell them and reinvest in a fixed-income product. He therefore placed a sell order at 100% of the face value. However, the sale was executed at 95%, leaving him with a 12,186 euro loss. The CNMV found the provider to be at fault here. In its defence, it had claimed that the order had been placed "at best", it therefore placed an order at market price and, given market circumstances at the time, this inevitably resulted in the losses.

An "at best" order must be understood as an order sent to the market with no price limit which is therefore executed at the best counterparty price available at the time. This is the definition in Circular 1/2001 issued by the stock exchange manager Sociedad de Bolsas on Operating Standards for the SIBE.

However, the order at the heart of this complaint could not be traded through SIBE, the electronic trading system for equities, but had to go through the electronic market for fixed-income securities (the Audasa securities were classed as fixed-income) and trading standards for this market are covered by Circular 6/1993, of 24 November, on trading standards for fixed-income securities and book-entry public debt, as amended by Circular 1/2005.

These rules do not allow "at best" orders for fixed-income securities traded on Spanish markets. Orders must always specify a price limit. The caja was therefore wrong to have accepted an "at best" order for the securities concerned.

In complaint R/1266/2009, the client placed an "at best" order online to buy 19,600 shares in Allied Irish Banks plc, which are traded on the New York Stock Exchange. The complaint turns on the 129.68 dollars charged in fees.

The provider claimed that the buy order was executed in 16 tranches of differing sizes and at different prices. This meant that the "at best" order placed by the client in a secondary international market was processed as an order to sell at market price. The entity was found to be at fault since it had no adequate procedure for informing its clients of this, and the two types of order were reported under the same name

whichever market they were sent to. They should have included an explanatory note as "Related information" explaining the restrictions on such orders in other markets.

Swaps

R/661/2009, R/662/2009, R/762/2009, R/1295/2009, R/1526/2009, R/1596/2009, R/1805/2009, R/1983/2009, R/2038/2009, R/2043/2009, R/2107/2009, R/58/2010, R/64/2010, R/66/2010, R/647/2010 and R/1477/2010 – Banco Bilbao Vizcaya Argentaria, S.A.

R/522/2009, R/551/2009, R/566/2009, R/573/2009, R/664/2009, R/703/2009, R/1082/2009, R/1083/2009, R/1084/2009, R/1091/2009, R/1095/2009, R/1156/2009, R/1290/2009, R/1519/2009, R/1638/2009, R/1713/2009, R/1718/2009 and R/1761/2009 – Bankinter, S.A.

R/1495/2009 – Banco Guipuzcoano, S.A.

R/297/2009, R/725/2009 and R/1559/2009 – Banco Popular Español, S.A.

R/415/2008, R/854/2008, R/220/2009, R/549/2009, R/850/2009, R/1103/2009, R/1188/2009, R/1395/2009, R/1494/2009, R/1502/2009, R/1609/2009, R/1649/2009, R/1667/2009, R/1775/2009, R/1783/2009, R/1802/2009, R/1977/2009 and R/2121/2009 – Banco Español de Crédito, S.A.

R/829/2009, R/1105/2009, R/1174/2009, R/1459/2009, R/1512/2009, R/1528/2009, R/1570/2009, R/1637/2009, R/1681/2009, R/1754/2009, R/1828/2009, R/1913/2009, R/1953/2009, R/1972/2009, R/1973/2009, R/1984/2009, R/1986/2009, R/2133/2009, R/2134/2009, R/2146/2009, R/9/2010, R/24/2010, R/69/2010, R/119/2010, R/153/2010, R/222/2010, R/250/2010 R/472/2010, R/474/2010 and R/541/2009 – Banco de Santander, S.A.

R/1115/2009, R/1414/2009, R/1485/2009, R/1703/2009, R/1850/2009, R/1981/2009 and R/2141/2009 – Banco de Sabadell, S.A.

R/1058/2009, R/1183/2009, R/1242/2009, R/1291/2009, R/1458/2009, R/1510/2009, R/1644/2009, R/1725/2009, R/1780/2009, R/2132/2009 and R/420/2010 – Caixa d'Estalvis de Catalunya

R/1524/2009 – Caixa d'Estalvis de Sabadell

R/1678/2009, R/1751/2009 and R/669/2010 – Caja de Ahorros de Galicia

R/1516/2009, R/1529/2009 and R/1532/2009 – Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja

R/507/2009 and R/1515/2009 – Caja de Ahorros y Monte de Piedad de Madrid

The most common source of complaint was that products were offered as a hedge against rises in interest rates or as insurance.

In most of the above cases, the providers could not produce documents to show that the products were appropriate to the circumstances or profile of the investor – whether an individual or company. The products fall into two groups depending on whether they were taken out before or after the MiFID came into force:

- For products bought before the MiFID came in (up to 21 December 2007) providers had to identify the financial circumstances, investing experience and investment objectives of the client, which were then compared against the features of the recommended product to ensure it matched the client's expectations.

– For products bought post-MiFID providers firms had to analyse whether the product was appropriate to their client and, as part of this, had to satisfy themselves that the client had the knowledge and experience to understand the nature and risks of the product being offered. To this end, the entity must analyse three factors: the investor's previous experience, taking account of the nature, frequency, volume and period of their trading history, their general level of training and professional experience, and the types of product with which they are familiar.

In complaints R/1058/2009, R/1242/2009 and R/474/2010, there was an advisory relationship between the parties and this placed firms under an additional obligation to understand the characteristics of their clients. MiFID rules require that entities carry out a suitability test, which means in all cases procuring infromation not only on the experience and knowledge of the client but also their investment objectives and financial situation, something that the firms could not show they had done.

R/1017/2009 and R/1018/2009 – Banco Bilbao Vizcaya Argentaria, S.A., R/548/2009 and R/676/2009– Banco de Sabadell, S.A.

In these complaints, the clients were unhappy with the products they were sold as a way to hedge a rise in the price of gasoil.

The cases cited involved a number of faults remarked on before: lack of information on the costs of early termination, poor client profiling or a failure to point out during the sale process that the client did not enjoy the usual legal period for cancellation.

Another area where institutions were found wanting in several cases – R/1115/2009, R/850/2009 and R/522/2009 – was information about the characteristics and risks of the product. Providers of investment services must give clients a general description, in a durable medium, of the nature and risks of the financial instruments concerned. Specifically, the description must explain the instrument's characteristics and inherent risks in sufficient detail for the client to make a well-founded investment decision. Among other things, this should include an explanation of the level of gearing and its effects, and the risk of losing the whole investment.

On several occasions, the bank concerned said it had given information on the characteristics, nature and risks of the product but only verbally. The CNMV considers this insufficient as it offers no way to verify compliance with the duty of disclosure.

In other cases, – R/522/2009, R/551/2009, R/1091/2009, R/1095/2009, R/1058/2009, R/1183/2009, R/1242/2009, R/1291/2009, R/1458/2009, R/1644/2009, R/1725/2009, R/2132/2009 and R/1678/2009 – advertising material was found to give an unbalanced view of the product, since while it presented the features of the product it emphasised their supposed advantages without explicitly referring to disadvantages and/or risks. This, despite dealing with a high-risk product.

The CNMV also received complaints about the difficulty and expense for the holders of terminating these products ahead of time.

Many contracts made no explicit provision for termination, which was left to the mutual agreement between the parties. It was felt to be wrong that although, in practice, the entity admitted the possibility of early termination, the contract made no explicit mention of the terms and criteria used to calculate its cost, even though this is important information that could affect clients' decision to invest or disinvest.

Also, once the firm had agreed to process the termination, it should have notified the total cost in advance under the normal rules for investment service providers, who are obliged to specify wherever possible the actual or, failing that, estimated amounts that will be charged for the service being requested by the client.

Finally, regarding the telephone trading procedures followed in cases R/1596/2009, R/1805/2009 and R/2038/2009, the CNMV listened to recordings of conversations between the two parties to determine whether the entity warned its clients that what was said would be contractually binding and was being recorded.

It was clear that the client was aware of the nature of the transaction, gave his agreement and the firm adequately described some of the key features of the product, such as nominal amount, duration and settlement details. However, the information provided to the client could not be considered adequate as some key facts were omitted:

- The client was not told that he had no right to withdraw from the contract that was about to be agreed as required by Articles 7 and 10 of Law 22/2007, of 11 July on the distance marketing of consumer financial services.
- No specific reference was made to risks associated with the contract.
- Nor was the client told whether or not he could request early termination of the product, although it was clear that this was an option.

R/1325/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

Another area of complaint where the CNMV found in favour of the investor concerned swaps where the underlying was linked to annual CPI.

In the cases cited, the shortcomings detected were largely the same as with interest rate swaps. We refer you to this section to avoid repetition.

Preference shares

R/104/2009, R/109/2009, R/1165/2009, R/412/2010, R/490/2010, R/1147/2010, R/1230/2010, R/1451/2010, R/1382/2009, R/2039/2009, R/2136/2009, R/1648/2009, R/1945/2009, R/1413/2009, R/1742/2009, R/1203/2009, R/1332/2009, R/1998/2009 – Caja de Ahorros de Galicia

R/1019/2009, R/1020/2009, R/1040/2009, R/1243/2009, R/1326/2009, R/1377/2009, R/1693/2009, R/1933/2009, R/325/2010, R/479/2010, R/1047/2010, R/1062/2010, R/1195/2010 – Banco Guipuzcoano, S.A.

R/620/2009 – Caja de Ahorros y Monte de Piedad de Madrid

R/1838/2009, R/1839/2009, R/2151/2009, R/974/2010 – Banco Santander, S.A.

R/968/2009 – Banco Español de Crédito, S.A.

R/824/2010, R/914/2010 – Caixa d´Estalvis de Terrasa

R/460/2010, R/475/2010, R/828/2010, R/1233/2010 – Caixa d´Estalvis de Manresa

R/1049/2010 – Bankinter, S.A.

R/390/2010, R/957/2010, R/1133/2010, R/1385/2010, R/1695/2010 – Caja Insular de Ahorros de Canarias

R/865/2010, R/1198/2010, R/958/2009, R/1204/2009, R/1225/2009, R/1397/2009 – Caja de Ahorros de Galicia

R/479/2010 – Banco Guipuzcoano, S.A.

R/2018/2009 – Banco Popular Español, S.A.

R/626/2010 – Bankinter, S.A.

All complainants in these cases held preference shares traded on the AIAF fixed-income market and complained that their providers had mishandled sell orders.

Many complaints showed that the entity had brokered trades at a higher price than their clients specified on the sell orders, in breach of regulations and the firms' best execution policies.

In some cases the entity had brokered trades at the same price as the complainants specified on the orders, suggesting that transactions brokered by the firm were deliberately put through ahead of those placed by the complainants, without this being acknowledged by the entities concerned.

That aside, it was found that entities should have warned the client of the practical difficulties in selling their shares at par as part of their disclosure obligations and notified them that adjusting the minimum selling price and setting a longer term for the order would have exponentially improved their chances of completing the sale.

R/1616/2009, R/1916/2009, R/1167/2009, R/1867/2009, R/1869/2009, R/567/2009, R/919/2009, R/1989/2009, R/2126/2009, R/92/2010 – Caja de Ahorros de Galicia. R/1572/2010, R/796/2009, R/2128/2009 – Banco Guipuzcoano, S.A. R/1545/2009, R/2063/2009, R/2068/2009 – Caja de Ahorros y Monte de Piedad de Madrid. R/450/2009 – Banco Santander, S.A. R/179/2010,– Bankinter. R/1656/2009– Caja Insular de Ahorros de Canarias. R/1256/2009, R/1506/2009 – Caja de Ahorros del Mediterráneo

The complainants were preference shareholders. The issuer had a liquidity contract with a number of firms (liquidity providers) who undertook to make a market for preference shareholders by placing buy and sell orders in AIAF.

On the dates shown on the sell orders placed by the complainants, the liquidity providers were not exempted from their obligations, and the CNMV therefore considers that an appropriate response in accordance with their order execution policy would have required the firms to seek a counterparty for the sell orders using all reasonable means available to them: looking for buy positions across their commercial network and, if this failed, contacting the liquidity provider to ascertain the buy prices being quoted and, if applicable, if it was acting as counterparty.

Based on their own submissions, the firms acted incorrectly in all these cases by failing to consult as required with the liquidity provider to seek a counterparty for its clients' sell orders.

R518/2009 – Banco Popular Español, R/98/2010 – Caja de Ahorros de Galicia, R/2055/2009 – Banco Santander, S.A.

The complainants in these cases all held preference shares issued by Unión Fenosa Financial Services USA, LLC (ISIN USU90716AA64) and traded on AIAF.

Regarding the complainants' wish to recover their investment, it was clear that Banco Santander was exempted from its obligations as liquidity provider for the issue but the other liquidity providers were not. The firms cited in these complaints

should therefore have checked with these alternative liquidity providers as part of their obligation to seek a counterparty for the complainants' sell orders. However, it was not shown that they did any such thing.

R/1590/20009 – Caja de Ahorros de Galicia

R/243/2009 – Popular Banca Privada, S.A.

R/450/2009, R/1022/2010, R/1680/2009, R/1760/2009, R/592/2010 – Banco Santander, S.A.

R/1885/2009 – Caja de Ahorros del Mediterráneo

R/775/2009, R/864/2009 – Bankinter, S.A.

R/949/2009 – Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja

R/1716/2009 – Banco de la Pequeña y Mediana Empresa, S.A.

R/2064/20009 – Caja de Ahorros del Mediterráneo

R/2108/2009 – Banco Español de Crédito, S.A.

Preference shares are complex products. Rules governing investment companies state that when a client asks to buy a "complex" product the investment service provider must ask for information about the client's investment knowledge and experience so that it can form a judgement as to whether the investment product is an appropriate choice.

In none of the above cases could the firms concerned show that they had, before the transaction, assessed whether the products concerned were appropriate to the complainants' financial situation and investment experience and objectives.

On one occasion, before the shares were acquired, a test was completed which was specifically designed to assess the appropriateness of investing in fixed-income assets. However, the contracts submitted by the complainant and entity differed in an important respect. The complainant's said that the client had no prior experience in fixed-income products and did not understand the associated risks, yet the entity's said the opposite. Because of this disparity in contents, the CNMV considered it had not been shown that the firm had considered pre-sale whether the securities in question were appropriate to the complainant's profile.

On some occasions, the firms submitted a signed questionnaire designed to gauge the complainant's financial situation and investment experience and objectives (suitability test). However, in this questionnaire the complainant stated that he was only familiar with equities from among a list of financial products which included preference shares as an option. Nor did the complainant state in the test that he had any great knowledge of the risks associated with such securities.

In cases R/1680/2009, R/1760/2009 and R/592/2010, the complainants had acquired preference shares issued by Cuétara Preferentes, S.A.U., (ISIN ES0130124003) and traded on AIAF.

In none of the above cases could the entity show that it had, before the transaction, assessed whether the preference shares concerned were appropriate to the complainants' financial situation and investment experience and objectives.

Also, a review of the purchase documents found a flaw in one clause, which read: *"having received all information which I consider necessary and having understood to*

my satisfaction the product's characteristics and risks, I consider it to be appropriate for my investment experience and objectives".

This clause eas clearly unacceptable since assessing appropriateness is the job of the broker and not the buyer.

A3.1.2 Information to clients

Purchase of Lehman products

R/478/2009, R/335/2009, R/296/2009, R/629/2009 and R/874/2009 – Banco Banif, S.A.

R/849/2009 – Banco Caixa Geral, S.A.

R/307/2009 – Banco de Finanzas e Inversiones, S.A.

R/2017/2009 – Banco de la Pequeña and Mediana Empresa, S.A.

R/556/2009 – Banco de Madrid, S.A.

R/909/2009, R/1303/2009 and R/1562/2009 – Banco de Sabadell, S.A.

R/1544/2009, R/2105/2009 – Banco Inversis, S.A.

R/1000/2008, R/1052/2008, R/1792/2009, R/734/2009, R/1176/2009, R/1374/2009, R/981/2009, R/728/2009, R/1535/2009, R/414/2009, R/1140/2009, R/1142/2009, R/1143/2009, R/940/2009, R/1202/2009, R/1391/2009, R/917/2009, R/928/2009, R/793/2009, R/780/2009, R/411/2009, R/1109/2009, R/168/2009, R/781/2009, R/1035/2009, R/1333/2009, R/898/2009, R/914/2009, R/988/2009, R/1068/2009, R/1542/2009, R/1339/2009 and R/1527/2009 – Bankinter, S.A.

R/309/2009, R/311/2009, R/291/2009, R/1343/2009, R/660/2009, R/586/2009, R/1455/2009 and R/482/2009 – Barclays Bank, S.A.

R/543/2009, R/562/2009 and R/351/2009 – BNP Paribas España, S.A.

R/128/2009 – Caja de Ahorros de Valencia, Castellón and Alicante, BANCAJA

R/246/2009 and R/271/2009 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón and Rioja, IBERCAJA

R/457/2009, R/1076/2009 and R/498/2009 – Citibank España, S.A.

R/837/2009 – Credit Suisse AG, Sucursal en España, S.A.

R/847/2009, R/332/2009, R/786/2009, R/1508/2009, R/683/2009, R/396/2009, R/936/2009 and R/649/2009 – Deutsche Bank, Sociedad Anónima Española

R/1118/2009 – Lloyds TSB Bank PLC, Sucursal en España

R/424/2009 – Popular Banca Privada, S.A.

Complainants in cases R/1792/2009, R/1374/2009, R/1068/2009, R/988/2009, R/928/2009, R/917/2009, R/914/2009, R/793/2009, R/780/2009, R/168/2009 and R/1052/2008 bought a structured note issued by Lehman Brothers Treasury Co. B.V. called *Bono Fortaleza* (ISIN XS0342637872) and guaranteed by Lehman Brothers Holding Inc.

Among the bond's main features were a variable return linked to the price of Deutsche Bank AG and ING Groep NV shares between 15 February 2008 and 15 February 2016, the absence of full capital protection at maturity, an option to redeem early at preset dates and a listing on the Dublin stock exchange. Given these features, the *Bono Fortaleza* qualified as a complex product.

Having analysed the documents submitted, despite the absence of a contract explicitly stating so, the CNMV found that in most cases the firm was offering a relationship of investment advice. There was, however, no evidence that it had taken active steps to obtain information on the client using the requisite tests nor that the clients concerned had previously bought any bond issue of similar characteristics and risks to the Bono Fortaleza.

Another common point in the complaints was the inclusion in the purchase order and prospectus of clauses that read as follows:

In the purchase order: *"The client acknowledges that he/she has been advised about the risk of the product and whether the investment in this product is suitable for their investment profile. (..)"*

In the sales brochure: *"The parties state that before completing any transaction they will have assessed the legal, regulatory, accounting, financial and tax implications and that they have the knowledge and experience to do so, on their own behalf or with the aid of their advisors. The Bank cannot in any circumstances be considered as an advisor. In the abovementioned assessment, each party will take account of their own financial business circumstances and ability to evaluate risk".*

These clauses were contradictory in their drafting as, in the first, the client declares that he/she has been advised on the risks and their investment profile has been assessed, while, in the second, it is claimed that the client had assessed the risk for themselves. This was found to be wrong. In general, the CNMV also ruled that it was wrong to use generic disclaimers on orders as a way of demonstrating compliance with the entity's legal obligation to collect information from clients.

On occasion, a short questionnaire was provided on knowledge and experience in which the client stated that he knew and understood the characteristics and risks of the product and that he had experience investing in this type of product in recent years. Again, this was found to be wrong as it transfers responsibility for the declaration to the client, whereas in fact it is the entity that is obliged to obtain this information, assess it and arrive at a judgement on the appropriateness/suitability of the product which must then be notified to the client.

The same problems arose in the marketing of 5.75% preference shares (ISIN XS0282978666), whose holders could collect a non-cumulative annual coupon of 5.75% nominal, if certain conditions were met. The shares were perpetual duration with an option for the issuer to redeem early, as from 25 April 2012, and listed on the London Stock Exchange. They were cited in complaints R/1035/2009, R/307/2009, R/309/2009, R/311/2009, R/291/2009, R/660/2009, R/482/2009, R/562/2009, R/351/2009, R/847/2009, R/332/2009, R/1508/2009, R/683/2009, R/396/2009 and R/936/2009.

The contracts were drawn up and signed under pre-MiFID rules. The provider was therefore obliged to identify the client's financial situation and their investment experience and objectives in order to confirm that the product recommended was appropriate to the specific expectations and circumstances of the potential buyer.

Another product complained about was the structured note called *Bono Bacom* (ISIN XS0306090423), also issued by Lehman Brothers Treasury Co. B.V. and the subject of complaints R/981/2009, R/414/2009, R/1140/2009, R/1142/2009, R/1143/2009, R/940/2009, R/1391/2009 and R/781/2009. The main features of the product were

that it offered a variable return linked to the price of BBVA and France Telecom shares (potential cumulative annual coupon of 22.50%), was autocallable from year one, lacked full capital protection on maturity (8 July 2015) and was listed on the Irish Stock Exchange.

Except in complaints R/981/2009, R/1339/2009 and R/1527/2009, the entity could not show it had collected enough information, either from the client or otherwise, to assess whether the product was appropriate to their investment experience, objectives and profile. This was one fault. Another was that information reported in the regular statements gave the nominal value of the bond rather than the market value, which would be preferable. A third was that subscription orders were in many cases unsigned and undated.

There were fewer, but no less serious, complaints in a similar vein about other Lehman products, with marketing firms again found to be at fault for failing to define client profiles, providing incomplete information on the product, missing items off orders or reporting inappropriate values to clients in their statements. These products were:

- The *"EUR 5,000,000 Fixed Rate Guaranteed Non-Voting Non-Cumulative Perpetual Preferred Securities"*, (ISIN XS0229269856), with a non-cumulative annual coupon of 5.125%, conditional on the issuer having sufficient funds and the guarantor's discretion. This was a subordinated and perpetual issue callable by the issuer from 21 September 2009 and gave rise to complaints R/849/2009, R/2105/2009, R/1343/2009, R/586/2009, R/1455/2009, R/786/2009, R/649/2009 and R/424/2009.

- *"Index-Linked Notes"*, (ISIN XS0229584296), with an annual coupon of 7.25% fixed until 2010 and variable thereafter, maturing in 2035 and listed on Euronext Amsterdam, subject of complaints R/909/2009, R/1303/2009, R/1562/2009, R/734/2009, R/1176/2009, R/543/2009 and R/1118/2009.

- The *Bono TARN Notes* (ISIN XS0224301571) with a 5% coupon fixed for the first five years and varying thereafter based on the 10-year and 2-year swap curves, with variable maturity subject to an automatic redemption condition (aggregate coupons received reaching 35% of the amount of the issue) up to a maximum of 20 years.

  This product was the subject of complaints R/246/2009 and R/271/2009. In both cases the firm admitted it could not find the purchase orders for Lehman Brothers securities. Clearly, therefore, the recording of the order failed to meet required standards.

- The *Bono Senior Lehman Brothers Cupón 6.375%* (ISIN XS0128857413), paying a fixed annual return of 6.375%, maturing on 10 May 2011, with capital guaranteed at maturity and listed on the London Stock Exchange, which was cited in complaint R/2017/2009.

- The *"EMTN cancelable ligado a acciones de Telefónica y ABN AMRO"*, (ISIN XS0288610016), a dollar denominated note, maturing on 9 March 2014, callable early in certain circumstances, with variable remuneration linked to the price of underlying shares and no capital guarantee, cited in case R/629/2009.

- The note issued by Lehman Brothers Treasury Co. B.V (ISIN XS0241421089), paying a return linked to the EuroStoxx 50 index with no capital guarantee

at maturity (25 January 2011) and an early redemption option, subject of complaint R/556/2009.

– The structured note *Bono Dólar 2.5 II* (ISIN XS0334693578), linked to the euro's exchange rate versus the dollar, paying a possible single coupon of 2.5 times the dollar's percentage gain versus the euro, and guaranteeing capital at maturity (21 December 2010), subject of complaint R/728/2009.

– The 6.625% preference shares (ISIN XS0215349357), paying a non-cumulative annual coupon of 6.625% nominal until March 2007 and a variable coupon thereafter with no set maturity date, cited in complaint R/1535/2009.

– The structured note *Bono Cupón Eurostoxx 3* (ISIN XS0351390017), paying a possible 9% annual coupon, linked to the DJ Eurostoxx 50 with no capital guarantee at maturity (14 March 2013). This note was mentioned in complaints R/1000/2008 and R/411/2009.

– The *Bono Inflación Española* (ISIN XS0348914606) with returns linked to Spanish CPI and possible recovery of the capital at 14 March 2011 (complaint R/1542/2009).

In all these cases, as in others discussed above, it was considered that there was an advisory relationship between the provider and the client. Accordingly, since these products were being sold to retail clients, under MiFID rules the entity should have established whether the client had the knowledge and experience to understand the risks inherent in the product being offered and checked that the product was appropriate to their financial circumstances and investment objectives (suitability test). None of this appeared to have been done based on documents submitted by the parties.

– Structured note (ISIN XS0213416141), paying an annual return fixed at 8.25% until 2008 and thereafter variable within a band of 2% and 12%, maturing 16 March 2035, subject of complaint R/128/2009.

– *The Bono 65-65 II* (ISIN XS0283319837) paying a return linked to the DJ Eurostoxx 50, with capital guaranteed at maturity (6 April 2011). Liquidity was provided and prices published by Lehman Brothers Holding Inc., subject of complaint R/1076/2009.

– In complaint R/498/2009, the client subscribed for three different structured products: the *Bono 60-60 II* (ISIN XS0267365442), linked to the DJ EuroStoxx 50, the *Bono Semestre X 5* (ISIN XS0319193396), linked to the DJ EuroStoxx 50 and Nikkei 225, with capital guarantee at maturity and the *Bono Ibex Suma Absoluta* (ISIN XS0348646919), linked to the IBEX 35, also with a capital guarantee.

These products were bought under different regulatory regimes as a result of amendments made to Securities Law 24/1988, of 28 July, by Law 47/2007 and the implementation of Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other providers of investment services.

The purchase of the *60-60 II* and *Semestre X 5* bonds were unaffected by the reforms, but the purchase of the *Ibex Suma Absoluta* did come under the reformed standards.

– The Bonus *Certificate Plus Spanish Stocks* (ISIN ANN5214A1035), linked to the price of Banco Bilbao Vizcaya Argentaria, S.A. and Banco Santander, S.A. shares at specific dates with no capital guarantee at maturity, cited in complaint R/837/2009.

– Finally, the CNMV dealt with a number of other cases where the products were not identified with their ISIN, such as R/335/2009, where only the coupon was known (3-month Euribor + 0.25% paid quarterly) or R/478/2009, where the purchase order merely says "Fixed Income P." with "interest % 5.09 %", "Maturity (Call L.B.) 13.03.2009", "Initial amount 750,000 euros" and "Amount at maturity depending on tax 788,232.50 euros".

In case R/1544/2009 the investor complained of poor service by Inversis after the collapse of Lehman Brothers Holding Inc., issuer of the securities the complainant had bought from Inversis.

Purchase of products issued by Icelandic banks

R/1956/2009, R/580/2009 and R/296/2009 – Banco Banif, S.A.

R/290/2009, R/973/2009, R/295/2009, R/327/2009, R/820/2009, R/1442/2009, R/1722/2009, R/2075/2009, R/1187/2009 and R/510/2009 – Banco de la Pequeña y Mediana Empresa, S.A.

R/437/2009 and R/1562/2009 – Banco de Sabadell, S.A.

R/2106/2009 – Banco Inversis, S.A.

R/119/2009, R/1051/2009, R/590/2009, R/848/2009, R/209/2009, R/1507/2009 and R/421/2009 – Bankinter, S.A.

R/342/2009 – BNP Paribas España, S.A.

R/2014/2009 – Caja de Ahorros del Mediterráneo

R/1959/2009 and R/668/2009 – Caja de Ahorros y Monte de Piedad de Gipuzcoa y San Sebastián

R/906/2009, R/627/2009, R/512/2009, R/585/2009, R/742/2009, R/495/2009, R/724/2009, R/871/2009, R/723/2009, R/683/2009, R/1088/2009, R/1705/2009, R/1965/2009, R/1305/2009, R/1274/2009, R/1273/2009, R/511/2009, R/1133/2009, R/792/2009, R/1706/2009, R/1119/2009, R/1964/2009, R/534/2009 and R/1006/2009 – Deutsche Bank, Sociedad Anónima Española

R/646/2009, R/593/2009, R/233/2009 and R/445/2009 – Popular Banca Privada, S.A.

The complainants in these cases used a variety of financial intermediaries to subscribe for preference shares issued by two Icelandic banks: Landsbanki Islands and Kaupthing Bank. In October 2008 both banks were seized by the Icelandic monetary authorities with the result that coupon payments on their securities were immediately frozen and the market value of such assets crippled.

The securities cited in client complaints were the following:

– *"Non-Cumulative Undated Fixed Rate Capital Notes"*, (ISIN XS0244143961), issued by Landsbanki Islands, listed on Euronext Amsterdam – complaints R/533/2009, R/580/2009, R/2106/2009 and R/437/2009 among others.

– *"Non-Cumulative Undated 6.25% Capital Notes"*, (ISIN DE000A0E6B87), issued by Kaupthing Bank and listed on Euronext Amsterdam and the Frank-

furt Stock Exchange –complaints R/296/2009, R/4372009, R/1187/2009, R/1722/2009, R/820/2009 and R/973/2009 among others.

– Securities issued by Kaupthing Bank Hf, under ISIN XS0308636157 – complaints R/1674/2009, R/119/2009, R/2075/2009, R/327/2009, R/295/2009, R/510/2009 and R/590/2009 among others.

The features of these issues – perpetual, callable securities paying fixed returns conditional on the existence of a distributable profit – made them similar to what in Spain are known as preference shares.

The clients said that the securities were marketed as risk-free fixed-income products for a conservative profile, based on the solvency of the issuer banks, but they were never given full information on the securities, particularly on the risks they carried.

Having analysed the documentation submitted, in most cases, with the exceptions of complaints R/1955/2009, R/296/2009, R/437/2009, R/119/2009, R/1051/2009, R/848/2009, R/906/2009, R/724/2009, R/1965/2009, R/1274/2009, R/511/2009, R/1706/2009 and R/1006/2009 an initial fault is apparent. This is the failure by the firm to demonstrate that it knew the client's financial situation and investment experience and objectives at the time the investment was made.

In complaint R/590/2009, the entity claimed that the client had investment experience based on a statement of movements in their account showing that before they bought the Kaupthing securities they had invested in *"BON LEHMAN PIR 0,00 03-11"* (XS0246269897), Bankinter promissory notes (several issues) and *"PPF B. AIRWAYS 6.75 05-49"* (GB0005679449). However, the CNMV considered that these previous investments were neither frequent nor similar enough for the firm to decide securities such as the Kaupthing notes were appropriate to the investor's experience, objectives and profile. This view was reinforced by the result of an "Investment preferences questionnaire", which the firm later had the client complete, with the aim of establishing their financial situation and investment experience and objectives. The conclusion was that the client had the lowest risk profile in a 5-scale range and in replying to the questionnaire the complainant said that he did not understand the features and risks of preference shares.

The firm was also at fault for failing to produce documentation confirming that the client had been fully informed about the securities before purchase, specifically, about the investment risks involved.

In complaints R/1442/2009, R/1722/1009, R/2075/2009, R/1187/2009, R/437/2009, R/651/2009, R/2106/2009, R/590/2009, R/1959/2009, R/495/2009, R/724/2009, R/1705/2009, R/792/2009, R/1706/2009 and R/534/2009, the fault lay in the content of the securities subscription orders. It was shown that these omitted some basic information required for orders sent to a secondary market, such as the price or market to which the orders were to be submitted. Also, the information contained in the orders could not be said to make up for, complete or substitute information that the firm failed to provide during the marketing process.

Further, in cases R/327/2009, R/495/2009, R/1706/2009 and R/534/2009, the entity was unable to produce a subscription order signed by the complainant.

In many cases, such as complaints R/1006/2009, R/1964/2009, R/724/2009, R/742/2009 and R/1119/2009, the wrong name was shown on the subscription orders or statements. For instance, in complaint R/1119/2009, the product was described as

"BON" while in fact the Landsbanki securities were, by their features, assimilable to preference shares. The use of this insufficiently rigorous name could mislead clients as to the nature of the security or the product they had bought.

Finally, in complaints R/533/2009, R/580/2009, R/1674/2009, R/290/2009, R/295/2009, R/437/2009, R/590/2009, R/1959/2009, R/792/2009 and R/646/2009, while acknowledging that the widespread uncertainty in the wake of the banks' seizure made it hard to obtain precise information on the legal and ownership position of the creditors, it was not clear that the entities acted with due speed to inform their clients about the seizure of the banks, the suspension of market trading and, particularly, that as from October 2008 they would no longer receive the coupons due on their investment.

Purchase of autocallable structured products

R/808/2009 – Banco Banif, S.A.

R/2025/2009 – Banco de Sabadell, S.A.

R/305/2009, R/934/2009, R/1092/2009, R/892/2009, R/1773/2009, R/563/2009, R/925/2009, R/600/2009, R/755/2009, R/310/2009, R/1289/2009, R/249/2009, R/1171/2009, R/677/2009, R/1461/2009, R/1438/2009, R/630/2009, R/1655/2009, R/1281/2009, R/458/2010, R/1608/2009, R/1579/2009, R/7/2010, R/1292/2009, R/2080/2009, R/194/2010, R/1036/2009, R/1269/2009, R/531/2009, R/1200/2009, R/1044/2009 and R/896/2009 – Barclays Bank, S.A.

R/1892/2009 and R/911/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

R/1673/2009 and R/1158/2009 – Deutsche Bank, Sociedad Anónima Española

The crux of the complaint in these cases was the way entities acted when selling so-called "autocallable" notes. They allege that they were not informed about basic features of these products, such as the possibility of early redemption based on the performance of the underlying assets (BBVA, Santander, Popular, Telefónica, ING, Bayer, Ferrovial, Iberdrola, ACS, BNP Paribas, RBS, Barclays, Fortis and Deutsche Telecom, among others), returns that were also conditional on the price of these shares and the absence of a capital guarantee at maturity. The complainants state that they only found out about these details after they had bought.

The fact that the returns and redemption of capital invested were dependent on the performance of an underlying asset made these notes risky products. Accordingly, the complainants claimed that the product was unsuited to their investment profile and that they had not been informed about this aspect of the notes. They further claimed that if they had been given timely information about the product's features and its true risks they would never have bought it.

In many cases, the providers were unable to show that they had carried out the necessary actions to check that the product was suitable to the investment profile of the subscriber. Nor could they prove that they had adequately informed clients about the product. As a result, the CNMV found them to be at fault in this respect.

The entities were also at fault in that the statements for the structured notes failed to identify the issuer of the notes and, in the case of Barclays, continued to state the investment at face value only until December 2008, instead of offering a more reliable, dynamic valuation by reference, for instance, to market price.

Further, in case R/600/2009 the clearly confusing term "GAR" was used as a prefix, even though capital invested in these notes was not guaranteed at maturity and there was a risk of loss.

We also highlight complaint R/310/2009, where the provider was found to be at fault in several regards, including a formal defect in the purchase instructions, failing to note the date of signature on both documents and failing to specify whether the amount shown on the purchase order for preference shares was nominal or effective value. Finally, the report provided by the entity following a specific request for information about the investments by the client was found to be inadequate.

Deficiencies in pre-sale information

R/525/2009 – Altae Banco, S.A.

R/240/2009, R/726/2009, R/747/2009, R/218/2009, R/438/2009 y R/1051/2008 – Banco Banif, S.A.

R/1090/2009 – Banco de Finanzas e Inversiones, S.A.

R/1469/2009 – Banco de Madrid

R/1404/2009 – Banco de la Pequeña y Mediana Empresa, S.A.

R/824/2009 – Banco Español de Crédito, S.A.

R/933/2009 – Banco Santander, S.A.

R/1102/2009 and R/1842/2009 – Banco Urquijo Sabadell Banca Privada,S.A.

R/308/2009, R/412/2009, R/730/2009, R/748/2009, R/808/2008, R/1209/2009, R/2086/2009 and R/2155/2009 – Bankinter, S.A.

R/1222/2009, R/986/2009, R/408/2009, R/852/2009, R/1268/2009, R/19/2009, R/1695/2009, R/1653/2009, R/652/2009, R/1865/2009, R/1591/2009, R/706/2009 and R/24/2009 – Barclays Bank, S.A.

R/651/2009 – Banco Inversis, S.A.

R/79/2010 – BNP Paribas, S.A.

R/1910/2009 – Caixa de Credit dels Enginyers –Caja de Crédito de Ingenieros, S. Coop.

R/8/2009, R/716/2009 and R/1136/2009 – Caja de Ahorros del Mediterráneo

R/1566/2009 – Caja de Ahorros y Monte de Piedad de Gipuzcoa y San Sebastian

R/760/2009 – Caja de Ahorros y Monte de Piedad de Madrid

R/179/2009 – Caja de Ahorros y Monte de Piedad del Círculo Católico de Obreros de Burgos

R/479/2009, R/1177/2009 and R/918/2009 – Citibank España, S.A.

R/861/2009 – Credit Suisse AG, Sucursal en España

R/795/2009, R/712/2009, R/435/2009, R/146/2009, R/404/2009, R/1368/2009, R/856/2009, R/558/2009, R/318/2009, R/946/2009, R/1807/2009, R/1503/2009, R/417/2009, R/1300/2009, R/1302/2009, R/1504/2009, R/1214/2009, R/1310/2009, R/998/2009, R/466/2009 and R/1558/2009 – Deutsche Bank, Sociedad Anónima Española

R/825/2009, R/1041/2009 and R/274/2009 – Lloyds TSB Bank PLC, Sucursal en España

This set of complaints revealed a variety of failures by firms which are grouped below under four areas of malpractice, in descending order of frequency.

(i) Firms could not show that they had, before the transaction, assessed whether the securities concerned were appropriate to the complainants' financial situation and investment experience and objectives.

In some cases, firms could not show that the complainant had either the prior experience or a track record of frequently investing in similar products to understand the fundamentals and risks of the form of investment to which they had subscribed. In others, the firm took the investor's status as sole director of several companies belonging to the family business as evidence of financial knowledge.

Where there was an advisory relationship between the two, as in cases R/747/2009, R/1310/2009 and R/408/2009, the firms should also have obtained information on the client's financial circumstances and investment objectives.

In R/240/2009 the complained-about product was called *"Obligación Cancelable ligado a las acciones de Fortis y Telefónica",* a structured product issued by Banesto Financial Products PLC (ISIN XS0370381484). In this case, the entity was unable to demonstrate that it had, before the investment, obtained the necessary information on the client's knowledge, experience, financial situation and investment objectives, or that it had informed the client about any liquidity arrangements for the product concerned. In addition, the data on past performance shown in the investment proposal submitted alongside the client's complaint failed to meet the standards of Royal Decree 217/2008.

(ii) Firms could not show either that they had provided written information on the products' characteristics and risks, prior to their being contracted. These failures of information were not made good by the information contained in the securities purchase documents.

In complaints R/1404/2009, R/824/2009 and R/933/2009 the firm could not show that its clients had been given information before taking out the products *"GENERAL MOTORS 5.375% 06/06/2011"* (ISIN XS0187751150) and *"Bonos AISA Agosto 2006"* (ISIN ES0306585029).

R/1090/2009 and R/748/2009 concerned BBB-rated preference shares issued by Caixa Terrassa Societat de Participacions Preferents, S.A. (ISIN XS0225115566) paying a fixed return of 8% until August 2010 and a variable return thereafter, all conditional on the guarantor making distributable profits. In neither case was it shown that the client had been given information on the characteristics and risks of the product in a timely and correct manner.

Complaint R/726/2009 concerned products contracted in 2004 and comprising preference shares issued by several companies, British Airways Finance (Jersey) LP, Santander Finance Preferred, SAU and Royal Bank of Scotland. They all paid fixed coupons until the first "call" date (when the issuer could exercise their early redemption option). The British Airways shares were first callable in 1999 and the other two in 2009. All these products were listed on foreign secondary markets. Analysis of the documentation provided failed to show that the client had been duly informed about the products' features before buying or that the statements identified any of the securities in the portfolio as preference shares. The CNMV also found that the firm was wrong not to produce in evidence the purchase orders, indicative of an op-

erational failure either in the process of buying the shares or in the process of filing and preserving records of securities orders.

In R/1102/2009, the clients said they had subscribed for two products offered to them as "insurance". The first was a structured product issued by JP Morgan Internat. Derivates Ltd, called *"Certificado Autocancelable Santander and Royal Bank of Scotland"*, whose redemption date and returns (gain or loss) depended on the price of Banco Santander, S.A. and Royal Bank of Scotland shares on specific dates. The product did not guarantee capital at maturity and in fact it was possible for clients to lose their whole principal.

The second product was a combination of structured note, fixed-term deposit and loan.

However, it was only when the complainants checked the returns on their investments that they were told for the first time about certain features of the products they had bought, such as their maturity conditions, base currency and liquidity problems.

The CNMV concluded that the fact sheet on the products, attached with the submissions, failed to explain their features and risks in a clear and accurate way. Nor was it shown that the client had been informed about the risks of the product *"Urquijo 3 en 1"* as a whole.

In complaint R/1842/2009, the provider was found to be at fault for two reasons. It could not be shown that the client had received the required information about the product concerned: *"Callable Fixed Rate/Index Linked Notes due 15 February 2045"*. And the purchase order submitted was defective in some respects, such as not adequately identifying the securities, not giving the full registered address of the issuer and omitting the limit price and/or terms of execution for the order. It was confusing as to the base currency of the securities.

Two products gave rise to complaint R/308/2009: the *"Bono Bienvenida"* (ISIN XS0359252797) issued by SGA Societé Generale Acceptance NV, with returns linked to the price of Telefónica, BBVA and Banco Popular shares and an initial coupon of 12%, and a structured product *"Certificado Bienvenida 2"* (ISIN XS0360825268) issued by BNP Paribas Arbitrage Issuance BV, linked to the price of Telefónica, BBVA and Iberdrola shares. Both products could be seen as complex for MiFID purposes, as they were structured and had no capital guarantee at maturity. The provider failed to adequately inform the client about these features, and also lacked the necessary information on the client to assess whether the product matched their risk profile. The same problem arose in cases R/412/2009, R/1209/2009, R/730/2009 and R/2086/2009. In cases R/1209/2009, R/730/2009 and R/412/2009 the subscription date was also missing from the purchase orders.

In case R/808/2008, the complainant invested 100,000 euros in a structured product with returns linked to the trading price of a basket of three stocks. If they were trading above their price on April 2006, the subscription date, he would receive the principal plus 10% for year one and so on up to 50% after year five. If the share price failed to rise, he would get back the principal. The grounds of complaint were a lack of information on the product and on the performance of the securities making up the basket. The CNMV confirmed these shortcomings after establishing that the client never received the prospectus for the issue, either at the time of subscription or later, and that the provider took several months to notify the client that one of the stocks in the basket had been substituted.

(iii) There were also formal problems with the securities orders placed by the financial firms when subscribing for the products on the complainant's behalf.

Cases R/525/2009, R/747/2009, R/218/2009, R/438/2009, R/986/2009, R/1222/2009, R/408/2009, R/852/2010, R/1268/2009, R/19/2009, R/1653/2009, R/652/2009, R/1865/2009, R/716/2009, R/1136/2009, R/1566/2009, R/179/2009, R/861/2009, R/712/2009, R/146/2009, R/1368/2009, R/856/2009, R/558/2009, R/1807/2009, R/1503/2009, R/417/2009, R/1302/2010, R/1504/2009, R/1214/2009, R/998/2009, R/466/2009, R/1558/2009, R/1041/2009 and R/274/2009 revealed a variety of faults, such as orders that gave the commercial name of the product but not the issuer, missing information which could mislead the client as to the maximum term of the investment or orders lacking information such as the type of security, order price, ISIN or intended market (primary or secondary).

R/1469/2009 – Banco de Madrid

This was an investment described as a callable three-year EMTN, with underlying of Repsol, Telefónica and Iberdrola and no capital protection at maturity. The purchase order for the structured note was ambiguous as to the underling shares, saying first that they were Repsol, Telefónica and Iberdrola but then, when describing the features of the product and amounts due on redemption, listing them as BBVA, Telefónica and Iberdrola.

Information deficiencies during the investment

In these cases, the CNMV found that the regular statements provided by the firms contained inadequate information on the assets owned by their clients, either giving unreal valuations or failing to clearly identify the product in question.

R/692/2009 – Bankinter, S.A, R/826/2009, R/1003/2009, R/1153/2009, R/1244/2009 and R/1287/2009 – Barclays Bank, S.A, R/389/2009 and R/1039/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa), R/1794/2009 and R/1469/2009 – Banco de Madrid, and R/1620/2009 and R/2054/2009 – Deutsche Bank, Sociedad Anónima Española

In case R/692/2009, the client complained about the information provided by the firm on the value of *"Bono Gran Banca"* notes, whose trading price plunged suddenly from 88.6% to 39.10%. In this case, the real value of the assets did not match that of the quarterly statements over the period, which prevented the client from offloading positions and minimising his losses.

Analysis of the submissions uncovered shortcomings in cases R/1051/2009, R/1222/2009, R/408/2009, R/852/2009, R/1268/2009, R/1653/2009, R/652/2010, R/1865/2009, R/1591/2009, R/24/2009, R/79/2010, R/8/2009, R/4/2010, R/435/2009, R/146/2009, R/946/2009, R/1503/2009, R/1300/2009, R/1302/2009 and R/1504/2009, especially failure to reflect the market, effective or estimated value of the financial instruments at a particular date. The firm concerned argued that there was no market value, a defence that was dismissed as they could have turned to the issuer for information on the counterparty price and this would have given the client a far truer idea of the value of their investment.

A similar issue arose in complaints R/826/2009, R/1003/2009, R/1153/2009, R/1244/2009 and R/1287/2009, where the complainants held various products marketed by Barclays, on which they received regular reports.

However, until December 2008 these reports gave the value of the securities as their initial investment and only thereafter did it start quoting market value, which was

below the purchase price. Also, in most of these cases, the regular statements failed to adequately identify the products or show the name of the issuer, important information if the clients were to understand the true nature of their investment.

R/718/2009 – Banco de Santander, S.A.

The core of this complaint was the amount received after the client executed a euro (PUT) US dollar (CALL) option on the EUR/USD exchange rate – 21,406.93 euros rather than the 27,000 euros he expected. According to the bank this was due to fluctuations in the currency markets. Documentation established that the client was in agreement with the amount settled and, specifically, with the exchange rate shown by Banco Santander. However, the bank was found to have been at fault for not including information on this investment in its regular statements to the client, thereby meeting its legal obligation to report regularly the position's real value and change over time.

R/183/2009 and R/1744/2009 – Bankinter, S.A. and R/785/2009 – Caja de Ahorros del Mediterráneo

In case R/183/2009 Bankinter was found to be at fault for omitting from its client's securities account statement the market value of preference shares issued by Bankinter Emisiones, S.A.

In similar vein, complaints R/785/2009 and R/1744/2009 dealt with alleged wrong tax information on some of the client's securities transactions, in the latter case resulting in the tax authorities sending him a parallel statement showing discrepancies with some of the information provided.

While Bankinter acknowledged its mistake, the CNMV still found it to be at fault for not having automatically corrected the information provided to the tax authorities, as the tax information that financial entities send their clients is a key help to them in fulfilling their tax declaration obligations.

Other information

R/294/2009 and R/350/2009 – Banco de Santander, S.A.

In both these complaints the clients claimed the entity had failed to inform them about the put option on Europistas shares which they could have taken up.

It was clear that the communications sent by the bank made no mention of these put options and nor did they encourage the recipient to contact their branch before deciding whether to invest or to inform themselves on this point. The CNMV therefore ruled the entity to be at fault.

R/922/2009 – Cortal Consors, Sucursal en España and R/1963/2009 – Banco Inversis, S.A.

The grounds for complaint R/922/2009, related to Cortal Consors' failure to notify clients that it had changed address. As a consequence, instructions were sent to the wrong place preventing the client from taking up the bid by Gas Natural SDG, S.A. for Unión Fenosa, S.A. shares.

Although the bank claimed it had fulfilled its regulatory duties to inform the public, including announcing the move in the newspapers Cinco Días and Expansión, it should also have informed its clients directly, which it failed to do.

Cortal Consors was additionally found to be at fault for unilaterally shortening the period available to sign up to the bid.

Complaint R/1963/2009 related to the same bid. The firm failed to show that it had passed on the informative note in a timely and diligent manner and Inversis was also found to be at fault for unilaterally shortening the bid-acceptance period.

R/1456/2009 – Caja de Ahorros del Mediterráneo.

The entity failed to send the attendance card for the AGM of company La Seda de Barcelona, and as a result the client was unable to exercise his right as a shareholder to appoint a proxy vote in favour of the Minority Shareholders Platform.

The entity defended its actions by pointing out that there was no attendance bonus for the AGM and that the client could have found the information he needed elsewhere (Official Bulletin announcement, press, significant events filing, etc.). However, the CNMV still found against the entity, as its standard contract for securities custody and administration, filed with the CNMV, made no specific mention of this point.

R/1170/2009 – Banco de Santander, S.A.

The client objected to what he considered excessive and unjustified fees charged on the sale of Unión Fenosa, S.A. shares during the takeover bid by Gas Natural SDG, S.A. and not having been warned in advance about the level of commission.

Although it was established that the commission was within the limits set in the bank's fee schedule, the CNMV ruled that Santander, before executing the instructions, should have informed its client on a durable medium of the total price payable, including all fees, commissions, costs and expenses and all taxes to be paid through the bank, information that was not provided. Banco Santander was therefore found lacking on these grounds.

R/1278/2009 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón and Rioja (Ibercaja)

The complainant said that on May 2009, the IberCaja website carried a significant event notice about the company Cintra, according to which Cintra planned to pay a gross dividend of 0.8950 euros per share on 7 May.

Based on this information the complainant decided to buy 1,100 Cintra shares, but the dividend he then received was only 79.72 euros, or 0.0895 euros per share. When he asked for clarification he was told that the broker had provided mistaken information.

The CNMV found IberCaja to be at fault for publishing incorrect information on the size of the Cintra dividend through its website, the *caja* being held responsible for the information it passed on to its clients irrespective of whether the source of the error was a third party.

A3.1.3 Subscribing for issues

Incidents regarding preferential subscription rights

Complaints were received about the following rights:

-Gas Natural rights

The prospectus for Gas Natural SDG, S.A.'s capital increase set 28 March 2009 as the closing date for share subscriptions. This was not a bonus issue and shares were allocated on the basis of one new for each old share, at a cost of 7.82 euros per share.

R/1825/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

On 27 March 2009, the complainant placed an order at his BBVA branch to subscribe for 75 new shares in exercise of the preferential subscription rights assigned him. However, instead of the shares he received the proceeds of selling the rights. The entity explained that this was because the subscription period for the capital increase had ended before 27 March. BBVA had decided to bring forward the closing date for accepting subscription instructions to 26 March 2009. This is not necessarily prejudicial to the client's interests as it can have the advantage of increasing liquidity for rightsholders, reducing the danger of overselling that would prevent sales on the last day's trading.

However, BBVA was found to have been at fault for the incomplete information notes it sent to clients which made no mention of an additional period for the allocation of shares or a discretionary share allocation period, nor of the terms and conditions applying to each of these periods and the circumstances in which shareholders could take advantage of them.

R/1078/2009, R/1257/2009, R/95/2010, R/1010/2010 and R/1404/2010 – Bankinter, S.A.

These complaints concerned a number of incidents in which Bankinter was found to be at fault. In some cases, the bank had failed to inform its clients about the risks associated with the specific type of financial instrument they were buying. One of these was that they could lose the whole of their investment if they failed to issue additional instructions to exercise or sell the rights before expiry of the trading period.

The CNMV also ruled that the fact that the order was placed on the Internet without the direct intervention of any Bankinter operator or employee did not exempt the bank from having to provide this information.

In complaint R/1257/2009 information supplied via the website about the client's trade was confusing and should have been clearer and more precise. It recorded as share trades what were in fact the exercise of subscription rights.

R/1396/2009 – Unoe Bank, S.A.

On 24 March, the complainant bought on the secondary market 1,500 rights to subscribe for Gas Natural shares, but then neglected to place any subscription order. As a result Unoe sold the rights on the last day they were traded at a price of 1.40 euros each.

The CNMV found that Unoe was wrong to sell the rights. Also it could not be shown that Unoe had specifically informed the client about the risks of buying rights on the secondary market.

-Banco de Santander rights

The prospectus for Banco Santander, S.A. share issue set a period up to and including 27 November for rightsholders to exercise their preferential subscription rights and pay the corresponding premium.

The ratio was one new share for each four existing shares at a price of 4.50 euros per share. This was not, therefore, a bonus issue.

R/409/2009, R/500/2009, R/679/2009, R/764/2009, R/926/2009 and R/1020/2009 – Bankinter, S.A.

In complaint R/409/2009, the provider failed to process the client's orders in accordance with the terms of Banco Santander's capital increase, which made it clear that subscriber orders during the preferential subscription period would only be accepted and processed if the subscriber had paid when submitting the order.

The complainant did not have the funds to meet the premium at the time the order to exercise his rights was placed and the provider failed to alert him or warn him of the possible consequences.

In the other complaints, clients lost the money they had invested in buying up rights on the secondary market by failing to give explicit instructions.

In these cases, a firm has no obligation to maintain an active position, and can even cancel the rights with a consequent loss to the investors. However, the CNMV found that Bankinter was at fault, since it could not show that it had specifically informed the client in advance of the risk of losing all his investment if he failed to give specific further instructions on what to do with the rights.

R/232/2009– Banco Pastor, S.A.

The complainant placed an order to buy rights on the secondary market but failed to give any further instructions or another order on what to do with these rights once bought.

The bank was found to be at fault for two reasons: failing to warn the client of the risks of buying rights and unilaterally selling the rights bought by the complainant on the secondary market even though this earned the client some income which he would otherwise have lost.

R/336/2009 – Caja de Ahorros del Mediterráneo

The client placed a telephone order to exercise 6,200 rights that he owned. However, instead of following this instruction, Caja de Ahorros del Mediterráneo sold the rights at 0.34 euros each. The *caja* justified its actions by claiming the order had been cancelled as the client had insufficient funds in his account.

The *caja* was nonetheless found to be in the wrong for having accepted and processed the client's subscription order despite his lack of funds, and for failing to alert the client in any way about the cancellation or rejection of his share subscription instruction.

R/2066/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The CNMV considered that the entity was wrong to accept and process an order to buy 2 subscription rights and subscribe for 53 new shares, when the client's accounts

and sight and term deposits had been blocked under a judicial embargo for more than three years, as a result of which he should never have been able to use the rights and shares deposited in his securities account nor the cash in his current account to finance the transaction.

R/746/2009 – ING Direct, N.V., sucursal en España

In this case, ING was found to have acted wrongly in failing to respond promptly to requests from its client for information on the capital increase. This despite the client making several attempts to get through and leaving messages that the bank should contact him.

As a result, the client decided to sell his Banco Santander subscription rights, and based the subsequent claim on the fact that the market price (0.49 euros) was higher than the sale price (0.36 euros).

R/1492/2009 – Montes de Piedad y Cajas de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera

As a Santander shareholder, the complainant was awarded some rights and then bought 4,000 more on the secondary market. When he tried to subscribe some of these rights to the capital increase, i.e. only those he had been initially awarded, Unicaja said that this was impossible and that he had to either subscribe with all the rights or sell them all.

This turned out to be untrue, as when giving instructions to subscribe for shares by exercising some rights, investors were also able to place an order to sell the remainder, something that Unicaja failed to make clear to the client.

- Jazztel rights

The prospectus for Jazztel's capital increase allowed preferential share subscriptions from 22 June to 9 July 2009 inclusive at a ratio of four new for every nine existing shares at a price of 0.12 euros per share. This was not a bonus issue.

In the same period, shareholders who had exercised all their rights and so wished could register for additional shares if any remained unallocated (second round).

Finally, there was the possibility of a further discretionary allocation period reserved for qualified investors.

R/1557/2009 and R/102/2010 – Banco Inversis, S.A.

In case R/1557/2009, the client was allotted 180,000 preferential subscription rights, which were then exercised following a telephone instruction placed on 8 July.

As we said , shareholders who had subscribed all their rights to the offering could then apply to take part in a second round, which would entitle them to new shares on highly advantageous terms if the company should decide to go ahead with it. Inversis was unaware of this option and therefore did not allow the client to place his instruction. This was wrong on its part.

In R/102/2010, the client complained about losing all the money invested in buying 77,000 subscription rights for Jazztel PLC and 5,500 for Vértice Trescientos Sesenta Grados, S.A.. It was established that he placed an order to sell all the rights acquired, although this order was not executed as the share prices of Jazztel and Vértice 360º

never reached the minimum levels set by the client (0.055 euros and 0.44 euros, respectively), and subsequent attempts to sell the rights fell outside the secondary market trading period.

Inversis could not show in this case that it had warned its client early enough about the risk of losing the whole investment if he failed to place further specific instructions on what to do with the rights.

R/1759/2009– Banco Pastor, S.A.

The complainant objected to a lack of information in the communication by Banco Pastor, as custodian, to its clients seeking instructions on what to do with the rights (461,000), which failed to mention that there was a possible second round.

Nor was this mentioned when the client placed a telephone order through "oficinadirecta.com". Banco Pastor was therefore found to have been in the wrong for failing specifically to inform the client, either in writing or on the phone, about the option of subscribing for surplus shares in the second round.

R/1460/2009, R/1473/2009, R/1489/2009, R/1831/2009, R/33/2010 and R/680/2010 – Bankinter, S.A.

Bankinter was found to be at fault in R/1460/2009 as it could not show that it had informed its client about the risk of losing his whole investment, as indeed happened, of 27,000 Jazztel rights that the client bought on the secondary market. The same lack of information was found in cases R/1473/2009 and R/680/2010.

In R/1473/2009, also, the complainant produced a copy of two specific notes that Bankinter posted on its website on the transaction. This information was considered to be ambiguous and potentially misleading as the subscription order was classed as "buy shares" when in fact it was only the subscription rights that were being bought.

Testimony from the complainant in R/1489/2009 shows that he instructed Bankinter to exercise 17,496 rights allocated to him, but there was no evidence of any instruction regarding the remaining four rights or another 39,375 which he instructed the bank to acquire on the secondary market.

Bankinter was wrong to sell the unexercised rights, i.e., the 39,375 rights bought on the market and the four originally assigned and unexercised, as it was the client's exclusive right to decide what to do with them.

In case R/33/2010, the complainant stated that on 7 July 2009 he contacted Bankinter's telephone share dealing service to order the purchase of 15,000 euros of Jazztel preferential subscription rights, intending to subscribe for new shares. The first time he called he was told that the trade could not be done because the trading period had expired, when in fact rights trading continued until 9 July. The second time he called for the same purpose he was put through a string of irksome processes and, given the cost of telephoning from Tanzania, eventually had to give up.

The recordings show that on both occasions the complainant said he wished to buy rights on the secondary market and that the Bankinter employee gave the client two important pieces of information:

First, correctly, that if he bought the rights and failed to place any further instructions as to whether to exercise or sell them, they would expire and he would lose the investment.

Second, and this was incorrect, that the term for exercising rights in Jazztel by telephone banking had expired, even though the term set by the issuer allowed two further days' trading and the client should have been able to exercise or order the sale of his rights.

Bankinter was therefore found to have misinformed the complainant about the deadlines for exercising the subscription rights he wanted to buy.

The same conclusion applied to complaint R/1831/2009, where the client was not told, either verbally or in writing, of his option to apply for additional shares as detailed in the issue prospectus: *"During the preferential subscription period, initial subscribers shall place orders subscribing for new shares and requests to subscribe for additional shares during the public offering or the increase to the public offering".*

R/1819/2009 – Caja de Ahorros del Mediterráneo

The client placed instructions with CAM to take part in the Jazztel capital increase by exercising 16,999 subscription rights which he held, and selling one additional right. These transactions failed to take place since, according to the *caja*, the complainant's subscription order was automatically cancelled as he did not have enough funds in the associated current account.

CAM also said that on the closing date of the capital increase, having received no instructions from the client and in order to prevent the loss of the investment in the rights, it sold the rights on the market and credited the client with the 539.20 euros proceeds.

The prospectus for the capital increase stated that when placing subscription orders, the instructions could only be accepted and processed if the subscriber had paid the corresponding amounts in full.

The entity was therefore found to be in the wrong for having accepted and processed the client's subscription order despite his lack of funds, and for failing to alert the client either automatically or manually about the cancellation or rejection of his share subscription instruction.

R/1357/2009 – Bankinter

The complainant was unable to sell online the Jazztel subscription rights he had been allotted as a shareholder. The technical problem, which the bank admits, meant that the holder had to sell them at a much lower price. The client also complained that he could not check the trading price of the rights through the bank's website.

Bankinter, in its defence, said that due to fluctuations in the trading price of subscription rights only limit orders could be placed online and that the problems in accessing trading prices were the fault of a third party, not related to Bankinter.

The CNMV found that in general, firms that provide investment services should organise and control their media responsibly and efficiently and also fulfil their duty to keep their clients informed.

In this case, the bank could not disclaim responsibility for the interruption in the flow of trading information, which was particularly important for those trading in highly volatile instruments which need constant vigilance, such as subscription rights. Nor had the bank posted on its website any alerts or warnings about the problem that might have helped the complainant.

As regards the operating restriction on trading subscription rights, it was found that this was a limit on the clients' capacity to trade, which they should have been told about before entering a contractual relationship with Bankinter, or, for existing clients, when the restriction was first added to the bank's procedures.

- Other rights

R/647/2009 and R/1266/2010– Banco Santander, S.A.

R/647/2009 concerned the capital increase by La Seda de Barcelona, S.A. The complainant placed an order to buy 40,000 subscription rights for 7,223.73 euros, intending to subscribe for 20,000 new shares. However, two days before the close of the share subscription period, Santander sold the rights for 5,979.45 euros, an action which the complainant estimates ended up costing him 39,720.55 euros.

The recordings of conversations submitted in relation to the complaint contain no instruction to either sell or exercise the subscription rights in the client's portfolio. Santander therefore had no explicit instruction on what to do and should therefore not have sold the rights.

In R/1266/2010 the client complained that the bank had, without his authorisation, sold subscription rights for 314 shares in Obrascón-Huarte-Laín, S.A. deposited in its custody.

It was shown that the sale took place the same day that the client went into a Santander branch to give his instructions, as a result of which his subscription order was rejected. The CNMV considered that what Banco de Santander should have done was to confirm the sale with the client in advance and, if the rights had not yet been sold, cancel the order and await his instructions. The fact that he came to the branch after the limit date would not in itself annul the client's right to dispose of his securities as he saw fit.

R/1817/2009 and R/731/2010 – Bankinter, S.A.

The first complaint concerned the capital increase of Afirma Grupo Inmobiliario, S.A. The complainant, who held 15,800 shares in Afirma, claimed to have placed an order to buy 3,500 shares in exercise of the rights which he was allotted, in a proportion of sixty-four new shares for every eleven rights, at an effective price of 0.48 euros per share.

However, the recording of the order provided by the bank showed that the client placed instructions to exercise all the rights, which would have been very costly, exceeding the funds available in the associated account.

Analysing the documentation submitted shows that the bank was wrong on two counts. First, because it failed to fully inform the client (there was no reference to the option and procedures for applying for additional shares) and, second, because it placed the order without first debiting the required amount, a condition of the capital increase stated in the company's CNMV filing.

In complaint R/731/2010, the client placed an online order with the bank to subscribe for 2,400,000 Dinamia rights at 0.027 euros, when it was certain he would not be able to take part in the capital increase since the exercise of so many rights would have cost him 8 million euros. The same day, the last day of trading, he placed a sell order at 0.029 euros which remained unmatched and led to the expiry of the rights acquired at a loss, the reason for the complaint.

R/80/2009 and R/1497/2009 – Caja de Ahorros del Mediterráneo

In the first complaint, the *caja* failed to fully inform its client about the risk of losing all his rights and, therefore, the whole of his investment, if he failed to place further specific instructions about what to do with rights he had bought on the market, specifically preferential subscription rights for Tavex Algodonera, S.A.

In R/1497/2009, the complainant placed a limit order to buy 6,000 subscription rights for Natra, S.A. shares at up to 0.11 euros each, to remain open until 3 July 2009, which was the penultimate working day before the offering closed. However, when he checked his current account he found that it had not been debited the 666.75 euros required to subscribe for the new shares because, it transpired, the entity had sold the rights at market price on 6 July, the last day of the increase, since it was unaware that the complainant wanted to subscribe for the shares.

Although the entity compensated the client, as in the previous case it had failed to inform him specifically about the risks of buying subscription rights and also wrongly sold the subscription rights that the complainant had bought on the secondary market.

R/800/2009 – Cortal Consors, Sucursal en España

This complaint related to the Mapfre capital increase, where existing shareholders could subscribe for one new share for each twenty-two existing shares held at a price of 1.41 euros per share during a preferential subscription period from 18 March to 1 April 2009.

Cortal Consors was found to have wrongly curtailed the period available for clients to place instructions for the capital increase to just 5 days. The firm failed to offer any justification for this huge cut in the offer period.

R/1547/2009 and R/1896/2009 – ING Direct, N.V., Sucursal en España

In the first case, the written information sent to clients about the Afirma capital increase was found to be inadequate.

The letter failed to mention that there was a second round in which additional shares would be allotted and said nothing about the terms and conditions for this second subscription period and how shareholders could apply for it. Also, the provider referred to an "issue of bonds convertible into shares in the company itself", an inaccurate description of Afirma's offer which was an issue of new shares.

In complaint R/1896/2009, the provider was found to have been at fault for failing to transmit an order for Mapfre shares when the subscription period was still open – before the close of trading on 1 April 2009 – and for then giving its client contradictory information over the telephone about what had happened with the rights that were neither exercised nor sold in the absence of instructions from the client.

Purchase of Santander convertible notes

R/747/2008, R/224/2009, R/369/2009, R/475/2009, R/614/2009, R/902/2009, R/1005/2009, R/1071/2009, R/1111/2009, R/1245/2009, R/1342/2009, R/1379/2009, R/1573/2009, R/1592/2009, R/1762/2009, R/1823/2009, R/1824/2009, R/1884/2009, R/1895/2009, R/2073/2009, R/41/2010, R/182/2010, R/476/2010, R/966/2010, R/1320/2010 and R/1594/2010 – Banco de Santander, S.A.

These complaints all concerned the securities ISIN ES0307779001, issued by Santander Emisora 150, S.A. during its joint takeover bid, as part of a consortium with Royal Bank of Scotland and Fortis, for ABN AMRO.

The key features of this unrated issue were that if the takeover bid ultimately failed the securities would be redeemed on 4 October 2008 at nominal value plus a coupon of 7.5% AER. However, if the bid was successful, the securities would be mandatorily exchanged for convertible bonds, with no redemption of the face value, Banco Santander shares being valued for this purpose at 116% of their share price when the convertible bonds were issued. Bondholders could volunteer to convert on 4 October 2008, 2009, 2010 and 2011. If they did not do so the bonds would be mandatorily converted on 4 October 2012.

Finally, these securities were traded on the Madrid Stock Exchange's Electronic Fixed Income Market, paying a nominal annual coupon of Euribor +2.75% from year one.

The complainants' testimonies all agree that when they subscribed the notes, they were confident that this was a term deposit, with capital guarantee and risk free, features that were corroborated by the bank's employees in response to information requests by potential purchasers.

At the time that most of the contracts were signed – before 21 December 2007, the exception being R/187/2010, signed in May 2008 – MiFID standards were not yet in force so that, before contracting any investment product, the provider should have identified the client's financial situation and investment experience and objectives, when these were relevant to the services it was seeking to provide.

However, the bank was unable to show that it had sufficient information on the client before selling the securities, this being reason enough to find against it.

Also, as regards client profiling, in complaints R/1111/2009 and R1895/2009, the facts and explanations in the documentation submitted show that there was an advisory, rather than an execution only relationship at work and the provider should therefore have established not just the experience and knowledge but also the investment objectives and the previous personal and financial circumstances of the client, something that it failed to substantiate.

In complaints R/1111/2009, R/1342/2009, R/1379/2009, R/1824/2009, R/182/2010, R/476/2010 and R/1594/2010, also, it could not be shown that the firm had provided the complainants with written information on the characteristics and risks of these products before the contract was signed. These omissions were not offset by the information contained in the formal investment documents, which were defective in various ways, failing, for instance, to identify the issuer of the securities, a field that was not included in the standard issue document and which, where appropriate, should have been completed by the branch employees.

Complex products

R/587/2009 – Caixa d'Estalvis de Catalunya , R/1210/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa), and R/1518/2009 – Caja España de Inversiones, Caja de Ahorros y Monte de Piedad

In R/587/2009, the client explained that in January 2008 he bought 14 subordinated bonds in the secondary market, issued by Caixa Catalunya and trading at 104.274% of face value. But 10 months after the purchase the issuer redeemed the issue early, costing the client 897.54 euros.

The CNMV found that the firm was wrong to have classed the product as conservative when, given the issuer's early redemption option, it should have been classed as a complex product.

Also, the firm did not seem to have enough information about the client to assess whether the product was suitable. Nor was the client given full information on the issue's terms and conditions, particularly the early redemption option on the subordinated bonds.

A similar disclosure failure was evident in cases R/1210/2009 and R/1518/2009. In the first, the firm failed to show that it had, as it claimed, passed on the prospectus for the issue – of Caja España Subordinated Bonds (ISIN ES0215474208) – and its final conditions. Nor did the order adequately identify the features and risks of the type of product being bought.

The second complaint, occasioned by Caja España *Bonos de Tesorería (issue 7),* is an opportunity to highlight firms' obligations under Royal Decree 217/2008, of 15 February. These include giving their clients, including potential clients, information in a durable medium, including a general description of the nature and risks of financial instruments (market, credit and liquidity risks) with particular regard to the classification of the client as retail or professional.

R/1238/2009 and R/1245/2009– Banco Santander, S.A.

The securities concerned by complaint R/1238/2009 were bonds convertible into Inmobiliaria Colonial, S.A. shares, at a ratio of 117 subscription rights for each convertible bond and a price per bond of 100 euros. This was not a capital increase but a debt issue paying 12-month Euribor plus 4% and with preset conversion periods starting after six months.

The CNMV's final report identified two mistakes.

First, in response to R/1245/2009, it was found that Banco Santander misinformed the complainant about the nature of the transaction, describing it as a capital increase by Inmobiliaria Colonial rather than a convertible bond issue. Nor did the communication mention the possibility of taking part in the additional allotment process that would run if the issue was not fully subscribed during the preferential subscription period. This was important information as, if the client was interested, he would have to state how many additional bonds he wanted alongside his original order to exercise the rights.

Second, the firm's communication to the complaining dealer included a warning that the client would be trading on his own initiative and the bank was therefore not obliged to assess the product's appropriateness. This was untrue as the convertible bonds are considered to be complex products and under existing regulations Banco Santander should therefore have assessed their suitability before they were bought.

R/717/2010 – Banco de Santander, S.A.

The client, aged 90, said that after asking the bank for a savings product with permanent access to capital, they subscribed for 20,000 euros of *Aportaciones Financieras Subordinadas* issued by Fagor Electrodomésticos, S. Coop. , a potentially high-risk product as it was perpetual (i.e., no maturity date) and paid variable returns which could be in either cash or kind at the issuer's discretion.

Banco Santander failed to show it had enough information on the client to assess whether the product was appropriate to his risk profile. The citing of his previous investment in Series III preference shares issued by Santander Finance Capital, S.A.U., was not felt to be adequate evidence of investment knowledge on grounds of frequency and timing.

The bank also admitted that the only procedure applied to establish the client's profile was the subjective judgement of the salesman dealing with them, and failed to demonstrate how or what criteria he followed when concluding that the Fagor securities met the client's investment objectives and profile.

A3.1.4 Securities custody and administration

R/2015/2009 – Banco Guipuzcoano, S.A. (Securities Custody and Administration)

The complainant had received in payment of a debt owed by the company Avanzit, S.A., 15,659 Avanzit shares, but these were only credited to its securities account by the service concerned after some time had passed.

Although regulations set no fixed term for the allocation of securities, the time between 8 July 2009, when Banco Guipuzcoana received the shares from Iberclear, and 5 October 2009, when they were made available to the client was clearly excessive. The firm offered no argument to justify this delay.

R/1834/2009 – Citibank España, S.A., R/2153/2009 – Open Bank, S.A.

The complainants were unhappy about the lack of information from the entities concerned, regarding what was happening to their investment in some bonds issued by General Motors Corporation, after the issuer went bankrupt and the July 2009 coupon went unpaid.

When something like this happens to the company issuing the securities held in custody, the firms, as custodians and administrators, should have promptly informed the complainants of the event and all the relevant circumstances that might affect their investment, including their options for upholding their rights against the issuer.

From the evidence provided by both sides the firms involved seem to have taken no initiative to inform the clients about the company's bankruptcy, the situation of their bonds and how they would be affected by the resulting process of corporate restructuring.

R/1752/2009 – Ahorro Corporación Financiera, S.A., Sociedad de Valores

The complainant had a securities account with the broker in which he had deposited shares in American Capital Ltd., a company traded on a foreign market.

On 18 June 2009, the company decided to pay a gross dividend to its shareholders. The custodian sent the complainant a notice stating that he could choose how to take the dividend: either in cash, or as new shares, and the client opted for the first option. As a result, the client's current account was credited with the amount after deduction of the corresponding tax withholdings at source and in Spain.

Despite this, and despite the absence of any instruction from the client and the lack of funds in his account to finance the transaction, on 31 August 2009, the custodian went on to buy 1,099 shares in American Capital Ltd. at 3.22 US dollars per share.

Documentation submitted in evidence shows that on 7 July 2009 the custodian had notified the client in writing that this American Capital dividend was *"expected to be paid on 7 August 2009"*, explaining the payment options available and the deadline for giving instructions. However, they appear not to have mentioned that payment of the cash dividend might be pro-rata. This was because American Capital had capped the total amount payable in cash at 10% of the total dividend to be distributed. If more shareholders applied to take their dividend in cash they would each only receive a proportion of their total dividend in cash pro rata their shareholdings and the remaining shares would automatically switch to the reinvestment option.

R/1031/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The complainant had requested certain information about movements from his portfolio to the companies involved in the merger between Morgan Stanley and La Caixa. He also asked for a copy of his contracts with La Caixa and all the transactions carried out. It was not shown that the firm had complied with or even replied to the client's request for information.

R/1670/2009 – Caja de Ahorros y Monte de Piedad de Madrid

The complainant claimed that the firm never sent information about AGMs or other corporate events for his foreign shareholdings thereby preventing him from exercising his voting rights.

In general, the duties of securities custody and administration include providing all relevant information about securities under custody and administration so that clients can exercise their voting and economic rights as shareholders.

When the securities are traded on international markets, the custodian is still obliged to meet these obligations, even if it is not a member of the market concerned and acts via sub-custodians.

The firm was therefore found to be at fault as it could not show that it was able to guarantee clients the exercise of their voting rights on foreign shareholdings.

A3.1.5 Fees and expenses

R/231/2009 – Banco Banif, S.A.

In general, every time a firm settles a transaction it must provide the client with a document clearly showing the interest rates and fees or expenses applied, specifying what each refers to and its basis of calculation and period of accrual, any tax withholdings and any other information necessary for them to understand the transaction.

In this case, the firm had sent client statements for the sale of shares more than two months after execution and had then failed to correct the corresponding credits to the client's current account. This was clearly wrong.

R/1799/2009 – Banco Inversis, S.A.

The initial focus of this complaint was the client's unhappiness with the custody fees charged on some shares in Bradford & Bingley plc., even though they had been suspended from trading and delisted from the London Stock Exchange.

Although it was found that the fees charged were correct, it was considered that the custodian and administrator, Inversis, had failed to meet its information obligations as an investment services provider. Given the circumstances of the suspended company it should have informed the client about the legal position of his securities.

Accordingly, the notification sent out by the firm was found to be inadequate as it made no mention of steps that could be taken to try and delist the client's shares and directly suggested he should transfer the portfolio to another provider.

Execution of market trades

R/1500/2009 – Banco Español de Crédito, S.A and R/959/2009 – Caja de Ahorros de Salamanca y Soria

In these cases, the complaints were about the high costs of small trades. The firm was found not to have provided full and detailed information on the effective cost of executing the client's instructions either in their fee schedule and/or their best execution policy or on the occasion of the trades concerned.

In case R/1500/2009, for instance, it was apparent that the amount charged by the US market member (2,902.39 US dollars) who executed trades in *PowerShares DB Crude Oil Double Long ETN* (DXO) were higher than those charged by the custodian itself (514.99 US dollars) and that since it affected the cost of the trade this information was significant to the client's investment decision.

R/416/2009 – Caja Rural Aragonesa y de los Pirineos, S. Coop. De Crédito and R/657/2009 – Self Trade Bank, S.A.

In R/416/2009, the investor had a securities account which he generally used to trade and, based on the verbal agreement which he claimed to have reached with the branch manager, he paid a fee of 0.075% of the effective value for share buying and selling.

However, from documentation submitted and arguments made by the parties it is clear that the firm had wrongly charged higher fees for these trades than those shown in the fee schedule then in force.

In R/657/2009, the client also said there was an agreement with the firm to charge 6.75 euros per contract when trading on the futures market. Normally, he traded online, except when the application went wrong in which case he had to trade by phone.

On this occasion, however, although documents presented to the CNMV did not show that there was an agreement with Self Trade to charge lower fees than those in the schedule, there were elements that corroborated this claim, such as the cost shown in the statements and that the firm generally charged lower fees to clients who traded with a set frequency (between 50 and 300 futures contracts per month), this discounted rate being exactly 6.75 euros per contract.

The CNMV therefore concluded that Self Trade was in the wrong, having failed to adequately show why it had charged the complainant higher fees.

Securities custody and administration

R/1213/2009 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y La Rioja (IberCaja)

This complaint sought the CNMV's ruling on the fee charged by IberCaja for transferring securities to another firm, as well as the fee charged for administration of securities traded on Spanish markets.

Nothing in the case documentation showed that there was anything wrong with the transfer fee. However, the firm was wrong to charge 3.90 euros + VAT for a securities administration fee, while the fee schedule said that these fees would accrue half-yearly or proportionally for the number of months that the securities were in custody if less than a half-year, which did not apply in this case.

R/827/2009 – Deutsche Bank, Sociedad Anónima Española.

The CNMV found that custody and administration fees levied by the firm were too high, as they had wrongly been based on the nominal rather than the effective value of the securities.

Transfer of securities

R/456/2010 and R/655/2010 – Banco de Madrid, S.A.

In both these cases the complainant sought the return of fees for transferring securities deposited at the Banco de Madrid to an account with another firm, on the grounds that there was an agreement with Banco de Madrid to waive such fees.

The complainant could provide no documentation to show that the bank had agreed special terms, including the waiver of transfer fees, and the bank was therefore cleared of any wrongdoing in this respect.

However, analysis of the documents submitted did show that Banco de Madrid had incorrectly charged transfer fees higher than those shown in its fee schedule. The statements of account submitted in evidence revealed that the fee had been based on the effective amount instead of the nominal value as stated in the schedule.

Finally, for information purposes, it should be noted that if the order had been placed via the firm receiving the securities, this firm would have had to provide the above-mentioned information.

Modification of fees and commissions

R/1363/2009 – Citibank España, S.A.

Following an increase in the firm's custody fees, the complainant demanded to transfer his securities to another firm free of charge. Citibank objected to this.

Although the CNMV could not find that the firm did anything wrong in refusing to waive its fees for transferring securities to another firm – regulations in force do not prescribe a free right to leave – it was at fault in two other respects:

- the communication notifying clients of the changes to fees was factually incorrect in stating that these fees had been approved and published by the Bank of Spain, when no filing relating to the modification of fees could be found in either the Bank of Spain or CNMV archives.

- the commercial tariffs for securities transfer were calculated in a different way to that set out in the fee schedule filed with the CNMV. No distinction was made

between Spanish and foreign securities and the fixed rates for each transfer were replaced by a 0.50% levy on the volume transferred, with a minimum charge of 6.00 euros.

R/80/2010 – Caja de Ahorros y Monte de Piedad de Madrid

The complainant claimed that he had been charged fees in violation of an agreement reached as an incentive to acquire certain securities. From the time of the acquisition, every six months he paid custody and administration fees as normal but these were re-credited to his account on request. However, after some time the fees ceased to be returned and even after repeated complaints to the branch, only half of the amount was reimbursed.

In this case, no formal proof was presented of a specific agreement to waive custody and administration fees but the sequence of repeated repayments of the amounts debited by the firm are a clear indication, beyond simple client service, that there was a tacit deal between client and firm that this service would be offered free of charge.

Irrespective of whether the tacit agreement could have been changed at any time, the firm should have informed the client in a specific communication and offered him the chance to take his custom elsewhere with a minimum notice period of two months before the new fees were levied, although the previous fees could be charged. Such notification was not shown to have been sent in this case and for this reason the CNMV found against the firm.

R/227/2010 – Bankinter, S.A.

In this case, it was found that the information notifying the client about the modification of the fee structure was wrong. It gave a 15-day period to end the relationship with the firm rather than the statutory 2 months minimum allowed by regulations.

Exchange rates applied to market trades

R/1309/2009 – Banco de Sabadell, S.A. and R/1572/2009 – Banco de Santander, S.A.

In R1309/2009, the client complained about the exchange rates applied when buying and selling 60,000 shares in Sirus XM Radio on the Nasdaq.

These were 1.271828 US dollars per euro for the buy trade and 1.321608 US dollars for the sell trade, figures that did not tally with the client's rates.

Banco Sabadell claimed that it was free to set the exchange rate it wished and had complied at all times with the policy stated on its website.

Although it is true that firms are free to set the exchange rate they wish for currency trades, when the order is to buy a financial instrument firms must provide their retail clients with various information on a durable medium, including the exchange rate and any other costs applicable to the trade. If the exchange rate could not be given exactly, the firm should explain how it would be calculated.

In this complaint, and in R/1572/2009, the firm failed to show it had provided this information when it processed its client's order. In R/1309/2009, the firm also diverged from real market rates – adding spreads in its favour – and the CNMV therefore found against the firms in both cases.

R/1685/2009 – Open Bank, S.A.

Documents submitted for buy and sell trades in Cell Therapeutics Inc. securities show EUR/USD exchange rates that were different from those actually applied. According to the entity this was because the documents showed the exchange rate for the day that they were printed rather than the day of the trade.

However, irrespective of this fault, the firm accepted its mistake and explained appropriately how it had arisen, which the CNMV acknowledged in its favour.

Information on fees

R/1477/2009 – Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja R/1024/2010 – Banco Santander, S.A.

The complainant objected to the costs of selling preference shares. Having reviewed the fees in question, it was clear that these were within the maximum in the fee schedule registered with the CNMV at the time of the sale. The firm was therefore in compliance with regulations at the time, which left investment service providers free to set the fees or costs charged on any service that is effectively provided, within the limits of the fee schedule.

The firm failed to show, however, that when filling this trade it had specifically provided full and detailed information to the complainant about the actual cost of executing his instructions to sell preference shares.

The other cases related to charging fees when ownership changed after death. Specifically, the complainant objected to paying a fee on the grounds that this was not applicable at the time ownership was transferred, and further claimed that the firm had doubled the fees for this item.

As in the previous case, although it was shown that the firms concerned had applied the fees listed in the fee schedule duly registered with the CNMV, they were found to be at fault for not having adequately informed their client about the fees they were going to charge.

A3.1.6 Portfolio management

R/1564/2009 – Popular Banca Privada, S.A. R/1743/2009 – Banco de Sabadell, S.A. R/2137/2009 – Banco Bilbao Vizcaya Argentaria, S.A. R/1697/2009 – Banco de Madrid, S.A.

In all these cases, entities were found to have applied criteria and constraints that were outside the contracts signed between the parties when managing the clients' assets. Specifically, they had made investments that did not fit the investor profile and constraints shown in the signed contract.

R/1125/2009 – Finanduero Sociedad de Valores, S.A.

The complainant had signed a standard management contract for the firm to provide discretionary individualised management of investment portfolios. The contract stipulated a "conservative" investment profile. On the basis of this, the firm bought a 3-year autocallable structured bond issued by Banesto Financial Products PLC, linked to BBVA and Banco Santander shares and listed on the Dublin Stock Exchange, ISIN XS0355981621.

The bond should have been considered a complex risky product since although it offered a minimum fixed coupon of 6% annually, the coupon was benchmarked to the performance of underlying equities and the product did not guarantee capital at redemption (25 March 2011).

In general, it was wrong that a portfolio managed on behalf of a client who had declared himself to be a conservative investor should have been wholly composed of a product like the 3-year autocallable structured bond issued by Banesto Financial Products.

R/103/2009 – Banco Banif, S.A.

In this case, although in several months equity investments were above the 40% laid down in the portfolio management contract signed by the parties, the overrun was brief (3 months) and this was permitted by the contract.

However, the firm was at fault for failing to report details of the breach in the monthly position statements sent to the client.

Nor could the firm show that it had replied to its client when he contacted it on several occasions to find out about his investments, including one time by registered fax. The firm accepted that it had taken too long to respond to its client.

R/157/2009 – Bankinter, S.A.

In this complaint, a portfolio management contract signed on 7 July 1997 failed to comply with regulations in force. These lay down minimum contents for standard portfolio management contracts:

"a) Detailed description of the general investment criteria agreed between client and provider; b) Specific and detailed list of the different types of transactions and categories of securities or other financial instruments to be managed and of the types of transaction that can be carried out distinguishing at least between equities, fixed income, other spot financial instruments, derivatives, structured and funded products. The client's authorisation must be shown separately for each of these securities, instruments or types of transaction;"

The contract signed by the parties omitted the definition of the model portfolio.

Also, the firm had submitted a copy of two monthly asset management reports which included information on the identity of the securities making up the portfolio, their acquisition price and effective value.

For some bonds issued by Lehman Brothers Treasury Co. BV, the issuer was only clearly identified in one case and the CNMV further felt that in its regular statements the firm should have reported to the client their effective, market or estimated value at the time.

R/331/2009 – Banco Banif, S.A.

This complaint showed a discrepancy between the investor profile as stated in the portfolio management contract between the parties and that resulting from the client's "suitability test".

The firm was found to be at fault for not asking the client to clarify the discrepancy.

R/1949/2009 – Renta 4, Sociedad de Valores, S.A.

On 7 December 2001, the parties had signed a contract for discretionary and individualised management of investment portfolios and verbally agreed to limit losses to 50% of the portfolio. If the 50% threshold was reached the portfolio would be sold off.

The 50% loss was indeed reached and the investment portfolio was therefore sold. But the firm then went on to cancel the contract. There was nothing in the evidence and documentation submitted to suggest that in the verbal agreement selling off the portfolio would directly and explicitly entail cancellation of the contract, and the firm was found to have been at fault in this respect.

Clause 10 of the contract also stated that communications between the two parties had to be in writing. In this case, it was not shown that Renta 4 had notified the client in writing of the contract's cancellation.

R/904/2009 – Banco Banif, S.A.

The complainant, on 3 September 2007, had signed a portfolio management and administration agreement with the firm. This contract was submitted to the CNMV in evidence.

The month after the contract was signed, the parties agreed to amend the contract's risk profile from "*moderate*" to "*balanced*". Effectively, this meant the client was authorising a 60% share of equities in the portfolio.

The firm said it had provided the client with the documentation to formalise the change of profile. However, it was clear that it did not in fact have a signed copy of this document, and was found to be at fault in this respect, since it was unable to demonstrate the change in profile and had therefore breached the limits set by the client for portfolio management.

R/1191/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The complainant had agreed with the firm a standard contract for discretionary individualised management of portfolios of investment funds. This contract stipulated a "*moderate*" investment profile, which meant not investing more than 40% of the capital in equity funds.

A signed copy of the contract was submitted to the CNMV with information on the risk profile (moderate) and the investment horizon (3 years). The copy submitted clearly defines the basic terms under which the firm had to provide the services under the contract. However, it was not shown that the investments selected by the firm conformed to the constraints derived from the client's chosen profile.

A3.1.7 Other subjects

R/471/2009 – Banco Pastor, S.A. R/806/2009 – Banco Espirito Santo, S.A., Sucursal en España. R/818/2009 – Banco Guipuzcoano, S.A.

The firms concerned by this complaint provided no evidence that the complainants had signed the contract for the product bought or that they had given firm instructions to buy it.

R/1094/2009, R/1163/2009 – Banco Santander, S.A.

The complainants had bought a product called *"Producto Financiero Estructurado Multiestrategia Optimal"* and then requested its early cancellation.

On 16 December 2008, the Board of Directors of Optimal Multiadvisors had decided to suspend calculating the NAV of the underlying Optimal Strategic fund as execution of its investments was entrusted to Madoff Securities and this broker had ceased trading after the arrest of its president.

On 26 January 2009, it was decided to suspend calculation of NAV for the other four underlying funds and start the process of mandatory orderly liquidation.

These circumstances – suspension of NAV calculation for the five funds underlying the product and their orderly liquidation – prevented their redemption on the dates envisaged and, as a result, the structured financial product could not be liquidated as there was no way of determining its redemption price.

The CNMV considered that these circumstances were not the fault of Banco Santander which merely marketed the product but that it should have told its client that it could not comply with his instructions, explained why and set out the alternative courses of action that were available to him.

R/141/2009, R/142/2009, R/143/2009, R/144/2009 – Banco de Sabadell, S.A. R/758/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The complainants had bought high-risk structured products whose yield depended on the market performance at preset dates of a number of companies, both Spanish and foreign. The products were bought in the course of an investment advisory relationship.

Under the rules in force, when investment advice is being offered to retail clients, firms must obtain certain information on their client's knowledge and experience, their financial situation and their investment objectives (the so-called "suitability test"), so as to be able to recommend the most appropriate investment services and financial instruments. If the firm has not got this information, it must not recommend investment services or financial instruments to the client or potential client.

Documentation submitted showed that the firm had assessed the appropriateness of the products contracted, having the complainants complete a suitability test. However, the information elicited by this test did not meet the regulatory requirements for a suitability test.

It was also found in the case of the Banco Sabadell complainants that the bank had wrongly included in the purchase document a disclaimer stating that there had been no advice given when contracting the products, a clause that is in clear contradiction with the facts as established by the case.

R/1220/2009 – Banco Santander, S.A.

The complainant had contracted the *"Producto Financiero Estructurado Multiestrategia Optimal"*. Under the terms of the contract he would pay 300,000 euros to Banco Santander up to 31 August 2010, when the product matured, and would then receive a sum depending on the NAVs of a basket of five underlying funds based in Ireland. This product, according to the terms of the contract, had no minimum guaranteed

return and did not guarantee capital at maturity. It was in fact possible to lose the whole investment.

At the same time the client contracted a personal loan of 300,000 euros, at an annual nominal interest rate of 4.6% (AER 4.54%). This loan, according to the contract, was to be invested in the *"Depósito Optimal Multiestrategia"* which was then pledged as collateral and whose redemption date was 20 October 2010.

Regarding the information provided to the client on the characteristics and risks of the product, documentation submitted showed that on 20 March 2007, the complainant had initialled all eight pages of the contract to buy the Multiestrategia Optimal structured product for 300,000 euros. The clauses in this contract were clear and explicit enough to explain the nature, features and risks of the product, with no reference made to Multiestrategia Optimal being a fixed-term deposit.

However, the fact that this purchase was financed by a loan collateralised by a pledge of the product itself effectively meant adding financing risk to the risks specific to the structured product, as well having an impact on the yield.

In these circumstances, Banco Santander's information obligations extended beyond the contract itself. The bank should also have informed its client about the terms and risks of the transaction as a whole, including explaining how the loan increased the risks of the transaction and its impact on the net return on investment.

R/897/2009 – Banco Guipuzcoano, S.A.

The client had agreed several put option contracts and complained about the information he had received from the firm before contracting these.

To assess the suitability of these products, the firm had carried out a test which gave the client's investment profile as "*Dynamic*", defined as investing mainly in products with very low, low and medium risk, with limited losses (around 5% of the investment) acceptable, in exchange for better expected returns.

The CNMV therefore felt that, as regards the sale contract for the put option agreed after this test, the firm should have warned its client that, based on the test results, this was not an appropriate product, being a high-risk product in which the client could lose virtually the whole of his investment.

Similarly, given that some days previously the complainant had signed another contract to sell options which still fell within the period when subscription orders could be cancelled (until 2:00 p.m. on 3 June 2008), Banco Guipuzcoano should also have warned him that this investment too was inappropriate. Based on evidence given by the parties, it was found that Banco Guipuzcoano had failed to give these warnings.

A3.2 Investment funds and other U.C.I.T.S. schemes

A3.2.1 Information to clients

Pre-sale information

R/851/2009, R/1800/2009 – Banco Español de Crédito, S.A. R/1042/2009 – Banco Santander, S.A. R/893/2009; R/1472/2009, R/1248/2010 – Banco Caixa Geral, S.A.

R/921/2009 – Open Bank, S.A. R/1055/2009 – Caja de Ahorros y Monte de Piedad de Madrid. R/850/2010 – Banco de Sabadell, S.A. R/564/2009 – Banco Banif, S.A.

In none of these cases was it proved that the firm had complied with the informational requirements of investment fund regulations; particularly the prior delivery of a copy of the simplified prospectus and latest semiannual report and accounts or, at the client's request, the full prospectus and latest quarterly statements, detailing all the investor needs to know to arrive at an informed decision.

R/1939/2009 – Caixa d´Estalvis de Catalunya

The complainant, a company, had placed 103,000 euros in the investment fund Caixa Catalunya Diner Plus, FI on 4 June 2008.

It alleged in its written complaint that the above fund had been redeemed in July 2008 and the proceeds applied to the taking out of a structured deposit, in both cases without the consent of the company's legal or authorised representative.

Caixa Catalunya claimed that the money had been shifted out of the investment fund into the product *DEPÓSITO DÓLAR JUNIO* 2008 on 10 July 2008, after a telephone conversation between the branch manager, the entity's business manager and the General Manager of the complainant company, during which the transaction was verbally agreed on.

While it is hard to understand how an investment transfer of this size (103,000 euros) could go unnoticed for nine months (the time lapsing until the complaint was presented), the submissions made by the respondent entity included neither the signed redemption order nor the purchase document for the structured deposit, i.e., it offered no evidence for the verbal agreement it claimed to have made with the complainant.

R/961/2008, R/1583/2009 – Banco Santander, S.A.

In the first case, on 28 February 2003, the complainant had subscribed units in the guaranteed fund Superselección, FI, whose guarantee date was 28 September 2006.

An earnings protection contract is a supplementary instrument to investment fund subscriptions whereby the firm undertakes, in exchange for a premium, to guarantee a particular NAV on a determined future date, in accordance with the agreed terms. However, if the fund's NAV is higher than the assured amount when that date arrives, the contract loses all value since the target NAV has been reached unassisted.

The bank furnished a copy of the earnings protection contract signed with the complainant on 16 March 2004. Briefly, it guaranteed that on 28 September 2006 the value of each of his units plus the contract would come to at least 112.15 euros in exchange for a premium of 2.71 euros. Under its terms, the total amount of the premium would be calculated by multiplying its unit price by the number of options taken out and payable on the date of the contract's execution, 16 April 2004. The contract furnished by the bank had evident formal deficiencies including the omission of contractually important data like the number of options taken out and the total amount of the premium.

Also, the earnings protection contract stated that the premium would be payable on the contract's execution date. However from the documentation furnished and the parties' declarations it appeared that payment had been made on 28 September

2006, after the fund guarantee had expired. Specifically, the complainant's account showed a 5,089.35 euro charge labelled *Tarjeta Cred Manzanos Fernand,* which appears to refer to a credit card rather than a premium payment.

The complainant was also unhappy about having to arrange a loan to pay the premium of the earnings protection contract corresponding to the fund Super 100 2, FI. The earnings protection loan agreement dated 7 June 2005 also had a series of formal defects, again including contractually important data like the loan's repayment date. Banco Santander gave no explanation as to why this information was missing from the contract or why it had demanded payment of the loan and the accrued interest six months after Super 100 2, FI was redeemed in its entirety.

As to the date when the loan was paid into the complainant's account, it is inexplicable that the corresponding credit was on 16 May 2005 before the loan agreement had even been signed. Banco Santander offered no explanation on this point.

Pre-sale information regarding foreign schemes

R/1081/2009, R/1410/2009, R/1493/2009, R/2152/2009 – Banco Inversis, S.A. R/299/2009 – Cajamar Caja Rural, Sociedad Cooperativa de Crédito

In none of these cases was it proved that the entity had complied with the informational requirements imposed by the regulations governing foreign investment funds; particularly the prior delivery of a copy of the simplified prospectus and latest financial statement, translated into Spanish, setting out all the investor needs to know to reach an informed decision.

Such delivery is mandatory and cannot be waived by the share or unitholder.

R/453/2009, R/568/2009, R/1561/2009 – Barclays Bank, S.A.

The complainants held units in unauthorised schemes which were not registered with the CNMV. As such, they could not be legally marketed in Spain though there was nothing to stop clients subscribing for them directly without the bank's commercial intervention.

Even so, the complainants contended that the bank had failed in its information obligations. And indeed it could not be established from a review of the submissions that the entity had provided its clients with any information regarding the characteristics and risks of the units and/or shares acquired.

R/2154/2009 – Banque Privee Edmond de Rothschild Europe, Sucursal en España

The complainant held units in the investment fund LCF Edmond de Rothschild Prifund Alpha Uncorrelated Eur-A, a foreign scheme which was not registered with the CNMV for marketing in Spain and was accordingly not obliged to notify the regulator of changes to its prospectus.

The client was demanding the refund of a 3% redemption fee, since up till then he had been paying 0.5% on each redemption made, and had received no notice of the increase prior to his final sale.

The respondent entity claimed that it had in fact informed the complainant of the change in redemption fees in a letter of 3 December 2008, which it enclosed in its submissions.

The redemption order had been executed on 30 November 2008 and the bank's communication was dated 3 December 2008. It was obvious, therefore, that the complainant had not been advised of the increase before his order went through.

R/2143/2009 – Banco Inversis, S.A.

On 13 March 2007, the complainant invested 100,000 euros in the unauthorised scheme Fairfield Sigma LTD, which was not registered with the CNMV for marketing in Spain.

The above fund was of a type known as *"alternative management"* or more commonly *"hedge fund"*, which enjoy considerably more freedom in pursuing their investment policies and are also less bound by regulatory requirements on disclosure and liquidity. Hence their designation as a risky product.

Under the regulations applicable when the fund was taken out, the provider should have ascertained the client's financial situation and investment experience and objectives before moving to a sale, to ensure that the product's characteristics were aligned with his expectations.

The documentation submitted offered no proof that Inversis had gathered sufficient information on the client to judge whether the product matched his risk profile and, if not, warn him of the risks involved.

Further, when apprised of an unfortunate event, like the Bernard Madoff fraud, with potential to undermine their clients' interests, providers charged with the custody and administration of their assets have a duty to contact them as soon as possible, setting out all the circumstances that might affect their investments.

There was no evidence from the parties' submissions that clients had been immediately alerted in this case, or that the notices sent out by Fairfield Sigma LTD had been delivered to them before February 2009 when the first complaints were made.

R/1561/2009 – Barclays Bank, S.A.

The complainant had invested in the unauthorised scheme Fairfield Sigma LTD, which was not registered with the CNMV for marketing in Spain.

Under current legislation, clients entering into a provision of investment services agreement valid for an indefinite period or more than one year must have statements sent to their home address setting out the value of their investments on at least an annual basis, or quarterly in the event of some intervening movement.

The only statements included in the case file were dated 30 June and 31 August 2007. From a review of their content it transpired that the disputed investment appeared in the first statement under the *"FIXED INCOME"* heading and in the second under *"EQUITY"*, which indicated a lack of care on the entity's part.

R/453/2009 – Barclays Bank, S.A.

The complainant had invested in the unauthorised scheme Fairfield Sigma LTD, which was not registered with the CNMV for marketing in Spain.

Subscription confirmations and securities account statements should have included the name of the collective investment scheme while entering it correctly under the corresponding fund category, if provided, since this would have helped the client to understand the nature of his investment.

Also the value of the securities as shown in periodic statements tended to be static and unrealistic, and would have been better represented by, e.g., net asset value.

Regarding the statement submitted with the date 28 February 2009, the fact that the investment may have been worth zero euros did not justify excluding it from the list of the complainant's assets.

Pre-sale information on hedge funds

R/564/2009 – Banco Banif, S.A.

The funds complained about were collective investment schemes investing in hedge funds, otherwise known as *"funds of hedge funds"*, which the applicable regulations demand be treated as complex products.

To test their appropriateness, a provider must gather information on the client's knowledge and experience in the investment field the product or service belongs to, and warn him if it concludes on this basis that he might not wish to bear the investment risk.

From the entity's submissions and the content of the transfer order instrumenting the subscription it appeared that Banif had neglected to make this assessment.

R/21/2010 – Banco Banif, S.A.

The complainant had taken out the product designated Banif Fairfield Impala, IICIICIL, a fund investing in the products known as *"alternative management"* or more commonly *"hedge funds"*, which enjoy considerably more freedom in pursuing their investment policies and are also less bound by regulatory requirements on disclosure and liquidity.

As the client was a retail investor, the firm should have carried out a pre-sale appropriateness test to gauge whether the service or product was right for her needs, gathering all pertinent information on her knowledge and experience in the relevant investment field.

As it transpired, she had signed a document titled "suitability test" inquiring into her financial situation and investment experience and goals. The results of this test classified her in the "conservative" bracket – at odds with the risk profile of the investment fund.

The case file also included the written material that the entity had delivered to clients before selling them the fund units.

This communication stressed the product's advantages, glossed over its risks, and made no reference to its atypical nature, which in fact had caused the authorities to restrict its marketing to retail clients and even to demand that prospective investors sign a statement saying that they understand and accept its characteristics.

R/423/2009 – UBS Bank, S.A.

The complainant had invested in the fund of hedge funds UBS (ES) Alpha Select Hedge Fund IICIICIL whose investment policy was to purchase hedge funds, principally of foreign origin.

The regulations governing this type of fund stipulate that prospective investors must declare in writing that they understand the risks inherent to the investment.

This written statement must be separate from the subscription order, but signed at the same time, and the investor must be given a signed copy.

Neither the case documentation nor declarations contained proof that the complainant had signed any form at the time of subscription advising him of the risks carried by fund of hedge fund investment.

R/537/2009 – Banco Popular Español, S.A.

All purchases of investment fund units must be detailed in a subscription order confirming the investor's intention to acquire the units of a named fund whose characteristics are set out in the corresponding prospectus. This prospectus, furthermore, should be delivered to the investor without charge before he subscribes.

In this case, the complainant had signed an investment fund transaction order for the subscription of units in Eurovalor Gestión Alternativa, FI in which the signatories acknowledged receipt of the prospectus and quarterly statement.

However, the complainant furnished a promotional communication from the bank describing the conditions and operation of the abovementioned fund. On analysis this document was found to have a series of deficiencies which could mislead the investor as to the fund's operation and the risks involved.

R/523/2009 – Fortis Bank, S.A., Sucursal en España

The complainant held units in Laredo Fund Class I, a hedge fund.

The periodic statements he submitted showed a price or net asset value for the fund that did not correspond to the price or NAV on the stated date. In the case of the monthly statement dated 30 September 2008, the price or NAV was 1,480.04 euros, but an email message listing the fund's NAVs showed that this value in fact corresponded to the month of August 2008 (1,478.04 euros).

The entity declared that periodic statements reflected the latest NAV available at the time, so the monthly statement for 30 September 2008 would show a price corresponding to the end of August.

The bank, we concluded, should have made it plain in the statements sent to clients that the price or NAV shown was the latest published NAV.

Advised sales

R/1364/2009 – Banco Santander, S.A. R/326/2009 – Banco Español de Crédito, S.A.

The complainants had taken out investment funds in the frame of an investment advisory relationship.

Under applicable regulations, when a firm renders investment advisory services to retail clients it must gather certain kinds of information on their knowledge and experience, financial situation and investment objectives (the so-called *"suitability test"*), so it can offer them solutions that are right for their needs. Without this information it may not recommend investment services or financial instruments.

The respondent banks could provide no evidence or indication of having carried out this assessment before urging financial instruments on their clients, in this case investment funds.

Information during the investment

R/1708/2009 – Banco Español de Crédito, S.A.

The complainant had written to the bank on several occasions enquiring about the status of his investment fund holdings. However from the submissions made there was no evidence that it had answered these requests.

R/97/2009, R/98/2009, R/105/2009 – Banco Inversis, S.A.

The complainants were unhappy about the redemption fee charged in respect of a switch between investment funds, since they had not been informed about this fee when it was first introduced.

Regardless of whether this modification to the delivering fund prospectus was notified to the CNMV, the bank was still obliged under investment service regulations to advise its clients sufficiently in advance of major changes to their fund conditions, in this case fees and expenses. The entity was accordingly judged to be at fault in not informing its clients about a new redemption fee.

R/1593/2009 – Banco Santander, S.A.

The complainant had acquired units in the fund BCH Rentas 1 M, FI on 9 August 2000. Since then the investment had been renewed over successive guarantee periods and under a series of different fund names. According to the subscription form itself and the securities account statement dated 14 August 2000, the fund was designated as shown above. Yet on 7 July 2000, Banco Santander had filed a significant event notice with the CNMV communicating a change of name from BCH Rentas 1 M to BCH Rentas 2M, FI. The fund BCH Rentas 1M subsequently expired on 11 August 2000.

We concluded that the provider has misinformed its client at the time of making his investment, in that the name figuring on the subscription form referred to a fund expiring in two days' time.

Further, on 26 March 2009 the client ordered the redemption of all his units in the said fund, by then denominated Santander Ahorro Rentas 3, FI. The bank informed him that the resulting capital gain had to be calculated on the basis of all his past transactions in fund units – in this case, each of the quarterly payments which the investor received as income had been instrumented as redemptions.

The information supplied by the respondent entity was evidently lacking in clarity, as was its explanation of the calculation basis for the withholding tax applied to the redemption practised on 26 March 2009.

R/953/2010 – Caja de Ahorros de Galicia

The complainant had subscribed units in the investment funds Caixa Galicia Renta Creciente 3, FI and Caixa Galicia Renta Creciente, FI, guaranteed funds whose guarantee expired early.

The respondent entity claimed that it was under no obligation to advise investors of this circumstance (the early expiry of the guarantee) when it was envisaged in the fund prospectus. The CNMV did not share this view on the grounds that investment service providers must keep their clients diligently informed about all matters pertaining to their investments.

Although the simplified prospectus of both funds explained the possibility of early redemption, with details of the triggers, the proper route for Caixa Galicia would have been to advise clients that these triggers had been reached.

R/129/2009 – Banco Inversis, S.A.

The complainant had acquired shares in the US Opportunities FD compartment of the foreign scheme denominated ABN Amro Funds.

On 30 October 2008, representatives of ABN Amro Funds sent the CNMV a notice addressed to shareholders of this scheme to the effect that the boards of directors of Fortis L Fund and ABN Amro Funds had agreed to merge the two schemes parallel to ABN Amro Asset Management's integration within Fortis Investment.

As a result, the complainant became a shareholder in the compartment called LF Opportunities USA P (ISIN LU0377127104).

Distributing entities should have communicated the merger and its main conditions as part of their disclosure obligations with clients, given the essential nature of the change. However the respondent in this case was unable to substantiate having advised the client beforehand.

Further, in the case of foreign schemes, distributors are legally obliged to operate an electronic system listing the NAVs of the units and shares they are currently marketing in Spain. Inversis fulfilled this requirement via a website section offering a valuation of clients' portfolios.

The respondent entity acknowledged an error in the information supplied to its client in that his investment in the acquired fund was denominated in euros and that in the acquiring fund in US dollars, and it had failed to update the exchange rate when the merger took place.

R/1215/2009 – Barclays Bank, S.A.

The complainant became a unitholder in Barclays UK Alpha Fund (absorbing fund) as a result of its merger with Barclays United Kingdom Equity (absorbed fund).

He claimed that despite countless verbal enquiries and four written requests for information about the merger of the above funds, the entity did not reply until one year after the event and had since offered no explanation for its tardiness.

The bank had failed in its responsibilities to keep its client duly informed and, moreover, was unable to provide any evidence or indication of having attended to his many enquiries in the wake of the aforementioned merger.

R/609/2009 – Banco Santander, S.A.

The complainants had applied to the bank for information about the make-up of their investment fund portfolio.

Management companies must publish and keep updated a full prospectus, a simplified prospectus and annual, semiannual and quarterly reports and accounts for each fund they manage. These documents must be available for consultation by shareholders, unitholders and the public at large, so they can be informed of the circumstances that may influence the funds' value and prospects, with particular regard to its inherent risks and regulatory compliance.

The complainants should have been delivered the above documents in response to their enquiries. In any case, the entity was unable to substantiate having informed its clients about the assets making up their fund portfolio.

R/1604/2009 – Banco Inversis, S.A.

The complainant had redeemed a total of 166,814.76 euros from the fund ING L Renta Fund Euro P, FI on 19 August 2008 and gone on to transfer the proceeds to another scheme.

On 19 September 2008, Banco Inversis annulled the credit entry of 166,814.76 euros and simultaneously credited the amount of 164,738.45 euros with value date 21 August 2008. Due to this settlement adjustment the complainant was for a time overdrawn in her account, incurring a series of interest expenses.

The complainant was given no reason as to why the redeemed amount had been readjusted until its Customer Service Department explained the case in reply to her complaint dated 18 February 2009.

It was decided that Banco Inversis had been excessively vague in its communications with the client and had failed to clarify the cause of the above movements in her account.

R/817/2009 – Gesmadrid, S.A., S.G.I.I.C.

The complainant had invested in Caja Madrid Evolución VaR 20, FI, affected by the Bernard Madoff investment fraud.

The entity had misinformed its client about the percentage of the fund's holdings compromised by the above fraud and was also vague in its communications about the nature and origin of the exposure, making no reference to the common criterion for fund managers established by the CNMV or to the possibility of seeking legal redress either through Gesmadrid or as an individual unitholder.

R/854/2009 – BNP Paribas Investment Partners, S.G.I.I.C., S.A.

The complainant had invested in a fund denominated BNP Paribas Cash Plus, FI and claimed that the company had failed to provide him with a copy of a redemption statement. He had sought details of the transaction via registered fax without receiving a reply.

Although a copy of the registered fax was not included in the file, the mere mention of this fact in the complainant's submission showed he had made a clear request for information. BNP declined to comment on this point or to provide evidence that it had dealt with the complainant's petition, and was therefore judged to be at fault.

R/628/2009 – Axa Ibercapital, Agencia de Valores, S.A.

It was found that the statements the firm was sending out through a commercial representative, as attached to the case file, contained misleading information on the value of the complainant's invetments.

A3.2.2 Subscription and redemption of units and shares

Procedural deficiencies

R/1402/2009, R/1042/2009 – Banco Santander, S.A.

The complainant held units in the real estate fund Santander Banif Inmobiliario, FII, though she claimed not to have authorised the investment.

The subscription contract was signed only by the complainant's husband although the two appears as joint holders of the investment. We understand that Banco Santander was in error on this point for not observing the formalities of the subscription process, which would have required both parties to sign the subscription order.

In the other case, the bank placed an order on the complainant's behalf on 18 January 2008 subscribing for an investment fund designated *Monetario Fondtesoro*.

Banco Santander stated in its submissions that the fund units acquired were those of Santander Bonos Fondtesoro Renta, FI, a long-term fixed income fund, therefore in a different category from a money market fund. It was decided that the order had been wrongly filled out, misstating the name of the fund in a way likely to mislead the client and third parties and omitting any mention of its real category, as defined by its investment policy and management objectives.

R/1259/2009 – Caja de Ahorros y Monte de Piedad de Madrid. S.A.

The respondent entity was unable to produce investment fund subscription/redemption orders signed by the clients, so we assume a fault on its part either in the purchase/sale of fund units or in the process of filing and conserving order records.

R/819/2010 – ING Direct, N.V., Sucursal en España

The complainant had received an integrated monthly statement for the months of April and May 2008. On analysis it was found that the number of units in the fund Fondo Naranja IBEX-35, FI reflected in this document was not the number actually held by the complainant on those dates.

The entity was deemed to have acted incorrectly in that the information shown in the attached monthly statement did not meet the mandatory standards of clarity, relevance and reliability.

R/579/2009 – ING Direct, N.V., Sucursal en España

The firm admitted an error in the closing balance of investment fund units appearing in its client's statement, though not until his complaint had reached the CNMV.

As far as incident management is concerned, it would have been better practice for the entity to have acknowledged its error in the first instance without waiting for the client to place a complaint.

R/2119/2009 – Caja de Ahorros y Monte de Piedad de Madrid

The complainant alleged after redeeming his investment in Platinum Renta Fija 2011, FI that the terms agreed prior to his first subscription had not been respected.

Among the case file submissions was a letter dated 11 May 2004 that Caja Madrid had sent the complainant, including the following information: *"Guaranteed annual return 3.5%"*.

However a study of the fund prospectus revealed no such guarantee. The entity was clearly at fault, since investment service providers are obliged to supply accurate information to their clients.

R/696/2009 – Altae Banco, S.A. R/1249/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The entities in these cases were unable to provide evidence of meeting their informational requirements under investment fund regulations; in particular, the pre-sale delivery of copies of the simplified prospectus and the latest semiannual report and accounts plus, when so requested, the full prospectus and latest quarterly statement, setting out all the necessary information for the investor to reach an informed decision.

R/1888/2009 – Caja de Ahorros de Castilla-La Mancha

The complainant contended that fund units co-owned with two other persons had been redeemed without his knowledge or permission. On his assertion, the redeemed amounts had been diverted to accounts where he did not appear among the holders, depriving him of his share (33.33%) of the investment in CCM Doble Gestión Garantizado, FI.

It was found that on 18 January 2008, the three had signed an order to redeem all their units in CCM Doble Gestión Garantizado, FI. The complainant, however, did not receive his part because previously, on 5 November 2007, the conditions of the associated account had been changed leaving his two co-investors as the sole holders.

Regarding this change in the associated current account, the respondent entity admitted that the procedure had not been properly documented, given that it was unable to produce any record substantiating the desire of the three co-investors to alter the terms of their account.

R/972/2009 – Caja de Ahorros de Galicia

The complainant had subscribed units in an investment fund on 13 August 1993. He issued the order on behalf of his granddaughter, the beneficial owner, and the entity recorded the name of the grandfather as the legal representative of a minor.

The problem was that the complainant's relationship with the owner of the units did not give him powers of legal representation, since that authority was vested with the parents. This mistake came to light in the course of processing a redemption order.

Further to its duties of care and diligence, the entity should have procured all necessary information and documentation to establish the legal representation of the fund's owner, at that time below legal age.

R/885/2010 – Deutsche Bank, S.A.E.

The complaint centred on Deutsche Bank's actions in taking out a fund denominated DWS Fondo Depósito Plus, FI without the complainant's knowledge or consent.

Fund subscriptions must be detailed in an order expressing the investor's desire to acquire a particular product. And in this respect Deutsche Bank had failed in its duties of diligence in ordering a fund subscription without permission from its client.

The entity alleged that the acquisition had been made at the client's request relying on his verbal consent, but could produce no evidence to back its assertion.

R/2060/2009 – Caixa d´Estalvis de Catalunya

The complainant related that on 12 April 2006 a movement appeared in his current account with the entity – a withdrawal of 90,000 euros which was used to subscribe for an investment fund. The client contended that he had placed no such purchase order and had signed no contract in respect of the aforementioned investment product.

The entity submitted that this was demonstrably a common practice with this client based on the mutual knowledge and trust existing between them.

This was taken to be an admission on the entity's part that it had subscribed for the fund on his behalf without his permission or intervention, the action motivating the complaint.

Change of distributor

R/362/2009 – ING Belgium, S.A., Sucursal en España R/783/2009 – Banco Inversis, S.A.

The entities ING Belgium, S.A. and Inversis had reached an agreement to transfer the former's distribution business to the latter as of 9 May 2008. This change affected the shares held by the complainant in Emerging Europe (class X), a compartment of the Luxembourg SICAV ING (L) Invest.

A change of distributor is something on which investors have no say. They must, however, be advised of the operation in due time and form and offered suitable alternatives.

Also, the change of distributor of the above compartment put shareholders to some inconvenience, since they had to sign new contracts introducing new terms and fee conditions, the use of new transactional platforms, etc.

The communication that Inversis sent the complainants contained some misleading affirmations; saying, for instance, that the change *"will in no way affect your way of transacting and will only have advantages for you".*

It was also found that from 9 May 2008, the date initially envisaged for clients to begin dealing with Inversis, to 19 May 2008, when it advised them that they could effectively do so, they were left in a transactional and procedural limbo, faced with restrictions for which they were in no way responsible.

Redemption conditions

R/2008/2009 – Barclays Bank, S.A.

On 12 May 2009, the complainants ordered the redemption of units held in the sub-fund Fidelity Germany Fund (compartment 35 of the Luxembourg SICAV Fidelity

Funds). However the proceeds did not show up in the associated account until 21 May, according to the cash settlement statement included in the case file. Their complaint, as such, turned on the delay in settling and depositing the redeemed amount.

The Fidelity Funds prospectus states in this respect: *"Settlement will normally be made by electronic bank transfer. After receipt of written instructions, payment will normally be made in one of the principal dealing currencies of the relevant class of shares within three business days for cash sub-funds and five business days for remaining sub-funds".*

The Fidelity Germany Fund was defined in the prospectus as an equity fund, such that the settlement period should have been five business days from the order's entry date. The entity was accordingly deemed to have delayed payment inadmissibly.

R/799/2009 – Axa Ibercapital, Agencia de Valores, S.A.

The complainant had invested in a series of foreign investment funds and complained about the time taken between placing the redemption order with the respondent firm and receiving the proceeds in his account.

On analysing the entity's handling of redemption orders on foreign investment funds, two instances were found of unjustified delays.

The CNMV concluded that there were no objective reasons for delays of this kind, when the fund's prospectus and marketing memorandum stipulated a maximum of 4 days for the completion of orders.

R/1597/2009, R/1598/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The complainant held a power of attorney authorising him to dispose of the investment funds and associated account of a third party held with the respondent entity.

Pursuant to this power, he ordered the redemption of the fund BBVA Triple Óptimo, FI. The bank, however, turned down the instruction alleging that *"at the time the branch received the sell order, it could not find the power of attorney in its records".*

The mislaying of the document authorising the complainant to transact in the said fund showed a laxity on BBVA's part with regard to its record-keeping obligations.

R/1955/2009 – Citibank España, S.A.

The entity, it was found, had failed to keep the complainant properly informed about the conditions applying to investment fund redemptions with particular regard to the settlement period.

On 30 April 2009, the complainant instructed the bank to redeem his units in Fidelity Iberia Fund E. The order was placed at 13:46:02 this same day.

On 7 July 2009, the bank sent a written communication to the complainant's home informing him that this order had entered after the cut-off time established by the fund, which was why it appeared with the issue date of 4 May 2009.

However, the cut-off time in the fund prospectus (18:00, Central European time) did not coincide with that quoted by Citibank (14:00).

Net asset value

R/867/2010 – Banco Inversis, S.A.

The complainants were unhappy about the net asset value the entity had applied in the redemption of foreign schemes.

According to the fund prospectuses, applicable NAV was that of the valuation day following receipt of the redemption order (D+1), provided such receipt was before the established cut-off time. The orders had been placed earlier so the valuation applied should have been D+1.

However NAV calculations, according to the payments received by the complainants, did not coincide with the terms of the fund prospectuses. The CNMV accordingly concluded that there had been an error in the settlements.

R/616/2010 – UnoE Bank, S.A.

The complainant had ordered a redemption from the fund Credit Suisse EQ. Global Biotech-B. Before he redeemed his units, they were valued on the entity's website at 94,904.8 euros, yet the redeemed amount came to only 69,703.7 euros.

In its report, the CNMV reasoned that investment service providers have a duty to organise and control their various channels in a responsible manner, deploying all resources necessary to conduct their business efficiently. So when offering clients the possibility of transacting online, they must be able to guarantee the effective performance of this service and also that the data and information supplied meet the required standards of clarity, precision and relevance. In this case, UNO-E was responsible for all the information given to clients about the funds invested in.

From the documents submitted, it was plain that when the client entered instructions on the UNO-E website on 29 June 2009 to redeem his investment in Credit Suisse EQ. Global Biotech-B, he was informed that his 1,552 units had a redemption value of 94,904.80 euros. In effect, the fund data were posted in euros but the amounts corresponded to US dollars, the currency of the fund. This same error was identified in statements sent out by UNO-E, specifically the securities account statements dated 14 January 2009, 20 April 2009 and 8 May 2009.

R/985/2010 – Banco Español de Crédito, S.A.

On 26 November 2009, the complainant issued a redemption order on the fund Santander Brict, FI. He declared that on receiving his order, Banesto confirmed by phone that it would go through that same day, i.e., 26 November, despite it being a public holiday in the United States.

In the copy of the redemption confirmation message contained in the case file, the redemption date reported was 26 November 2009. And in the same message, Banesto communicated that the NAV applied would be that of the redemption date.

However, the NAV applied was actually that of the next business day, 27 November 2009, in accordance with the fund prospectus. In effect, the prospectus stated that days when there was no market for assets representing more than 5% of the fund's assets would not be accounted business days. The fund portfolio at that time was over 17% invested in U.S. securities and 26 November was a public holiday in the U.S.

It was found that the respondent entity had misinformed its client regarding the NAV applicable to the redemption ordered.

Special redemption situations

R/672/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The complainant was invested in Foncaixa Privada Estrategia Hedge, IICIICIL and on 5 November 2008 had ordered the internal switch of his investment to Foncaixa Privada Dinerplus, FI.

Fund manager Invercaixa wrote to him on 22 December 2008 saying that the tensions on financial markets over recent months had triggered an international liquidity crisis that had hit especially hard the hedge funds market to which Foncaixa Privada Estrategia Hedge, IICIICIL belonged.

For this reason, the management company had decided to initiate a *"transparent, orderly and simultaneous redemption"* process extending to all unitholders for the entirety of their fund holdings. The same notice stated that the redemption period was being extended to 14:00 on 30 January 2009.

The client's order was affected by this process, as evidenced by the fact that it had been partially filled as part of a "prorated" liquidation among all unitholders based on the amount of their investment. All this was stated in the letter sent by the manager.

But while admitting that the above disclosures were in order, the CNMV also heard that the complainant had on several occasions contacted the entity for more detailed information, without success, an assertion which the said entity was unable to refute.

R/1452/2009 – Caja de Arquitectos, S.Coop. de Crédito

The complainant was unclear about the application of a notice period for redemption orders exceeding 300,506.05 euros in the fund Arquiuno, FI.

The rules are that prospectuses must be updated on any change in the core elements of a fund's operation. According to the CNMV's records, on 8 June 2005 the prospectus corresponding to Arquiuno, FI had been modified to the effect that *"the management company will require ten days' notice for redemptions exceeding 300,506.05 euros."*

It is good practice for entities to advise unitholders wherever possible of the applicable redemption conditions (latest NAV, result of the investment, redemption fees, ...) before processing the order, which, according to the complainant, his provider failed to do. Especially in cases like this of a newly imposed requirement.

The entity was remiss in not informing the investor of the ten days' notice period before placing his redemption order.

A3.2.3 Switches between collective investment schemes

Formal deficiencies. Errors

R/968/2008 – Caja de Ahorros y Pensiones de Barcelona (La Caixa) and Banco Santander, S.A.

The complainant had ordered a switch out of FonCaixa Bolsa Euro 170, FI into Santander Monetario, Fia on 4 July 2008, and was unhappy about the delay in its execution.

Banco Santander affirmed that Invercaixa had rejected its switch request on the grounds that the unitholders account code figuring in the 4 July order was incorrect. In the bank's view, rejecting a switch due to an error of this sort was contrary to the protocol for investment fund switches.

However, according to the rejection slip furnished by Invercaixa, the reason was in fact a "code 18" meaning that *"the account holders own no units or shares in the stated scheme".*

This assertion did not hold water since the unitholder and investment fund data appearing on the form contained no such error. La Caixa was accordingly deemed to have acted incorrectly in turning down the switch request dated 4 July 2008.

The second and final switch request did not go through until three months after this failed attempt. In our view, the time elapsing until the second order was longer than it would reasonably take to correct the error causing the original rejection, making Banco Santander responsible for the delay.

R/52/2009 – BBVA Asset Management, S.A., S.G.I.I.C.

The complainant had asked for his units in the US Dollar Bond Fund compartment of the Luxembourg SICAV Fidelity Funds, distributed by Cortal Consors, to be transferred to BBVA Bolsa Europa, FI. The switch was ordered through the BBVA branch where he was a client.

The entity had entered the request through the SNCE (National Electronic Clearing System), stating the distributor's name as Consors España, Sociedad de Valores. However, Consors España had ceased trading as a brokerage house in April 2005.

Although a second, corrected order was directed to Banco Inversis, it was again rejected on the grounds that the distributor was wrongly identified.

It was not until the third attempt that the order was entered correctly and filled as directed.

R/155/2009 – Open Bank Santander Consumer, S.A.

On 7 May 2008, the complainant ordered an internal fund switch by phone from BK Dividendo, FI into Santander Brict, FI. He was also shown to have issued further instructions in the same conversation requesting an external switch between delivering fund Bestinver Bolsa, FI and receiving fund Fondo Depósitos Plus, FI.

In its submissions, the respondent admitted that, due to an error, it had been unable to fill the switch orders placed by phone on 7 May 2008. Although the internal switch eventually went through on 29 July 2008, not so the external order.

The regulations governing collective investment schemes do not stipulate a set validity for switch requests. On finding itself unable to process the order, the entity should have sought new instructions from the client as to whether or not he wished to go ahead with the transaction. Its failure to do so was considered a fault.

R/880/2010 – Gesconsult, S.A., S.G.I.I.C.

On 3 July 2009, Gesconsult received instructions from the complainant to switch out of Gesconsult Tesorería, FI into Carmignac Patrimoine.

The entity rejected his request on the grounds that a block had been placed on the delivering fund units pending the receipt of a certificate of ownership from the fund distributor, Inversis.

The complainant confirmed in his submissions that he had indeed asked Inversis for this certificate in 2009, but failed to understand the problem with his switch, since what he had requested was a certificate of his *position* on a given date rather than a certificate of *ownership*.

Not all certificates have the same scope or legal force. In this case, the differences between the two types of certificate were clearly established in the applicable regulations, along with their content and effects. Only certificates of ownership could entail the blocking of the investor's securities, so in this case there was no reason for the switch not to be processed as normal.

R/727/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

On 13 August 2008, the complainant issued instructions through Popular Banca Privada to switch his investment out of a fund managed by Invercaixa Gestión, S.G.I.I.C., S.A., into one marketed by Popular Banca Privada.

The respondent entity admitted in its submissions that the proceeds of the redemption from the delivering fund had been invested in a receiving fund which was not the one stated in the complainant's switch request. This admission, however, was not made when the client brought the matter up with its Customer Service Department but only when the complaint reached the CNMV.

R/1686/2009 – UnoE Bank, S.A.

The complainant informed that the switch he ordered from the fund SISF Euro Liquidity-B ACC, FI, deposited in UnoE Bank, into Banif Global 3-98, FI, had never gone through.

The bank said it was unable to fulfill his instructions because Banif switch requests were handled by BBVA not UnoE, and BBVA had rejected them since the originators did not figure in its database as holding units in SISF Euro Liquidity-B ACC. The CNMV considered, however, that knowing of this problem it should have reported it back to the complainant.

R/545/2009 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

On 18 June 2008, the complainant entered a switch request in respect of funds acquired through Caja Rural de Toledo, with La Caixa as the receiving fund distributor.

Both parties submitted an account statement issued by Caja Rural de Toledo at 12:49 on 17 June 2008, in which the unitholder account code appeared as "*0232*", corresponding to Banco Inversis, S.A.

While investors cannot be expected to know the meaning of such codes, investment service providers certainly can. From the account statement, or simply from the unitholder account code figuring on the instructions, La Caixa should have known that the entity referred to was Banco Inversis and not Caja Rural de Toledo.

R/1358/2009 – BNP Paribas Asset Management, S.A., S.G.I.I.C.

On 28 July 2008, the complainant issued instructions to Caixa Galicia (manager/distributor of the receiving fund) specifying a switch out of BNP Bolsa Española, FI into Caixa Galicia Euribor Garantizado, FI. The order, however, failed to materialise.

The complainant submitted that BNP Paribas had not contacted him after this date to solve the difficulties that had stopped the order going through.

In its defence, BNP contended that the switch request from Caixa Galicia had been rejected on the day it was received (29 July) because the national identity number did not coincide with the manager's records (this detail was in fact missing). The reason, apparently, was that at the time of subscribing the fund BNP Paribas Bolsa Española, FI, the owner was below legal age so had no national identity number.

It was considered that Caixa Galicia, as forwarder of the switch instructions, should have got back to the complainant explaining why his order of 28 July 2008 could not be processed.

R/29/2009 – Bankinter, S.A. and Banco Inversis, S.A.

The complainant had switched his investment from a scheme distributed by Bankinter to the fund Renta 4 Eurocash, FI, managed by Renta 4 Gestora, S.G.I.I.C. and distributed by Inversis, and was unhappy about the acquisition cost of the delivering fund units.

In effect the acquisition cost of the switched units had been misstated by Bankinter, which admitted its error. But it was clear also that Inversis, as distributor of the receiving fund, had been remiss in not intervening actively to correct the error, once identified.

R/603/2009 – Bankinter, S.A.

Redemptions from Credit Suisse Target Return were suspended as of 24 October 2008, as part of the fund's liquidation process, with the result that the complainant could not withdraw his investment.

As defence, the bank submitted a letter sent to all clients invested in the fund in the month of November, informing them that redemptions had been suspended with effect from 24 October 2008 and that the fund had entered liquidation on 27 October 2008.

Bankinter should, however, have advised the complainant of the liquidation the moment it was announced, especially as he had switch requests outstanding which involved redemption from the fund and could not be executed for this precise reason.

R/71/2009, R/899/2009 – UnoE Bank, S.A- R/352/2009 – Deutsche Bank, S.A.E.

The complainants had ordered switches between investment funds distributed by the respondent entities.

It was clear that they had not been informed at once as to why their requests had been rejected. In one case, the bank had not warned the complainant before processing his order that the monies invested in the delivering fund were insufficient to meet the minimum investment requirement of the receiving fund (10,000 euros).

R/50/2009 – Banco Inversis, S.A.

Inversis claimed that the reason the complainant's switch request had failed to execute was that, at the time, the relevant compartment of the delivering scheme was in breach of personal income tax provisions stipulating that switches from funds with fewer than 500 unitholders were not eligible for tax deferral.

This would not have stopped the complainant, if he wished, from redeeming his units in EMIF Brazil B and subscribing for the receiving fund, even though Inversis could not have handled the two transaction legs, since EMIF Brazil B was deposited with another entity which would not accept its redemption instructions.

Inversis, it was decided, should have informed the complainant that it was not possible to execute the switch with tax deferral, but, if he wished to go ahead, he could approach the delivering scheme distributor to order the redemption and then subscribe for the receiving fund.

Delays

R/375/2009 – Renta 4, Sociedad de Valores, S.A.

On 19 August 2008, the complainant approached Renta 4 with written instructions to change the distributor of the investment fund MLIIF New Energy Fund ER Eur.

Renta 4, however, did not process his instructions until 27 August, six business days later. This could hardly be termed a rapid and diligent response on the part of the firm, which furthermore could provide no justification for the initial delay.

R/931/2009 – Caja de Ahorros y Monte de Piedad de Madrid

On 18 July 2007, the complainant requested an external switch out of the investment funds JPMF Europe Strategic Value Fund D (Eur) and Franklin Mutual Global Discovery Fund N (Eur) into Fondmadrid, FI.

The switch requests forwarded from the receiving fund (Caja Madrid) on 18 July 2007 and met by the delivering company (Inversis) on 27 July 2007 by redeeming the delivering funds at the NAV of 30 July were found to have exceeded the deadlines stated in the regulations on switches between U.C.I.T.S. schemes.

The CNMV considered that Caja Madrid had acted diligently, processing its orders on 18 July, as confirmed by the records of the SNCE (National Electronic Clearing System) included in its submissions. Not so Inversis, however, since the internal settlement records furnished for these transactions failed to state that it had received the orders from Caja Madrid on 27 July.

R/494/2009 – UBS Bank, S.A.

The complainant held shares in a number of foreign schemes distributed by Fortis and deposited with the same. From UBS's submissions, it appeared that the delay in switching distributor was due to problems in the way the securities were entered in the name of the new distributor.

Absence of documented consent

R/1615/2009 – Caja de Ahorros de Asturias

The entity was deemed to have acted incorrectly in switching from Liberta Multiestrategia, IICIICIL into Asturfondo Dinero, FI without the consent of the unitholders.

R/853/2010 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (IberCaja)

On 21 June 2006, the entity executed a switch between funds held in the complainant's account. IberCaja declared that its client had ordered this switch on 21 June and that it had furnished him with a written confirmation that same day. The complainant denied this, saying that it had switched the investment at its own initiative without seeking the holders' consent. However the *caja* was unable to produce a copy of the signed switch request, and was therefore deemed to be at fault.

Special conditions

R/337/2010 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

The complainant ordered an investment fund switch on 15 September 2009 from Foncaixa Garantía Renta Fija 14, FI into Sabadell BS Asia Emergente Bolsa, FI. The entity had deducted a 4% redemption fee from the sum redeemed from the delivering fund instead of the 0.40% stated in its prospectus.

The delivering company received his request on 16 September 2009 and settled it on 18 September 2009, after running the pertinent checks.

The delivering fund prospectus stated as follows: *"Discounts for the fund in respect of redemptions: As of 20 March 2009, 4%. However, the discount for the fund in this respect shall be 0.40% of the redeemed amount on 18 September 2009 and 19 March 2010. The Management Company shall require 2 business days' notice to execute redemptions on those dates"*.

La Caixa affirmed that the complainant had not fulfilled the notice requirement stated in the prospectus, and for that reason had been charged 4% rather than 0.40%.

It should, however, have exercised sufficient logic to assume that a redemption order received on 16 September 2009, i.e., two business days before a liquidity window, could have no other aim than to take advantage of this facility. Also, the entity admitted in its submissions that the complainant had visited his branch before the operation and had requested information about the delivering fund and about the dates and conditions for taking up a liquidity window.

R/638/2009 – Banco Guipuzcoano, S.A.

The complainant was concerned that Banco Guipuzcoano had failed to process switch instructions so that the redemptions coincided with the delivering funds' liquidity windows. This failure, he alleged, had cost him a total of 17,450.67 euros in redemption fees.

The client claimed that he had instructed Banco Guipuzcoano to execute the switch request on the date of the next liquidity window. However the bank, in its submissions, could provide no evidence that it had communicated this intention to the delivering manager.

R/53/2009 – Caja de Ahorros y Monte de Piedad de Madrid, R/52/2009 – BBVA Asset Management S.G.I.I.C.

In one case, the complainant ordered the switch of his entire holding in the foreign scheme Franklin Templeton Investment Funds (compartment Franklin Mutual Beacon Fund) by means of a fax dated 25 October 2007, stating the receiving fund as Metavalor, FI. The switched amount, however, did not reach the receiving fund until value date 15 November 2007, that is, fifteen business days later.

Whether or not the entity marketing a foreign scheme is acting as distributor or sub-distributor of another, as a rule its duties will include the processing of clients' subscription and redemption orders, separately or as part of a fund switch.

Further, under the regulations governing switches between collective investment schemes, when the delivering scheme is foreign, the entity receiving the switch instructions from the receiving fund will be the local distributor, in this case Caja Madrid.

That said, third entities can be appointed to receive such communications through the SNCE (National Electronic Clearing System), providing the relevant details are adequately publicised. To this end, Sociedad Española de Sistemas de Pago, S.A. (IBERPAY), the SNCE management company, had taken steps so all participating agents were informed of these changes in good time in order to avoid incidents in order transmission via the SNCE hub.

The means used were three: the sending of e-mails to the participating entities; the posting of the corresponding notices on the IBERPAY website from the day of their reception; and the generation of an electronic exchange file with the changes incorporated so each entity could make the necessary adjustments.

Despite an express request to Caja Madrid to provide documentary proof that it had publicised the fact that these switch instructions should be sent to Banco Inversis and, in particular, that it had sent the appropriate notices to IBERPAY, Caja Madrid made no reference to this matter, with or without supporting documents, in its submissions to the CNMV.

R/253/2009, R/272/2009, R/1769/2009 – Banco Inversis, S.A. R/264/2009 – Citibank España, S.A. R/193/2009, R/318/2010 – Popular Banca Privada, S.A. R/1874/2009, R/187/2010, R/198/2010 – Banco Banif, S.A.

In switch requests where the entity receiving the order is distributor of both the delivering and receiving schemes, as well as channelling subscriptions for the delivering scheme, the regulatory deadlines for data exchange and verification cease to apply.

In other words, the distributor of the schemes need not run checks on instructions received direct from the investor other than those corresponding to the redemption and subscription transactions.

For the delivering fund, accordingly, the effective date of the redemption order should have been the date when the client issued his switch request.

A3.2.4 Fees and expenses

R/1962/2009 – Banco Inversis, S.A. R/1994/2009 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (IberCaja)

These complaints turned on the charging of maintenance fees on current accounts opened to facilitate administration of the client's investment fund holdings.

These associated accounts, as they are known, are of an instrumental nature, intended to record the credits and debits arising from movements in these holdings. Opening such an account is not mandatory, although it may facilitate the management of scheme subscriptions and redemptions. When the account's only purpose is to provide operational support for securities transactions, i.e., is optional and not obligatory, it may not carry maintenance charges.

R/299/2009 – Cajamar Caja Rural, Sociedad Cooperativa de Crédito

The complainant had purchased units in a foreign scheme designated SGAM AI MONEY + 2, and was claiming the refund of the 93.18 euros difference resulting from the rounding down of the units acquired from the 0.0148356 theoretically due to the 0.014 which were entered in his account.

The SGAM AI Money +2 prospectus stated that units could be purchased in fractions of a thousandth, so it would not be possible to acquire a ten thousandth of a unit or any smaller quantity.

In its submissions, Cajamar offered a general explanation as to why not all client orders had the same average cost. However it failed to analyse the complainant's specific case or to clarify whether the 93.18 euros were lost as a result of the allocation of thousandths of units among clients whose orders had been aggregated, in which case it should have shown why the complainant could not be the beneficiary of an additional thousandth, or as a result of rounding down by the scheme itself, in which case who had kept the 93.18 euros difference – the fund, the manager or some other entity.

R/330/2009, R/693/2009 – Banco Inversis, S.A.

The complainants were unhappy about the 1% redemption fee charged in the course of a fund switch requested on el 5 February 2009, since they had not been informed when this new fee was introduced.

On 1 December 2008, a document detailing changes in the delivering fund's prospectus was filed with the CNMV. These included a new redemption fee set at 1% of the redeemed amount, to be applied as of 1 January 2009.

This, however, does not relieve entities of their information obligations with their clients, who should be advised in good time of any major changes in their investment conditions, including fees and other charges. The bank was therefore judged to be at fault for not informing its clients about the new redemption fee.

R/1753/2009 – Open Bank, S.A.

This complaint concerned Open Bank's calculations of capital gains from the fund HSBC BRIC Freestyle M2C (denominated in dollars) and the withholding tax applied.

Although the rightness of the method used to calculate taxes is not a matter for the CNMV, it found that Open Bank had not been clear enough in explaining how the withholding tax had been arrived at in the settlement statement sent to the client, in compliance with securities market rules of conduct.

R/1215/2009 – Barclays Bank, S.A.

The complainant's investment in Barclays United Kingdom Equity (acquired fund) was transferred to Barclays UK Alpha Fund (acquiring fund) as part of a merger process. He contended that this operation had cost him money in the form of sundry commissions.

The notice the fund manager sent to affected unitholders on 28 May 2007 included a clause headed *Costs and Charges* which stated: *"Please note that the shares in the Target Compartment allocated as a result of the merger will carry no initial charges".*

In view of this, the entity had no justification for the 2% subscription fee applied.

A3.3 Incidents relating to transfers of ownership of securities following death

A3.3.1 Incorrect information

R/82/2009 – Caja de Ahorros y Monte de Piedad de Madrid and ING Direct NV, Sucursal en España

Following the death of his father, the complainant inherited some securities deposited in Caja Madrid, which he ordered to be transferred to ING. All the equity securities were transferred except for some shares in Aceralia.

The reason these could not be transferred was that ING's internal procedures did not permit the opening of a securities account that includes a usufructuary and in this case the mother of the complainant had usufruct rights over the shares. However, the other shares had been transferred even though they faced the same problem, i.e., the usufructuary was the complainant's mother. This was because the usufruct over the securities to be transferred had not been properly registered.

Caja Madrid was therefore found to have acted wrongly. As record-keeper for the client it was responsible for processing the change of ownership following his death including checking the title that gave rise to the change in registration. The *caja* should therefore either have ensured that the ownership group of the receiving account at the new bank was identical to that of the original account or informed the receiving bank of the ownership group that it was transferring.

ING, meanwhile, failed to tell the complainant that it could not manage accounts with a usufructuary, something that is not envisaged in the custody and administration contract filed with the CNMV.

R/2001/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The complainant and other heirs inherited 600 BBVA shares. This was evidenced by the position certificate sent by BBVA on 13 May 2008, issued as part of the process of managing the transfer of assets following death.

However, when time came to change the ownership of the securities in July 2009, it was found that the bank was holding not 600 but only 200 shares on behalf of the deceased. Only a third of the securities that the bank had mistakenly certified in fact belonged to the deceased.

While BBVA acknowledged its mistake and corrected the incident it was still found to have been at fault as it should, as record-keeper and custodian of the securities, have notified the heirs of the circumstances and sent a new position certificate to replace the original, which it did not appear to have done.

R/1401/2009 – Banco Español de Crédito, S.A.

The complainant was one of the heirs of a deceased client who had 2,934 Unión Fenosa shares under custody with the bank. At the time of the incident, title to the shares had not yet been changed by testamentary execution.

The complainant, following the client's decease, went to Banesto to place a unilateral instruction to accept Gas Natural's bid for Unión Fenosa shares. Having initially accepted it, Banesto then refused to process the order on the grounds that it had not yet been certified that inheritance tax declaration obligations had been met and until this was done the complainant could not dispose of the assets.

From the time that Banesto learned of the account-holder's death, it should not have either accepted or processed any order to sell or dispose of the securities deposited with it, until the change of ownership by testamentary execution had been completed.

Nevertheless, Banesto's submissions indicate that it failed adequately to inform the complainant about why his instruction was rejected, having initially accepted the order in the branch as normal and only rejecting it later.

R/885/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

Although the bank admitted it had been slow to carry out testamentary execution of the assets belonging to the complainant's father and offered financial compensation, it was found to be at fault for not explaining to the complainant the reasons for the delay.

R/340/2010 – Caja de Ahorros y Pensiones de Barcelona (La Caixa)

It was found that La Caixa had misinformed the complainant about the change in title of some investment funds. Specifically, it told him that the change of title had no effect on the guaranteed return on the funds concerned, which was incorrect.

R/1734/2009 – Banco de Castilla, S.A.

With a view to defending the heirs' rights to the property of the deceased, the entities froze the securities accounts and investment funds until the legacy had been divided and allocated. Accordingly, the bank that is the object of the complaint did not allow the complainant to dispose of the investment funds belonging to his father until these processes had been completed.

However, there was an additional factor that should have been considered in this case. Between the time of the owner's death and the change in title of the fund, there had been changes in the investment fund that triggered a free redemption right for

holders. In such cases, since the owner had died and could not dispose of his assets, the entity should have allowed his heirs and the surviving co-owner to order the legitimate exercise of their free redemption rights as they disagreed with the new terms and conditions of the investment fund.

In other words, as they needed to act within a limited time period which, once elapsed, would leave the heirs with an investment they did not want, the entity should have processed the redemption order, considering this merely an act of provisional preservation and administration of the inheritance.

R/870/2009 – Caja de Ahorros de Galicia

The complainant had acquired, jointly with another person, preference shares issued by Caixa Galicia Preferentes, S.A.U.

When the other owner died (in September 2006), the Caja could not accept orders to sell the securities until the usual change of ownership through testamentary execution had been completed.

The complainant sought to place an order to sell the preference shares on 3 September 2007, which was not filled, but it was not shown that Caixa Galicia had offered any kind of explanation as to why it had not processed the order.

A3.3.2 Delays in executing changes of ownership following death

R/1919/2009 – Banco Español de Crédito, S.A.

The issue raised by this complaint concerned delays by the entity in changing the ownership of securities following their owner's death. There was an unjustified delay between the time the bank had all the necessary inheritance documentation to change the title to the securities and the time that the securities were registered under the name of the new legal owners.

R/521/2009 – Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera

The entity in this case failed to process the complainant's request for position certificates on his sister's death with due diligence. It should have sent the request immediately to the firms managing the respective investment funds and, once the certificates were received, either forwarded them on to the complainant's home address or notified him that it now had them available.

In this respect, while the entity claimed that the document had been available to the complainant at any time, it did not specify or justify in any way the actions it took, nor why it seems that Ahorro Corporación Gestión, S.G.I.I.C., S.A., the fund manager, failed to received the complainant's request until 11 August 2008.

Also, regarding the change of ownership by testamentary execution and subsequent redemption of the units in Fondtesoro Corto Plazo, FI ordered by the complainant, the entity should have verified that the documentation presented was sufficient. In making these checks it is obliged to act with due diligence and although regulations set no specific time limit, in principle, the time taken for the testamentary execution (more than a month) appears excessive and the entity failed to justify the delay.

A3.3.3 Other issues with testamentary execution

R/1356/2009 – Banco Santander, S.A.

After the death of a securities accountholder, the complainant and his three brothers inherited equal parts of a portfolio comprising a number of shares, with their mother remaining as usufructuary.

When processing the change of ownership *mortis causa*, the entity should have ensured that the securities were registered in the sole name of the heirs, as their separate property. However, during the change of ownership the spouses of the heirs were also included, in violation of the terms of the inheritance, and the entity was found to have been at fault for this.

R/1075/2009 – Banco de Vasconia, S.A.

The documentation provided showed that at the time of death, the deceased owned 2,386.05 units in the investment fund Eurovalor Renta Fija FI, marketed by Banco de Vasconia and managed by Popular Gestión, S.G.I.I.C., S.A.

The deceased had made a will, in the fourth and fifth clauses of which a voluntary distinction is made between *"the money that exists at the time of the testator's death in any banking entity" and "the remainder of property, rights and shares constituting his inheritance"*. The money was to be split between two people but the rest of the inheritance was left to one only of these as sole heir.

Banco Vasconia, as the marketer of the investment fund and responsible for processing the change in title to the assets owned by the deceased, was obliged to ensure that the assets were correctly distributed and, therefore, that the testamentary provisions were correctly interpreted. Accordingly, when it received the request to deliver the legacy left to one of the parties, it should not have acted solely on the basis of the private document presented by one of the heirs to the Navarre tax authorities, since this was a document presented on behalf of a party and could neither replace nor amend the will made by the deceased, which was the reference document.

In case of doubt about the interpretation of the will's terms, the due prudence principle demanded that, rather than acting as it did, Banco Vasconia should have required the two heirs to clarify the matters causing confusion.

R/1212/2009 – Banco Bilbao Vizcaya Argentaria, S.A.

The ground of this claim was BBVA's processing and execution of an order to sell shares even though it was not signed by all co-owners.

It must be assumed that BBVA was unaware that one of the co-owners had died in the days before the instruction was given and so could not seek the consent of the legal heirs to execute the sale. Even so, unless expressly agreed otherwise, securities held in an account must be assumed to require the signature of all accountholders. The bank should therefore have sought the consent of all co-owners before executing the sale.

R/2055/2009 – Banco Santander, S.A.

Three clients acquired 39,000 euros of preference shares under a co-ownership arrangement. On 7 January 2010, two of the co-owners signed a written order to sell

1,560 preference shares with a nominal value of 39,000 euros, without specifying any minimum price.

Banco Santander acknowledges having received and processed this order even though one of the co-owners of the account in which they were deposited had died on 21 August 2008 and on 7 January 2010 testamentary execution of the change of ownership had not yet been completed. This was found to be wrong.

R/994/2009 – Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón and Rioja (IberCaja)

Ibercaja directly redeemed units which were still held in the name of a deceased person, by filling an order placed by someone who was not the owner. This was clearly wrong.

The correct course of action, once the death of the owner of investment fund units became known, was for the entity to carry out the process of changing ownership having confirmed the fact of the death and the right of the heir, by obtaining and examining the relevant documentation and, once these steps had been taken, changing the title of the units to the legitimate heir or heirs of the deceased.