CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquiries of Investors
Annual Report 2009

Attention to the Complaints and Enquiries of Investors. Annual Report 2009

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1 Introduction

This Annual Report sets out information corresponding to the year 2009 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 Investor Department 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 place complaints through the IAO when they feel their interests have been harmed or their rights undermined through the action of an entity providing investment services.

For complaints to be eligible under the CNMV's procedure, they must first have been put to the respondent entity's Customer 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 Register. 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. This Portal, set up as an investor-specific information channel, has sections devoted to enquiries and complaints, in which users are taken step by step through the procedures to follow. They also set forth the criteria used by the CNMV for resolving complaints, and the answers given to the most frequently asked questions. The Investor Portal, which replaces the former Investor's Corner, serves as a communication channel between the IAO and the investor public. As such, its contents are tailored to the information and learning needs inferred from the complaints and enquiries that the regulator receives each year. Information and education are indeed central to achieving the investor protection goals entrusted to the CNMV under the Securities Market Law.

A total of 14,248 enquiries were received in 2009, 16% more than the year before. Written enquiries in particular rose by 385% to 1,136. Many concerned the suspension of redemptions by a real estate investment fund, though there were also regular queries about the rating downgrades of investment fund guarantors, financial swaps, preference shares, and securities issues widely publicised in the media that are nonetheless outside the CNMV's supervisory remit.

Complaints reaching the CNMV came to 2,154. This was more than double the total for 2008, which itself was 30% up on the total for the prior year. A frequent motive was the lack or insufficiency of the information received before acquiring risky financial products. Special mention here must go to the financial instruments issued by Lehman Brothers subsidiaries and the Icelandic banks.

The Report is organised into five chapters plus three annexes. Following this short introduction, chapter two offers a run-through of the IOA's 2009 activity. It accordingly analyses the volume and nature of the enquiries and complaints received, with details of the incidents reported, the resolutions issued, the kinds of entities complained against, and the follow-up of reports finding in the complainant's favour. It also describes the IAO's activities in connection with FIN-NET, the cooperation network for handling cross-border disputes set up by the European Commission.

The third chapter opens with a discussion of the criteria and recommendations applied in dealing with the year's most relevant cases for their frequency or novelty. Chapter four looks at the main subjects of complaints resolved in favour of the complainant. And, finally, chapter five examines the main topics brought up in investor enquiries during 2009.

These are followed by three annexes. The first offers key statistics on complaints received, the second lists unauthorised firms that investors have enquired about to the IAO, and the third comprises a detailed list of complaints concluding in a report favourable to the service user.

2 IOA Activity in 2009

2 IOA Activity in 2009

2.1 Complaints

2.1.1 Volume and nature of complaints

A total of 2,154 complaints were received from investors in 2009, just over twice the figure for the previous year. Of this number, 1,137 were accepted for processing, 26% more than in 2008.

This escalating volume, and the complex nature of some of the subjects broached, has lengthened the time needed for their settlement to 179 days, compared to 123 days in 2008 and 99 in 2007. In all, 27.5% of complaints were resolved within four months of their presentation to the CNMV, and a further 60.7% in the space of five to six months.

Total complaints filed and processed TABLE 1

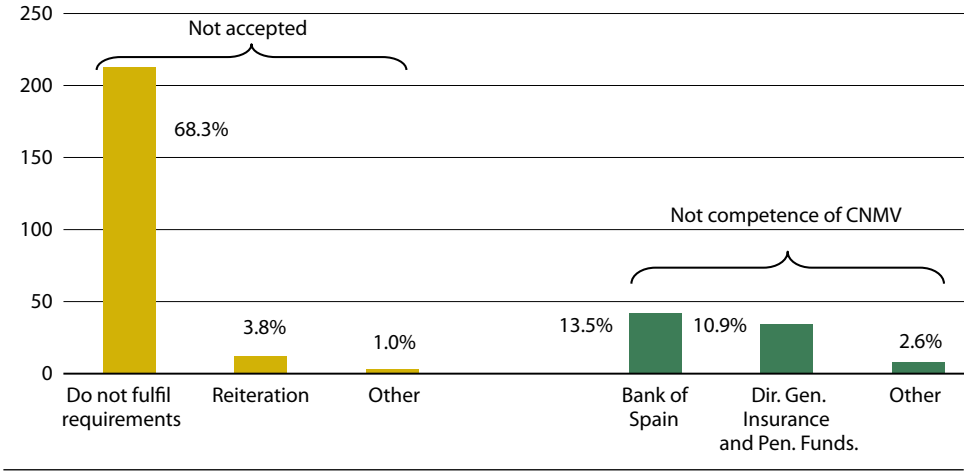
	2007	2008	2009
Filed in the year	809	1,058	2,154
Processed	788	899	1,137
Resolved	610	722	823
Not accepted	178	177	314
In progress at year end	**234**	**393**	**1,410**

Source: CNMV.

The number of non accepted complaints also moved up sharply in the year, by 77% to a total of 314.

A majority of the cases of non acceptance (213) were because the customer could provide no proof of having placed the matter before the respondent's Customer Service Department, while a further 39 were directly outside the competences of the CNMV. Remaining non acceptances (15) were due to defects of identification which were not corrected despite a request to this effect from the CNMV and/or failure to allow the two months stipulated between submitting a complaint to a provider and receiving a response.

Distribution of non accepted complaints by motive FIGURE 1



Source: CNMV.

2.1.2 The subject of complaints

The complaints resolved by the CNMV in 2009 can be classified into two large groups: those arising from incidents to do with the provision of investment services (orders, fees, securities custody) and those concerning incidents with investment funds (information, NAVs applied, inter-fund switches, the exercise of unitholder rights). The first of these groups accounted for 63.8% of the total and the second for the other 36.2%.

Complaints resolved in 2009. Distribution by subject TABLE 2

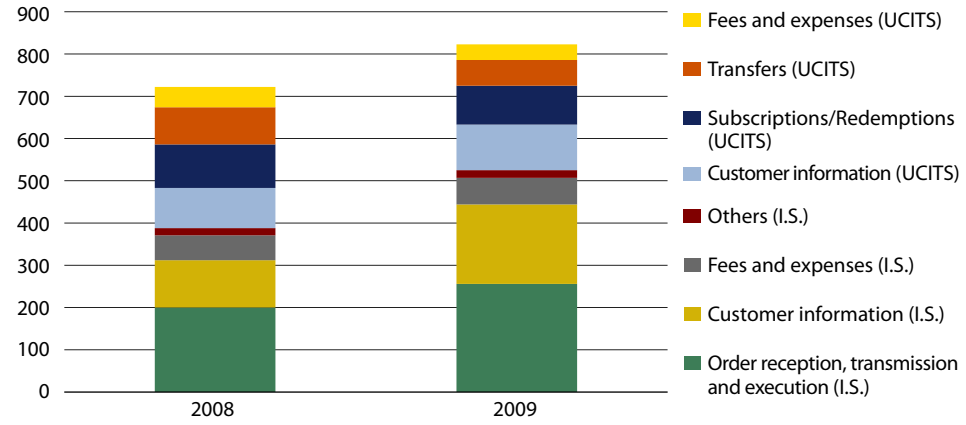
	2007		2008		2009	
	Number	% s/ total	Number	% s/ total	Number	% s/ total
Investment services	**338**	**55.6**	**388**	**53.7**	**525**	**63.8**
Order reception, processing and execution	173	28.5	200	27.7	256	31.1
Customer information	96	15.8	112	15.5	188	22.8
Fees and expenses	59	9.7	59	8.2	63	7.7
Others	10	1.6	17	2.4	18	2.2
Mutual funds and other UCITS	**272**	**44.4**	**334**	**46.3**	**298**	**36.2**
Customer information	114	18.7	95	13.2	108	13.1
Subscriptions/Redemptions	65	10.4	103	14.3	92	11.2
Transfers	54	8.9	88	12.2	61	7.4
Fees and expenses	39	6.4	48	6.6	37	4.5
Total complaints resolved	**610**	**100**	**722**	**100**	**823**	**100**

Source: CNMV.

Table 2 and figure 2 go into greater detail on the subjects of complaints under each of these headings. The increase in complaints regarding the provision of investment services traced mainly to information deficiencies and, in second place, order processing and execution, which remained overall the single largest group.

Distribution of complaints resolved by subject

FIGURE 2



Source: CNMV.

2.1.3 Type of resolution

The numbers of favourable and unfavourable reports were more evenly matched than in past editions. The trend over recent years has been for an increase in favourable reports, which indeed have come to outnumber those favouring the respondent entity.

Distribution of complaints by type of resolution

TABLE 3

	2007		2008		2009		% change
	Number	% s/ total	Number	% s/ total	Number	% s/ total	09/08
Resolved	**610**	**77.4**	**722**	**80.3**	**823**	**72.6**	**14.3**
Report favourable to complainant	176	22.3	226	25.1	292	25.7	29.2
Report unfavourable to complainant	342	43.4	365	40.6	255	22.4	-30.1
No opinion stated	7	0.9	10	1.1	57	5.2	490.0
Accommodation	76	9.6	112	12.5	198	17.4	76.8
Withdrawal	9	1.1	9	1	21	1.8	133.3
Non competence	**178**	**22.6**	**177**	**19.7**	**314**	**27.4**	**76.3**
Competence of other institutions	39	4.9	41	4.6	86	7.4	104.9
Not accepted	139	17.6	136	15.1	228	20.1	67.6
Total complaints processed	**788**	**100**	**899**	**100**	**1,137**	**100**	**26.5**
Total filed	**809**	**--**	**1,058**		**2,154**		**103.6**

Source: CNMV.

In effect, reports favourable to the complainant take the lead with 292 cases. Accommodations moved up from 112 cases in 2008 to 198 in 2009. Both types of resolution indicate a greater instance of entity malpractice.

Note also the jump in the number of reports with no opinion stated and, to a lesser extent, in the number of complaints withdrawn.

Taken together, accommodations and withdrawals amounted to 219 cases in 2009 compared to 121 in 2008. Practically all such 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.

All the above seems to indicate that investors are more keenly aware of the possibility of malpractice by their providers. This would also explain the growing number of non accepted complaints, which, as stated, were mainly turned down on formal grounds.

Most of the accommodations and withdrawals registered in 2009 were related to incidents arising in securities market trades (68.5%), particularly in the processing, execution and settlement of orders, which alone accounted for 38% (see annexe 1, table A.10).

2.1.4 Entities complained against

The established pattern is that credit institutions attract the largest percentage of complaints. This reflects the banks' dominance of the Spanish financial system and the importance of their branch networks in placing investment products and services with the retail public.

Of total complaints against credit institutions, as many as 600 were directed at banks, while the savings bank segment received 165. These figures amount to 75% and 20% respectively of complaints filed in 2009.

The proportion of complaints filed against savings banks is not that large considering the scale of assets under their management (see figure 3). Also, a higher percentage of complaints against savings banks concluded with a report unfavourable to the complainant (see figure 4).

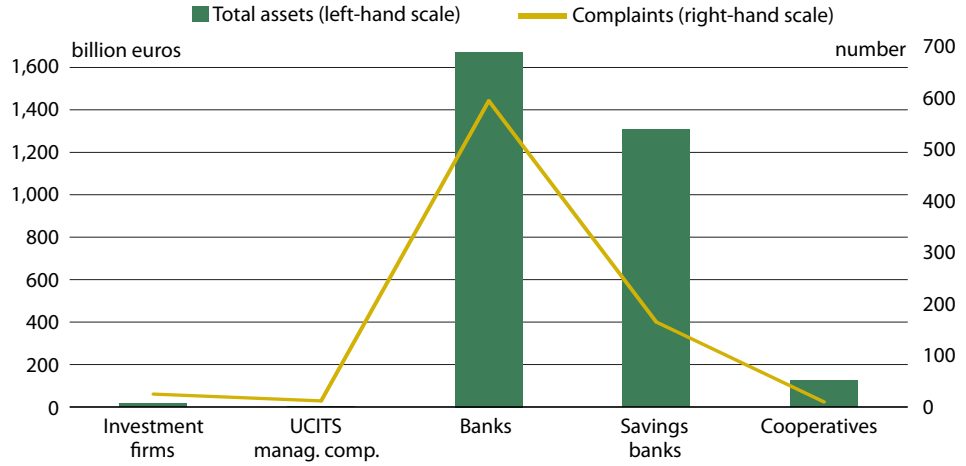
Of the 90 entities complained against, 32 were banks, 29 savings banks, eight cooperatives and 21 investment firms or UCITS management companies.

Complaints were concentrated in a small number of entities: among the banks complained against, five entities accounted for 60% of cases in this sub-sector (with more than 40 complaints per head) and two alone attracted 34% (around one hundred complaints each). Taking only reports favourable to the complainant (222), five entities received over twenty reports each with this conclusion (see annexe 1, table A.3).

Among savings banks, the degree of concentration was rather less, with two out of the 29 entities complained against attracting over 20 complaints each (one of them over 35). No single entity featured in more than ten reports favourable to the complainant, the largest number being the eight recorded against one savings bank (see annexe 1, table A.4).

Distribution by entity complained against FIGURE 3

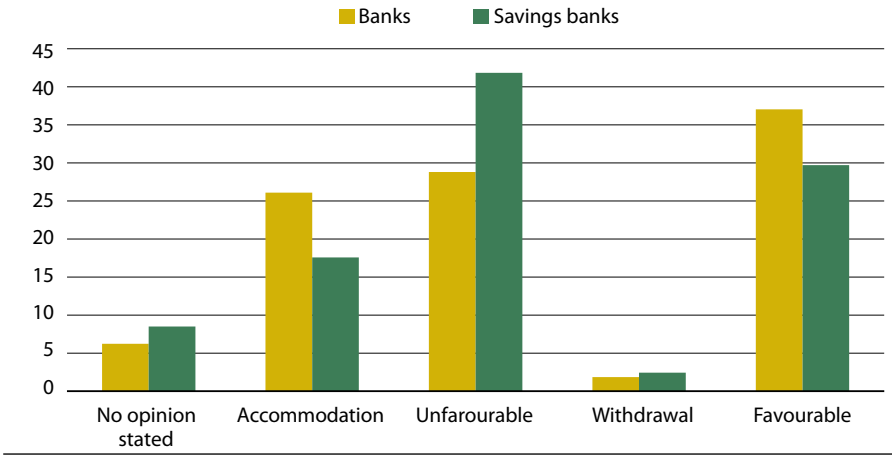
In relation to the total assets of each type of entity



Source: CNMV.

Distribution by type of report FIGURE 4

% out of total complaints received per type of entity



Source: CNMV.

Complaints resolved by type of entity and subject matter

We can see from table 4 that for both the banks and savings banks, complaints turned mainly on investment services, with the handling of customer orders as the biggest source of incidents.

In the case of the banks, however, deficiencies in customer information came strongly to the fore with a 124% increase versus 2008. Among the savings banks, complaints about order processing were followed in importance by incidents with UCITS, most of them concerning customer information and fund subscriptions and redemptions (see table 4).

Subjects of complaints in 2009 TABLE 4

	IFs	UCITS mgrs	Banks	Savings banks	Coops	TOTAL
Investment services	**23**	**0**	**404**	**90**	**8**	**525**
Order reception, processing and execution	16	0	183	52	5	256
Customer information	3	0	166	17	2	188
Fees and expenses	1	0	44	18	0	63
Others	3	0	11	3	1	18
Mutual funds and other UCITS	**8**	**12**	**201**	**75**	**2**	**298**
Customer information	1	4	71	32	0	108
Subscriptions/Redemptions	5	4	59	23	1	92
Transfers	1	4	44	11	1	61
Fees and expenses	1	0	27	9	0	37
Total complaints resolved	**31**	**12**	**605**	**165**	**10**	**823**

Source: CNMV.

2.1.5 Follow-up of reports favourable to the complainant

As in previous years, when the case file was closed, the respondent entity was asked to provide information, with supporting documentation, on any remedial measures taken as urged in the report's conclusions.

A fault is deemed to have been rectified when the provider accredits having dealt with the cause of the complaint whether by 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 avoid 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.

Of the 292 cases in 2009 concluding in a report favourable to the complainant, 18.2% of entities had rectified their procedures along the lines indicated, while 74.7% gave no answer and the remaining 7.2% challenged the arguments put forward by the CNMV.[1]

This follow-up provides a check on how well entities are adapting to the criteria and recommendations that emanate from complaints analysis. It also has a dissuasory force against bad practices while encouraging the adoption of measures to prevent their repetition.

2009 figures find a decreased percentage of post-complaint rectifications compared to the 34.1% of 2008 and 55% of 2007.

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 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. This enquiries form was launched as

1 Deutsche Bank (six complaints), Banco Santander (five complaints), Fibanc (three complaints), Altae, Banco Inversis, BNP Paribas, IB Kapital and IG Markets (one complaint).

a way to systematize procedures and make them more efficient. It is available on the CNMV's Investor Portal and replaces e-mail inversores@cnmv.es as an enquiry channel.

Another source of information is the educational content of the Investor Portal and the new investor newsletter *Boletín del Inversor*. The CNMV redesigned the investors' section of its website in 2009 introducing the new Investor Portal, which replaces the former Investor's Corner and is organised for maximum ease of information search. Inside the Portal, a section called Investor Guidance sets out the key factors to be borne in mind before taking an investment decision, while other sections explain the criteria used by the CNMV in settling complaints. Visitors can also check out news and views of interest to investors and the latest regulator alerts.

A dedicated section features specially prepared Q&A sheets on the subjects most frequently enquired about. Sheets available to date include investment service fees and expenses, investment funds and other UCITS, issues, share offerings and takeover bids, and feature questions like where are bonds and preference shares traded, how can I find out about securities marketed in Spain under the EU passport or how can I stop paying administration fees on delisted shares.

Portal users can also browse a list of CNMV publications for retail investors, like investor guides and factsheets (including the latest factsheet on how to read financial advertising or the guide "Questions Every Investor Should Ask about Listed Companies"), try out simulation tools and consult a glossary of financial terms.

Another 2009 novelty is the investor newsletter *Boletín del Inversor*, available from the Investor Portal or by free subscription. The *Boletín del Inversor* is a quarterly publication addressing general securities market topics and the keynote developments of the previous three months. These might include, for instance, good practice in marketing to the retail public, the new definition of money market funds or the importance of firms assigning clients an investor profile that demarcates the kind of products they can be sold.

Volume and nature of enquiries

The number of enquiries directed to the CNMV rose once more in 2009. Although the telephone channel remained the most popular with investors (accounting for 67.07% of total enquiries), its use has tended to level off. Concretely, the phone enquiries handled by call centre staff represented 54.23% of the 2009 total, against the 45.77% requiring the expertise of CNMV officers.

One apparent anomaly was the 385.5% surge in written enquiries. The motive for this growth was the suspension of redemptions from the Santander Banif Inmobiliario, FI real estate fund, since many of the investors affected used this channel for a mass mailing of standard letters.

Distribution by channel of enquiries TABLE 5

	2008		2009		% change
	Number	% s/ total	Number	% s/ total	09/08
Telephone	8,411	68.3	9,556	67.1	13.6
E-mail	2,903	23.6	2,944	20.7	1.4
Written	234	1.9	1,136	8.0	385.5
Face-to-face	765	6.2	574	4.0	-25.0
Form	0	0	38	0,3	-
Total	**12,313**	**100.0**	**14,248**	**100.0**	**15.7**

Source: CNMV.

2.3 IAO involvement in international cooperation vehicles

2.3.1 FIN-NET

FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries – the European Union Member States plus Iceland, Liechtenstein and Norway – that are responsible for handling disputes between consumers and financial services providers, i.e., banks, insurance companies, investment firms and others.

Launched by the European Commission (EC) in 2001, by end-2009 it had a membership comprising 51 national complaints schemes.

The purpose of its setup was primarily to advance the development of the internal market in financial services within the EEA. Through FIN-NET, the schemes cooperate to provide consumers with easy access to out-of-court procedures in disputes where the client lives in a member state distinct from that of the financial services provider.

The first step towards attaining an efficient network for the transfer of complaints between members was to secure visibility and accessibility with consumers and provider firms. It was also seen as vital to enlarge its scope to all financial services in all EEA countries. Only by this means could consumers be assured access to the right dispute settlement scheme from wherever they were based.

Among FIN-NET's other goals is to provide input to the European Commission on the resolution of financial services complaints and to foster a mutually advantageous exchange of information and experiences between national members.

These and other issues were discussed at the FIN-NET Steering Committee and subsequent plenary meeting during the second half of 2009. There it was agreed to continue working to build up the network's visibility and accessibility in furtherance of its mission.

Evaluation of FIN-NET

The European Commission ordered a study to be run on FIN-NET's relevance and effectiveness, whose results were published in June 2009.[2] This assessment took into account both the real level of cross-border transactions and the legal framework governing complaint resolution schemes in the financial services area, along with the difficulties faced by consumers in getting their complaint across to the right service.

Among its conclusions were the need to raise consumer confidence in buying financial services cross border, and assure them access to a cross-border complaint resolution mechanism that can deliver the same speed and convenience as in domestic disputes. FIN-NET, in these respects, represents an appropriate approach in the view of most stakeholders.

The report concludes with a series of recommendations concerning network management, like the need for improved statistical information and website content,[3] and

2 http://ec.europa.eu/internal_market/fin-net/docs/evaluation_en.pdf
3 http://ec.europa.eu/internal_market/fin-net/index_en.htm

measures to boost the visible of FIN-NET. It also advocates conserving the network's current structure and mechanisms and the role of the European Commission.

European Commission consultation on dispute resolution systems

At end-2008, the European Commission launched a public consultation to seek the views of stakeholders on how dispute resolution in financial services could be further improved. In particular, stakeholders were asked what steps they thought should be taken to make FIN-NET a stronger, more comprehensive network, and about the kind of information that might raise consumers' awareness of the existence of national and cross-border complaint schemes.

In September 2009, the EC published a summary report of the responses to this consultation,[4] numbering sixty-eight in all. They found that a majority of stakeholders recognised the benefits of dispute resolution systems, but that ways should be sought to improve the possibilities for satisfactory redress.

Opinions were more divided on the kind of improvement action needed. Consumers tended to advocate binding measures by the European Commission to ensure that all member states have dispute resolution systems in place which cover all financial service sectors and are also signed up to FIN-NET. The industry, however, would prefer awareness-raising activities to publicise the benefits of complaint schemes and FIN-NET, accompanied by non binding measures like Commission recommendations.

FIN-NET activity in 2009

Getting back to FIN-NET's day-to-day activity, the IAO attended the two plenary meetings held in 2009, the first in Brussels and the second, in October, in the city of Prague, with the Czech Financial Arbitror acting as host.

It also attended the meetings of the FIN-NET Steering Committee, which assists the European Commission in the preparation of each plenary, discussing and selecting items of interest for the agenda of the meeting.

Among the business debated at plenary meetings were the definition of what constitutes product mis-selling and advice that is inappropriate or unsuitable for a particular investor profile, and the implications of the now transposed MiFID for the handling of such incidents. Members were also eager to define which kind of relations complaint schemes should maintain with supervisory/regulatory bodies and consumer organisations.

The number of cross-border cases handled by FIN-NET has been building steadily since the network was founded. In 2001, it reported a total volume of 335 disputes, which rose to around 550 annual cases in 2004-2005, before breaching the 1,000 threshold in 2007.[5] According to the latest available published data, around 1,400 complaints were handled in 2008, of which 23% referred to investment services.[6]

In 2009, the IAO reported six cases of complaints from non resident investors directed against financial service providers operating in Spain. By this measure, FIN-NET cases amounted to around 0.5% of its annual output.

4 http://ec.europa.eu/internal_market/finservices-retail/docs/redress/consultation_summary_en.pdf

5 FIN-NET activity reports for 2001-2006 and 2007. 2008 data are drawn from the Evaluation of FIN-NET.

6 Information taken from the Evaluation of FIN-NET (June 2009).

2.3.2 International Network of Financial Services Ombudsman Schemes, INFO

Members of INFO are ombudsman schemes operating as out-of-court dispute resolution services in financial services. Unlike FIN-NET, this network does not offer a cross-border dispute resolution service and membership is not confined to organisations within the European Economic Area.

Its primary goal is to develop and ameliorate the dispute resolution expertise of its affiliates through conferences, workshops, formal and informal enquiries, and the organisation of meetings and forums to foster cooperation among member organisations.

In 2009, the IAO attended a series of conferences organised by INFO on the occasion of its annual meeting in Dublin, hosted by Ireland's Financial Services Ombudsman.

Discussions at these events revolved around the differences between legally established dispute resolution schemes and those of a private or voluntary nature, as well as analysing how such agencies are organised and how the press influences the direction of their efforts. Of particular interest was the talk given on investments and the elderly, a population segment that generates a significant number of complaints.

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 2009, focusing on those of a recurrent nature or that touch on matters of qualitative importance.

3.1 Provision of investment services

3.1.1 Preferential subscription rights (PSR)

Capital increases via the issue of new shares or other convertible securities which involve the subscription and trading of preferential subscription rights set in train a complex chain of operations which was the subject of detailed analysis in our 2007 report on Attention to Investor Complaints and Enquiries.

In this year's report we examine some new cases of particular relevance to investors and to the entities providing securities administration and custody services.

Information on the risks carried by PSRs

Entities are obliged to provide their customers with a description of the financial instrument they are planning to acquire, and the risks it entails, in sufficient detail for them to reach an informed investment decision.

They must accordingly be able to substantiate that the have advised their client about the risks associated to PSRs before they filled out the corresponding purchase order, particularly the risk of total capital loss if they do not issue supplementary buy or sell instructions before the end of the trading period.

Such proof can take the form of a separate document or else an informative clause in the body of the purchase order.

This informational requirement will not be considered to be fulfilled if the accrediting document was supplied a *posteriori*, that is, if it was addressed to the client after the rights were acquired on the market.

PSRs as a complex product

Whether or not PSRs acquired on the secondary market are classified as a complex product will depend on the end pursued with the transaction.

If investors have bought the rights to supplement others held in their portfolio with a view to subscribing for new shares, then they are not considered complex products and an appropriateness test is not required.

Conversely, rights acquired for other ends will be regarded as a complex product, triggering the obligation to test for appropriateness before processing the client's buy order.

When rights are allocated to a shareholder for the fact of being so, they are not considered a complex product. This criterion applies to transactions concluded as of 3 November 2009.

Content of notices to exercise PSRs

Custodians should ensure clients are fully advised when a capital increase envisages a preferential subscription period, and of the possibility of a second round.

This second round is the opportunity for shareholders so wishing to exercise their rights by instructing their custodian to subscribe for additional shares in the event that any are left after the preferential subscription period.

Custodians must have a valid procedure in place for processing such second round instructions.

PSPs for convertible bonds

When rights are issued for the purpose of subscribing for convertible bonds, which are classified as complex products, custodians are required to run appropriateness tests before shareholders of the issuing company can take them up.

In other words, custodians cannot process this kind of transaction as if it were a capital increase with the issuance of new shares, since the latter are not complex products.

3.1.2 Investment advisory services

In order to delimit the kind of obligations entities must fulfil with their customers, we must first determine whether the entity is providing a personalised financial advisory service or merely selling products and/or passing on orders. This is especially so after the entry to force of Law 47/2007 of 19 December, amending Securities Market Law 24/1988 of 28 July, which clarifies the terms of existing codes of conduct by specifying the exact information that entities should procure on their clients.

The criterion applied in handling complaints is that whether or not there exists a formal written agreement for the provision of advisory services, such a relationship can be surmised, in the field of investment services, when the facts of the matter and the content of the explanations given point simultaneously in that direction.

Examples of this kind of pointer are as shown below:

(i) The complainant is a private banking customer of the respondent entity and has been assigned a personal advisor.

The value-added of this banking segment with respect to retail or commercial banking is precisely the access it offers to qualified advisors, who will draw up an investment proposal stylised to the customer's needs, goals, net worth and tax concerns.

(ii) The customer has not approached the entity about a specific product but instead has asked it to suggest what it sees as the best investment options for his desired return, personal financial situation and expectations.

(iii) The document formalising the purchase includes clauses whereby the customer acknowledges that he has been alerted to the product's risk level and advised that it is appropriate for his investor profile.

(iv) A short time after buying the product, the customer completed a suitability test or questionnaire.

(v) There are e-mails, phone recordings or other materials in a durable medium which substantiate that the entity has made more or less explicit investment recommendations regarding one or several products.

3.1.3 Buying investment products

In view of the numerous complaints that turned on the information entities had given their clients regarding the purchase and/or holding of financial instruments, and their suitability or otherwise for that particular investor, it is germane here to clarify how the prevailing legislation has been systematically interpreted.

It bears mention that the incidents referred to in 2009 complaints occurred both before and after the entry to force of Law 47/2007, and this is reflected in the conclusions reached and their argumentation.

3.1.3.1 Information on the customer

Before the entry of the MiFID

Before MiFID provisions came into force, entities were obliged to procure pre-sale information on the customer's financial situation, investment experience and investment objectives when this was pertinent to the proposed service, in order to ensure that its characteristics matched with the buyer's circumstances and expectations.

Such information is even more crucial when the service in question is portfolio management or investment advice.

When selling products whose characteristics place them in a risk category – structured products without capital protection, very long-term or perpetual instruments, such as preference shares, derivatives, etc. – entities were required to procure sufficient information on the client to decide whether the product was suitable for his experience and investor profile. They would then analyse this information and, where necessary, convey a warning to the client that he might be buying a product whose risk level exceeded his tolerance.

To this end, entities had to create and conserve a record of customers' past investments and assign them a risk profile, bearing in mind factors like previous transactions involving assets of a similar nature and risk. Such records must include the dates of all transactions together with their amounts and conditions.

We consider that one transaction in a similar instrument is too small a sample to permit conclusions about a customer's investment experience, even if the instrument

is the same as the one now under dispute. In this case, it would have to be supplemented by information on his previous investments in other types of risky financial assets.

Since the entry of the MiFID

In the case of a customer planning to invest in a complex product outside the framework of a personalised advisory service, the entity must test the product for appropriateness by reference to his knowledge and experience of this type of product.

This information need not be gathered through a dedicated test or form, although the entity must be able to substantiate that an evaluation has indeed been carried out and the result notified to the client.

It can also be gathered indirectly by scrutinising the client's transaction records. Note, however, that he must have realised more than one operation in similar instruments; otherwise an investor profile must be established.

In the case of advisory services, a suitability test must also be run, amplifying the previous information to include the client's financial situation and investment goals.

3.1.3.2 Information on the product

In general, entities should offer their clients an explanation of the characteristics of the prospective investment and associated risks in sufficient detail to enable them to reach an informed decision. This information on product characteristics should invariably be clear, accurate, detailed and relevant.

Proof will be required that this information has been conveyed to clients, either by both parties acknowledging the fact or in the form of a signed receipt or similar document. The document in question may be a product presentation, the indicative and/or final terms and conditions, or some other material in a durable medium.

Delivery of written information will also be presumed when the purchase document itself contains sufficient information on the product's characteristics and risks.

In all these cases, the document will be examined to determine the sufficiency of its content, and that it is clearly dated so there is no doubt that it was delivered in a timely manner.

While it is recommendable to include a specific section alerting to the product's risks, it will also suffice to deal with the main risks (capital loss at maturity, exchange risk, etc.) clearly and explicitly within the body of the text.

Regarding issuer risk and how it should be conveyed to customers, the assessments carried out by rating agencies have to date been used by the market as indicators of issuer creditworthiness, and are accordingly construed as sufficient information. As well as the rating being stated in the information given to clients, the issuer's company name must be clearly identified.

3.1.3.3 Periodic post-sales information

Custodian entities have the obligation to periodically send customers clear, concrete information on the performance of their investment portfolios in a durable medium.

Some entities assume the contractual undertaking to send out statements with a higher or more precise periodicity than required by law.

The duty to provide clear, detailed information means statements should not just show the commercial names of the securities but also identify the issuer. All the securities carried should likewise be correctly identified, which means, for instance, not using the term "bonds" when the instruments in question are preference shares. Finally, statements must invariably include the cash, market or estimated value of financial instruments at each observation date. The face value alone will not suffice.

3.1.3.4 Notice of exceptional events affecting securities on deposit

When some out-of-the-way event occurs with major repercussions for customers' investments – for example, the insolvency of Lehman Brothers or the intervention of the Icelandic banks – custodian entities should inform their clients in good time, setting out all the circumstances that could affect their investments, including the resources at their command to defend their interests against the securities issuer.

3.1.4 Internet trading

Restrictions on the placing of certain kinds of orders via Internet from among those accepted by the Spanish continuous market (SIBE) – the case, for instance, of subscription right sales at market price – represent a constraint on customers' trading capacity that they should be advised of before entering a contractual relationship or, in the case of existing clients, the moment the restriction comes into force.

3.1.5 Interest rate and currency hedging derivatives. Demarcation of competences

As a rule, the supervision of this kind of derivative product is a competence of the CNMV, as envisaged in article 2 of the Securities Market Law. However, given the link between the acquisition of these derivatives and that of certain banking products, Banco de España, as bank system supervisor, has accessorily taken on supervision of this investment service.

Even so, it has been necessary to draw up a checklist of points to decide in which specific cases the CNMV should receive and resolve on investor complaints about this type of instrument. This checklist was agreed between the CNMV and Banco de España and has been publicised by both our organisations.[7]

Basing ourselves on article 79 quater of the Securities Market Law and article 19.1 of Law 36/2003 on economic reform measures, we can identify certain elements in the linkage between the products that determine the Banco de España's competence to supervise compliance with this obligation and resolve complaints in its regard.[8]

1) We have to clarify the concept of offering "an investment service as part of a financial product", since this places competence indistinctly with one or other supervisor. On examining the various types of linkage certain pointers emerge that allow for the application of the aforementioned article 79 quater:

7 Posted on the CNMV website in the section CNMV Communications with date 20/04/10, and on the Banco de España site under Banking Supervision, in the section Memorandums of Understanding on supervisory matters.

8 The following text is a translated version of the said Communication.

1.1.) The two products, that is, the bank product and the linked derivative, need not be acquired simultaneously: possibly the second will have been contracted later while the bank product remained outstanding.

1.2.) The existence or otherwise of a mortgage guarantee on the banking product does not suffice to assign competence to the Banco de España or the CNMV.

Although Law 36/2003 states that credit institutions can only offer the hedging derivative in connection with mortgage loans, if the derivative is linked (at the institution or client's initiative) to some other kind of banking product (unsecured personal loans, credit lines) the existence of a linkage in the terms analysed below will be the factor that determines the share-out of competences. This will be so whether or not the institution has based its decision on a legal precept, since the effect and situation (linking of an investment service and banking product) remain the same.

1.3.) In any event, for linkage to be deemed to exist, the notional amount of the hedge may not exceed that of the corresponding banking product(s).

2) The clearest instance of offering an investment service as part of a banking product is when the derivative is formally and expressly linked to the banking product at the point of contracting.

3) Likewise a linkage may be inferred even though the parties have not made any formal or explicit representation to this effect when they recognise that the offer and acquisition had this purpose in mind, making the derivative dependent on the banking product.

4) The same may be inferred, in the absence of an express formal representation, when the term of the derivative contract coincides exactly with that of the banking product, such that total or partial cancellation of the latter means the former diminishes in equal measure (providing of course that the amount of the hedge is equal to or less than that of the loan). In this case it is presumed to have been sold as part of a bank loan such that competence falls to Banco de España.

When a hedging derivative is contracted in respect of a banking product, but the latter matures first, the same linkage will be inferred provided that the banking product is renewable and, if not renewed, triggers the cancellation of the derivative at no cost to the client. Cost here to mean not only an eventual cancellation fee but also any amount that derives from repricing the derivative contract.

5) The last instance of linkage will be when a derivative product is contracted for a term below the duration of the bank loan or product (and again for an equal or lower amount), but is nonetheless marketed, offered and explicitly linked to the same in both products' contract clauses, even if there is no provision for their joint and simultaneous cancellation. The derivative may, as such, subsist, when it can be deduced from the form of its sale and contracting (pointers in this respect will be found in the text of complaint submissions, the contracts and other documents accompanying them and, especially, communications prior to contracting the derivative in the form of e-mails, faxes, etc.), and a

comparative analysis of the contract clauses that there was no intention to contract the derivative in isolation from the bank loan or for it to continue beyond its cancellation. In these circumstances, each individual case must be examined for evidence of linkage; particularly whether the credit institution marketed or placed the derivative as part of a banking product, such that its purpose lapses with the latter's cancellation. This filter, for use in the absence of an explicit or mutually recognised linkage or one that is inferrable from cancellation times, will be applied by the supervisor receiving the complaint on the basis of the accompanying submissions, with particular attention to how the derivative was marketed and its evident dependence or otherwise on an earlier or simultaneously arranged loan.

6) Although all the above cases refer to a linkage between a bank product and a derivative, the same rules for determining competence will apply when one derivative instrument is linked to two or more bank products, provided all of these products were marketed by the same entity. Again each case must be examined separately, with competence assigned to Banco de España solely in the presence of a clear linkage of an explicit or mutually recognised nature, inferrable from the products' cancellation times or substantiated by an analysis of their respective conditions.

7) When a derivative instrument is linked to some specific bank product(s) it may be distributed by any entity compliant with the requirements of banking law.

8) In all other cases, the CNMV will be competent to supervise compliance with investor information and risk profiling requirements and to receive and resolve on complaints pursuant to the MiFID provisions referred to in the Securities Market Law and implementing regulations.

9) Cases may arise of product decoupling such that a banking product linked clearly to a hedging instrument is cancelled without the client also cancelling the associated derivative, which will thenceforth stand independently without its original accessory nature. Here too any complaints regarding the derivative will be dealt with by Banco de España.

10) All the above rules are applicable to currency hedges linked to one or several banking products.

3.1.6 Information on fees and expenses

Besides delivering or having publicly available a brochure of maximum fees and chargeable expenses, entities rendering investment services must inform real or prospective customers pre-transaction of the total effective cost they will apply to each product or service sought. This information must be supplied in a durable medium, so the entity can substantiate its existence and the nature of its contents.

3.1.7 Changes in securities disposition regime

In the case of securities accounts opened under co-ownership, when one of the holders applies to change the access terms established in the mandate, all holders must consent to the change in the case of a restricted joint account (disposition contingent on the signature of all holders).

Conversely a joint and several account (each member has independent access) must be switched to restricted if even one holder so requests.

3.2 Undertakings for collective investment in transferable securities

3.2.1 Competences in complaint resolution

Asset valuation, liquidity monitoring or the alignment of a fund's assets with the quantitative and qualitative limits of its investment policy are matters dealt with in UCITS internal control and solvency regulations and bear no direct relationship with the rules on consumer protection and transparency or good financial practices. They accordingly fall outside the scope of the complaints procedure, and their results are subject to the duty of secrecy imposed by article 90.2 of Securities Market Law 24/1988 of 28 July.

Further, investment funds registered with the CNMV and marketed in Spain, and the companies managing these asset pools, come under a series of control and prudential supervision mechanisms which assure management companies operate at all times within the law and in consonance with the conditions figuring in each fund's prospectus.

The CNMV is not competent to pronounce on the quality of their management or on the returns obtained as a result of their endeavours.

3.2.2 Non acceptance of complaints

Only retail customers, basically the end users of financial services, are actively entitled to make use of the complaints procedure. Institutional investors – in the professional client category – are only actively entitled when they are acting in the interests of private customers.

Accordingly written submissions from SICAVs, UCITS management companies and other institutional investors will not be accepted for processing, although the CNMV may elect to use the information they provide in the exercise of its supervisory duties.

3.2.3 Marketing of closed-ended investment funds

The marketing in Spain of closed-ended investment funds – non UCITs – is outside the scope of application of Law 35/2003 of 4 November on collective investment undertakings.

This, of course, does not relieve entities of the obligation enshrined in Spanish securities market legislation to provide truthful, transparent and relevant information on the characteristics of the product being acquired, and to meet the informational requirements inherent to any complex product, including customer assessment.

3.2.4 nformation to be supplied before processing requests for UCITS transfers

Entities must provide investors in advance with a sufficiently in-depth explanation on the product's characteristics and risks to allow them to make an informed investment decision.

The CNMV's view is that among the general information requirements of entities that receive and process UCITS transfer requests is to inform the investor pre-transaction of the situation of the receiving scheme, including the number of shareholders/unitholders and resulting percentage ownership, thus facilitating take-up of the tax regime governing the transfer of investments between UCITS. This explanation must come with the proviso that things may change, and the real situation will be that prevailing at the time the request is made.

Also, entities receiving a transfer order may not subject it to their own procedural rules like, for instance, the need for fifteen days' notice to take up a liquidity window in the delivering fund, if these are not grounded on some legal requirement or set out in the prospectuses of the delivering and receiving fund, without advising the client beforehand of this fact.

4 Reports Favourable to Complainants

4 Reports Favourable to Complainants

In this chapter we offer a summary of complaints concluding in a report favourable to complainants during 2009, grouped into the corresponding categories. In Annexe 3 we offer a brief description of all the individual complaints upheld.

To facilitate processing and analysis, complaints were divided into three large groups according to the nature of the causal incident: (i) Complaints about investment services; (ii) Complaints about investment funds and other UCITS; and (iii) Complaints regarding testamentary execution. Each section is accompanied by a list of complaints by entity and subject matter.

Reports favourable to the complainant in respect of investment services include incidents in order reception, transmission and execution, customer information, fees and expenses and other subjects. The most numerous correspond to customer information, followed by incidents with orders.

The section on UCITS includes complaints in the spheres of customer information, subscription and redemption of units or shares, and the transfer of investments between funds.

Complaints about testamentary execution remain qualitatively and quantitatively significant, and are given their own section in view of the specific nature of the incidents reported.

4.1 Provision of investment services

4.1.1 Order reception, transmission and execution

In line with previous years, a majority of complaints referred to failures or delays in executing orders, discrepancies between the customer's stated instructions and the action taken, orders being executed without the client's consent, or even knowledge, and incidents with securities accounts under co-ownership.

That said, a substantial number also turned on incidents arising in the course of online trading.

Reports favourable to the complainant in respect of investment services

TABLE 6

SUBJECTS	ENTITIES	COMPLAINTS
Order reception, transmission and execution	Bankinter S.A.	R/449, 790, 912/2008
		R/134/2009
	Banco Bilbao Vizcaya Argentaria, S.A.	R/156, 418/2009
	Banco Santander, S.A.	R/114, 507, 793, 887, 932/2008
		R/169, 197, 1148/2009
	Open Bank Santander Consumer, S.A.	R/732/2008
	Banco Popular Español, S.A.	R/266/2008
		R/023/2009
	Barclays Bank, S.A.	R/516, 685/2009
	Caja de Ahorros del Mediterráneo	R/874, 949/2008
	ING Direct, N.V. Suc. en España	R/739/2008
	Caixa Catalunya	R/738, 972/2008
	Banco Inversis, S.A.	R/921, 992/2008
		R/269, 477/2009
	C.A. y M.P. de Madrid	R/804/2007
	Banco Español de Crédito, S.A.	R/215, 943/2008
	Caja de Ahorros de Galicia	R/234, 302, 737/2009
	Cajamar, Caja Rural, Soc. Coop. de Crédito	R/055/2009
	C. A. de Valencia, Castellón y Alicante	R/1003/2008
	Banco de la Pequeña y Mediana Empresa	R/933/2008
	C. A. de Salamanca y Soria	R/611/2008
	C. A. de Vigo, Ourense e Pontevedra	R/1030/2008
	C.A. y M.P. de Córdoba	R/776/2008
	Caja Rural de Toledo, Soc. Coop. de Crédito	R/893/2008
	Banco de Andalucía, S.A.	R/329/2008
	Delforca 2008, S.V., S.A.	R/1028/2008
	RBC Dexia Investor Services España	R/853/2009
	Unoe Bank, S.A.	R/171/2009
Customer information	Banco Santander, S.A.	R/315, 785, 855/2008
		R/1028/2009
	Bankinter, S.A.	R/698, 699, 709, 743, 973, 1019,
		1023, 1034, 1047/2008
		R/353, 468, 688, 741/2009
	Caja de Ahorros del Mediterráneo	R/717, 1013/2008
	Banco Español de Crédito, S.A.	R/545, 702, 763, 886, 1014/2008
		R/206/2009
	Banco Bilbao Vizcaya Argentaria, S.A.	R/841/2009
	Open Bank Santander Consumer, S.A.	R/487/2008
		R/066/2009
	Banco Popular Español, S.A.	R/8782/2008
	Barclays Bank, S.A.	R/535, 757, 846/2008
		R/015, 064, 084, 106, 127, 158, 191,
		208, 215, 225, 288, 328, 364, 365,
		379, 455, 659, 673/2009
	Banco Inversis, S.A.	R/504, 685, 705, 848/2008
		R/069, 070, 530, 1521/2009
	C.A. y M.P. de Madrid	R/207/2009
	RBC Dexia Investor Services España	R/100/2009
	Citibank España, S.A.	R/877, 911, 928, 947, 951, 959, 962,
		982, 995, 1002, 1011, 1016/2008
		R/005, 037, 044, 085, 116, 124, 135,
		136, 145, 150, 178, 187, 244, 267,
		268, 279, 282, 378, 442, 458, 547,
		782, 834, 877, 979, 1016/2009
	Banco Banif, S.A.	R/251, 745, 870, 1001/2008
	Caixa d'Estalvis de Catalunya	R/473/2009
	Deutsche Bank, S.A.	R/327, 358, 536, 740, 741/2008
		R/048, 202, 476, 778, 891/2009

	Banco Pastor, S.A.	R/110/2009
	Banco Sabadell, S.A.	R/896/2008
	Altae Banco, S.A.	R/711/2008
		R/138/2009
	Banco Gallego, S.A.	R/700/2008
	Caja de Ahorros de Asturias	R/883/2008
	Interdin Bolsa, S.V., S.A.	R/935, 1026/2008
	Crédit Suisse AG, Sucursal en España	R/952/2008
	BNP Paribas España, S.A. y Banco Gallego, S.A.	R/1031/2008
	Banco de Finanzas e Inversiones, S.A.	R/300, 317/2008
	IG Markets Limited, Sucursal en España	R/720/2008
	Banco Caixa Geral, S.A.	R/013/2009
	Banco de la Pequeña y Mediana Empresa	R/078, 856, 857/2008
	C.A. y M.P. de Gipuzkoa y San Sebastián	R/841/2008
	GVC Gaesco Valores, S.V., S.A.	R/779/2009
	Delforca 2008, S.V., S.A.	R/628/2008
	C.A. y Pensiones de Barcelona	R/1005/2008
Fees and expenses	Caja de Ahorros de Galicia	R/780, 990/2008
	Banco Banif, S.A.	R/773/2008
	C.A. y M.P. de Zaragoza, Aragón y Rioja	R/918/2008
	C.A. y Pensiones de Barcelona	R/925, 985, 999/2008
	Caja de Ahorros de Santander y Cantabria	R/343/2009
	Renta 4, S.V., S.A.	R/658/2008
	IB-Kapital Vermogensverwaltung GMBH	R/328, 879/2008
	Bankinter, S.A.	R/138/2008
	Banco de la Pequeña y Mediana Empresa	R/1029/2008
Otros temas	Caja Rural de Córdoba, Soc. Coop. De Crédito	R/177/2009
	Finanduero, S.V., S.A.	R/251/2009
	Banco Bilbao Vizcaya Argentaria, S.A.	R527/2008
	Banco Sabadell, S.A.	R/986/2008
	Caja Rural de Ciudad Real, Soc. Coop. De Crédito	R/123/2009
	Eurodeal, A.V., S.A.	R/963/2008
	BNP Paribas España, S.A.	R/873/2008

Source: CNMV.

4.1.1.1 Incidents with order execution

Delays or failures in order execution

When a customer issues an order to buy or sell a financial product, the entity is obliged to execute it promptly and sequentially; that is, as quickly as possible and in the order of reception, where pertinent trying to achieve an optimal outcome in accordance with its best execution policy. The entity must also report back to the client if it encounters any difficulty impeding correct execution.

In a large majority of cases, rejection of an order or failure to execute are for perfectly valid reasons to do with the circumstances of the moment, operational, counterparty or informational requisites, the content of orders, etc. In any case, the entity must inform the customer of any difficulty that prevents the order going through in due form.

On occasions, entities had neglected to explain to their clients, for instance, that the failure of a securities transfer order owed to differences in the names of the delivering and receiving account holders, that a sell order was rejected because the price asked was outside the static range set for the share, or that an order was rejected by a foreign market because the day in question was a public holiday.

AIAF fixed-income market

As stated in last year's report, the CNMV considers that the proper course for entities receiving customer orders is to seek a matching order as specified in its order execution policy, which must also lay down procedures for the assets traded on AIAF. The order execution policy should establish a series of principles including, among others, the search for the best buy positions, which should never be too narrowly focused, with the backstop of approaching the corresponding liquidity provider(s) as the case requires. The entity must be able to demonstrate that it has acted in accordance with its precepts.

In many complaints it was found that the entity had mishandled sell orders or else had failed to inform the client correctly of the real possibility of the orders going through.

From a number of incidents investigated in 2009, it was clear that entities were handling these sell orders in a way that further reduced the already thin liquidity of the corresponding issues. In some cases, they failed to adhere to the terms of their order execution policies or their policies actually omitted this kind of fixed-income trading. In others, they had not even searched for a matching order across their own branch network, orders identical to the complainants' were filled at the exact same time without any explanation being offered, or they were unable to demonstrate an approach to the corresponding liquidity providers.

4.1.1.2 Trading in preferential subscription rights

As stated in chapter 3, in the case of preferential subscription rights (PSRs), entities must demonstrate that they have informed clients beforehand of the risks associated to the product, in particular the risk of a total capital loss if they fail to issue follow-on instructions to sell or take up the rights before the close of the trading period.

Incidents reflected this lack of prior information – in one case, the entity claimed that it had advised the client in writing when he had already bought the rights on the market, along with delays in the availability for trading of PSRs and failure to inform clients correctly about the rights offering itself.

4.1.1.3 Incidents relative to online or distance trading

Entities offering online trading should be able to guarantee their clients an effective, reliable service complete with accurate, up-to-date information.

Most of the incidents reported under this head were due to technical failures in the provider's system which impeded normal service. In no case could the entity prove that it has posted an alert or message on its website advising of the existence of a technical or other problem.

Other incorrect practices brought to light were time lags in order transmission to the market, failure to advise or explain service discontinuities, a lack of comprehensive information on products or services available online or the status of customer orders, and dilatoriness in updating asset prices.

4.1.1.4 Incidents in securities accounts under co-ownership

As a rule, excepting specific arrangements for community property or other types of mutual agreement, the ownership of a book-entry marketable security will be deemed to lie with the holder of the securities account where it is deposited. This account, on other words, has a registration function and takes effect against third parties. Joint ownership and any usufruct rights are therefore formally established in the securities account mandate, and entities have no place altering property or usufruct regimes without the corresponding certification.

Further, a joint and several disposition regime between co-holders may be set aside at the formal quest of any one signatory.

Errors in this category gave rise to cases of securities dispositions which should never have been accepted.

4.1.1.5 Other incidents

Incidents were also reported with the execution of conditional orders (as regards both the information supplied and the terms in which they were filled) and the processing of takeover bid acceptance orders (misinformation from the custodian on alternative ways the transaction could be settled or restrictions on which media could be used to place instructions).

Order deficiencies were a regular cause of complaint: execution of trades without proof that they had been expressly ordered by the account holder; execution of trades without procuring reliable ID from the originator, in the case of telephone orders; or in the case of order record-keeping, failure to produce a signed purchase form.

4.1.2 Customer information

4.1.2.1 Information relative to product acquisitions

Many 2009 complaints concerned the acquisition and ownership of financial products, structured or otherwise, issued by Lehman Brothers subsidiaries and Icelandic banks, whose respective insolvency and intervention by the home-country supervisor occasioned heavy losses to a fair number of Spanish investors.

In the vast majority of cases, complaints turned on the pre-sale information supplied to clients regarding the characteristics and risks of the securities, although they also extended to the information given by custodians before and even after bankruptcy was declared.

It bears mention that the incidents referred to took place both before and after the MiFID directive was written into Spanish law, and this is reflected in both the conclusions issued and their argumentation.

The finding in many cases was that when selling or marketing this kind of instrument, entities had failed to gather information on the customer's investment experience (in cases where a product's characteristics placed it in the risky category) and his financial situation and investment goals (when it could be shown or inferred

that the disputed investment was framed by an investment advisory relationship) to check that the product was right for the prospective buyer.

Before placing a risky product, entities should gather enough information on the client to decide whether it fits well with his experience and investor profile; with this information to hand, entities can, where necessary, warn the customer that he may be investing in a product whose risk level exceeds the bounds of his tolerance.

This requirement was amply defined and developed by the MiFID and subsequently written into Spanish law, such that certain investment services became subject to appropriateness and suitability testing as of 19 December 2007.

As to information on products, it was usually not possible to judge the verbal information given to clients for lack of objective evidence. Also, when a complainant denies having received written information and there is no evidence to the contrary (a signed receipt or similar), entities are deemed to have omitted this step, except when the purchase document itself carries details of the product's risks and characteristics.

Entities must also keep customers supplied with the minimum information needed to track the performance of their investments. In the case of financial product buy or sell orders, the customer should receive a confirmation post-execution setting out the conditions of the trade (amount, date, time, venue and itemised fees and expenses). At least once a year, entities should send their customers a clear and specific statement showing the balance of their securities or financial instruments.

Given the importance of keeping customers informed of the value of their portfolios, it is remiss for periodic statements not to identify the issuer of each security, the type of securities held and the cash, market or estimated value of portfolio instruments on the observation date.

In the event of issuer insolvencies, custodian entities should inform their customers in a timely manner, detailing the options available to them to defend their rights.

This report reserves a section for the incidents detected in the marketing of products issued by entities in the Lehman group, in view of the volume and importance of the complaints received.

Space is also devoted to complaints alleging the mis-selling of financial swaps. In the disputed cases, the CNMV resolved that entities were obliged to give customers clear and specific indication of the costs incurred by early termination, along with the method of their calculation. By the same token, on receiving a request for early termination, entities should perform the calculations and give the client the results before any order is placed.

4.1.2.2 Information on execution of guarantees and liquidation of positions

A number of complaints concerned the execution of the resolutory conditions written into loan agreements, the liquidation of open positions in margin trading or the execution of guarantees in respect of derivatives trading To the extent that the resolutory condition was not automatically executed but simply optional under the terms of the contract, it was resolved that entities should advise the customer of the intention to liquidate all or part of his portfolio, indicating how he could regularise the situation and the time available to do so.

4.1.3 Fees and expenses

Resolutions against the provider owed basically to the misapplication of items and payment periods stipulated in the entity's fee brochure – charging a deposit cancellation fee for paper-based securities in place of a transfer fee, disregarding the proportionality principle in administration and custody fees, along with failure to inform customers of fee changes in a due and timely manner, the charging of amounts higher than the published rates or straightforward mischarging – the case of an UCITS investor charged fees for the opening of a securities account.

4.1.4 Portfolio management

Portfolio management agreements empower entities to undertake the discretionary management of the customer's assets, subject to certain pre-agreed constraints and conditions deriving from his investor profile and range of eligible instruments.

A number of complaints presented in 2009 were because customers felt that instruments acquired for their managed portfolios carried a higher risk than these eligible assets.

In others, the agreements governing the customer-provider relationship did not conform to specific regulations on portfolio management, meaning that the previous agreements remained in force.

There was even one case where an entity had discontinued a discretionary portfolio management service following the death of one of the co-owners.

4.2 Mutual funds and other UCITS

4.2.1 Customer information

4.2.1.1 Before the investment

In the case of UCITS, the general requirement to inform clients about the nature and risks of securities is joined by specific rules governing collective investment. These are clear and explicit regarding providers' obligation to deliver updated written information on the investment fund or company being acquired ahead of the transaction.

Again there were numerous incidents where distributors could give no proof of having delivered the prospectus and latest semiannual report, or, at the client's request, the full prospectus and latest annual and quarterly statements. What's more, these mandatory documents were at times replaced by marketing material whose content was incomplete or inexact.

Note that similar informational requirements apply to foreign schemes marketed in Spain, with the exception of closed-ended investment funds whose distribution stands outside the scope of application of Law 35/2003 of 4 November on collective investment undertakings.

Some entities were also judged to be at fault for not directing their customers towards investment funds or products better suited to their goals and expectations.

Reports favourable to the complainant in respect of investment funds and other UCITS

TABLE 7

SUBJECTS	ENTITIES	COMPLAINTS
Customer information	Bankinter, S.A.	R/888/2008
	Caja de Ahorros del Mediterráneo	R/926/2008
		R/665/2009
	C.A. y M.P. de Madrid	R/680/2008
	Banco Inversis, S.A.	R/497, 1049/2008
	Banco Español de Crédito, S.A.	R/638/2008
	Caja de Ahorros de Galicia y Ahorro Corporación Gestión SGIIC, S.A.	R/936/2008
	C.A. y M.P. de Zaragoza, Aragón y Rioja	R/862/2008
	Banco Santander, S.A.	R/442, 555/2008
	C.A. y Pensiones de Barcelona	R/554/2009
	Banco de Sabadell, S.A.	R/723/2008
	Banco de Finanzas e Inversiones, S.A.	R/710/2008
		R/003/2009
	Caixa d'Estalvis de Manresa	R/1128/2009
	Caja Insular de Ahorros de Canarias	R/801/2008
	Banco Inversis, S.A. e ING Belgium, S.A., Sucursal en España	R/774/2008
	Banco Caixa Geral, S.A.	R/770/2008
	MAPFRE Inversion, S.V., S.A.	R/436/2009
	Caixa de Aforros de Vigo, Ourense e Pontevedra	R/341/2009
	ING Direct NV, Sucursal en España	R/388/2008
	Caja de Ahorros de Galicia	R/315/2009
Subscriptions and redemptions	Banco Santander, S.A.	R/671, 882, 940, 1010/2008
	Bankinter, S.A.	R/621, 1038/2008
	Banco Bilbao Vizcaya Argentaria, S.A.	R/1032/2008
		R/096/2009
	Banco Inversis, S.A.	R/890/2008
		R/045, 154/2009
	C.A. y M.P. de Madrid	R/924/2008
	Deutsche Bank, S.A.E.	R/590/2008
		R/212/2009
	Unoe Bank, S.A.	R/974/2008
	Banco de Finanzas e Inversiones, S.A.	R/903/2008
	Banco de Sabadell, S.A.	R/011/2009
	Caixa del Penedès	R/241/2009
	Caja de Ahorros de Salamanca y Soria	R/775/2008
	BNP Paribas España, S.A.	R/1027/2008
	C.A. y M.P. de Madrid	R/095/2009
	Caja de Ahorros de Valencia, Castellón y Alicante	R/899/2008
	Caja Laboral Popular Coop. De Crédito	R/004/2009
	La Caixa Gestión de Patrimonios, S.V., SAU	R/657/2008
Transfers between UCITS	Open Bank Santander Consumer, S.A.	R/476, 629/2008
		R/175, 428/2009
	Banco Inversis, S.A.	R/849, 922, 983/2008
	C.A. y Pensiones de Barcelona	R/662/2008
	Unoe Bank, S.A.	R/077/2009
	Caixa de Credit dels Enginyers	R/021/2009
	Banco Sabadell, S.A.	R/213/2008
	Banco de Valencia, S.A.	R/307/2008
	Banco Espirito Santo, S.A., Sucursal en España	R/571/2008
	Cajamar, Caja Rural, Soc. Coop. De Crédito	R/895/2008
	Deutsche Bank, S.A.E.	R/880/2008
	Citibank España, S.A.	R/884/2008
	BNP Paribas España, S.A.	R/331/2008
	Bankinter, S.A.	R/537/2008
	Gesmadrid, S.A., SGIIC y Mutuactivos, S.A., SGIIC	R/924/2008
	C.A. y M.P. de Madrid	R/001/2009
	Self Trade Bank, S.A.	R/092/2009

Source: CNMV.

4.2.1.2 During and after the investment

Mutual fund investment can be monitored by means of the documentation sent out by the management company or custodian.

Among the mandatory periodic reports to be provided to share or unit holders are annual, semiannual and quarterly statements setting out the composition of the fund portfolio, movements in its value, etc. The manager or custodian must send each unitholder a statement setting out their fund position on a specified date. Timely and accurate record-keeping is of the essence for the smooth running of investment funds, so the distribution of units and their ownership can be known at all times.

Complaints under this head centred on errors and omissions in the reporting of unitholder positions. In some cases, entities had sent incorrect or incomplete information to their clients regarding the number of units held, at times due to technical problems during IT renewals, and at others to the misattribution of ownership.

One group of complaints concerned a switch in the distributor of foreign UCITS, which resulted in investors being unable to transact in their holdings over a prolonged period of time. Although this kind of changeover is inevitable at times, it should be done at the least inconvenience to investors, who should be notified in a due and timely manner and offered suitable interim arrangements.

Other incidents revolved around entities' failure to keep subscription and redemption orders on record for the mandatory period.

4.2.2 Subscription and redemption of units and shares

4.2.2.1 Order delays and non performance

Cases were reported in which a redemption order was not executed or executed late because investment fund holdings were pledged at the time. It bears mention here that although the release of the pledge is a pre-condition, this process should be completed with the utmost speed and diligence to avoid unjustified delays in the redemption, which could harm the client's interests in the event that a liquidity window intervenes.

Several complaints were also upheld upon verifying the existence of unjustifiable delays and failures in fund redemptions and subscriptions.

One curious case was of an entity accepting and processing a conditional redemption order contingent on a given NAV, despite having no resources to handle this type of instruction.

4.2.2.2 Determination of NAV

Several complaints concerned the application of redemption NAVs other than those stipulated in the fund prospectuses, or marketing memorandums in the case of foreign UCITS distributors.

4.2.3 Transfer of investments between UCITS

UCITS transfers are a common source of complaints, due to complicating factors like the intervention of more than one entity and the precise rules governing the exchange of data and the completion deadlines for each phase.

Remember that transfers of investments between UCITS are channelled through the National Electronic Clearing System (SNCE), so fields must be completed in a way consistent with their procedural instructions. It is essential, for instance, that the ID figuring in the order issued by the receiving entity coincides with the data in the power of the delivering fund. Cases were detected where the receiving entity misstated the originator's owner ID, which caused the delivering entity to turn down the request.

The role of the delivering entity is no less important in these respects. It must respond swiftly to the receiving entity on the points which motivated the transfer rejection, and ensure that the information supplied – tax age of the investment, amount to be transferred, etc. – is correct in all respects.

In any case, when an inter-fund transfer order is rejected due to some irreparable circumstance of whatever nature, the receiving entity, which has accepted the client's mandate and is therefore responsible for its correct performance, should inform him as soon as the incident comes to its attention.

Delay in the execution of transfers between UCITS marketed by the same entity was a particularly frequent incident. In these cases, the deadlines applying are similar to those for two UCITS with the same manager, i.e., entities cannot make use of the maximum terms allowed by legislation.

4.2.4 Fees and expenses

Complaints in this category concluding with a report favourable to the complainant had to do with the fees and expenses applicable to fund subscriptions and redemptions. One case, concretely, concerned the charging of a fee for the redemption of units in a guaranteed fund, despite the customer having taken up a liquidity window (period envisaged in the prospectus in which fees are not applied). Another turned on the exchange rate applicable to the subscription or redemption of units/shares in a foreign UCITS denominated in a non euro currency.

4.3 Testamentary execution

Most complaints under this head involved delays in changes of ownership under testamentary instrument. While there is no mandatory time limit for such arrangements, entities are nonetheless required to act with diligence in examining the papers presented to this end by legal heirs, since delays could prevent them, for example, from disposing investment fund holdings at the time of a liquidity window, should they choose to redeem them.

Reports favourable to the complainant in respect of testamentary execution

TABLE 8

SUBJECTS	ENTITIES	COMPLAINTS
Incorrect information	Banco Bilbao Vizcaya Argentaria, S.A.	R/239/2009
	Banco Santander, S.A.	R/594/2008
	Banco Español de Crédito, S.A.	R/816/2009
	Barclays Bank, S.A.	R/447/2009
Delays in executing transfers of ownership under testamentary instrument	Banco Gallego, S.A.	R/633/2008
	C.A. y Pensiones de Barcelona	R/750/2008
	Citibank España, S.A.	R/829/2008
	C.A. y M.P. de Madrid	R/1055/2008
	Banco Santander, S.A.	R/957/2008
	Deutsche Bank, S.A.E.	R/371/2009
Errors in executing transfers of ownership under testamentary instrument	C.A. y M.P. de Madrid	R/508/2008
Disposition of assets before the distribution of the estate	Banco Santander, S.A.	R/707, 800/2008
	Caja de Ahorros de Asturias	R/558/2008

Source: CNMV.

Entities were also deemed to have acted incorrectly in denying heirs access to the deceased person's assets in order to pay their inheritance tax, even prior to the formal change of ownership, and in failing to inform them about specific transactions despite a request to this effect.

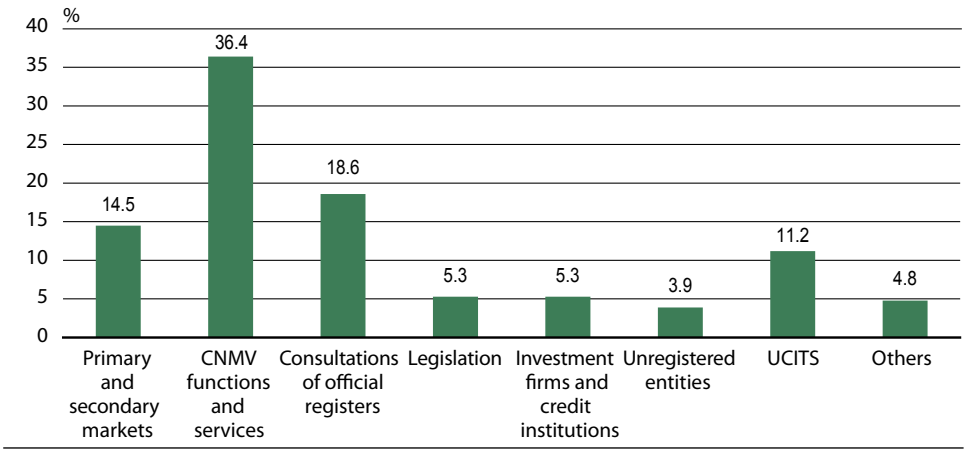
Other incidents concerned the disposition of assets by the surviving account-holder to the detriment of the deceased person's joint heirs or an entity's mishandling of a change of ownership, when it proceeded to liquidate the decedent's position then have the heir immediately purchase it back.

5 The Main Subjects of Enquiries

5 The Main Subjects of Enquiries

Investors approach the CNMV with enquiries about the information held in its Official Registers or about the functions and services within its remit. This last group, which expanded notably in 2009, includes queries about the status of outstanding complaints. Aside from these, the most popular subjects were again primary and secondary markets and UCITS (see figure 5).

Distribution of enquiries by subject in 2009 FIGURE 5



Source: CNMV.

There follows a run-through of the main subjects enquired about in 2009:

Suspension of redemptions at Santander Banif Inmobiliario, FII

The temporary suspension of redemptions from Santander Banif Inmobiliario, FII real estate fund, due to the manager's inability to cope with a flood of unitholder redemption orders, motivated a comparable flood of enquiries to the CNMV.

This issue had first raised its head in late 2008 with the manager's announcement that it would order a reappraisal of properties to align the fund's value with market prices. To help resolve investor doubts, the CNMV drafted a Q&A sheet explaining the measures taken by the management company.

Financial swaps

The sale of products to hedge against fluctuations in the interest rates associated to variable rate mortgages and other loans also motivated doubts and queries among the investor public. Such products confer protection when interest rates are rising by replacing the variable interest a borrower would pay by a fixed payment. However when rates are falling their effects may be very different. It is in this case that investors tend to question the product and the way it has been sold. A brief explanatory note on the subject was published in the investor newsletter *Boletín del Inversor* for the second quarter of 2009.

As stated in chapter 3 of this report, the CNMV and Banco de España have circulated a document demarcating their respective competences for the supervision and the handling of complaints regarding hedging instruments and products. This document, available on the CNMV website, also delimits responsibilities with regard to enquiries. Note, however, that investors are free to approach any supervisor with their queries and, as of March 2009, obtain a response, with the start-up of the one-stop enquiries facility on financial products and services run by the CNMV, Banco de España and the Directorate-General of Insurance and Pension Funds. Any citizen submitting an enquiry to any of these three institutions will receive an answer from the competent authority, regardless of the institution first approached and the particular medium used.

Nueva Rumasa, S.A. commercial paper

Investors expressed a certain confusion about issues which are not subject to prior verification by the CNMV because they are not considered public offerings or are in possession of an EU passport. One example was the commercial paper issues of Nueva Rumasa, which were not checked by the CNMV because the law does not require the filing of a prospectus for issues of their characteristics (minimum subscription of 50,000 euros and the paper not traded on a regulated market).

These issues were the subject of several CNMV communications[9] with recommendations to investors. They were reminded that the instruments do not come under CNMV control and are exempt from both the rules of conduct binding on financial intermediaries and the regulator's supervisory powers under the Securities Market Law, and urged to seek guidance from an authorised provider before making an investment decision. Each communication nonetheless offered certain pointers to help investors weigh up the pros and cons of subscribing for each new issue.

This situation has changed since the enactment and entry to force of Royal Decree-Law 6/2010 of 9 April on measures to promote economic recovery and employment. The new text amends the Securities Market Law in requiring the intervention of an authorised investment service provider during the marketing of securities to the general public through any kind of advertising material, whether or not the issue is exempt from the publication of a prospectus under its article 30 bis, the ultimate aim being to ensure safeguards are in place to protect investors.[10]

The secondary market in fixed-income products and preference shares

The year 2009 was remarkable for the quantity of primary market fixed-income issues targeted on the retail market and distributed through financial entity branch networks.

The CNMV paid special attention to these retail issues, first by taking steps to reinforce supervision of the transactions themselves and entities' conduct, and, secondly, through efforts to enlighten investors to the nature of the corresponding instruments.

On the supervisory side,[11] the CNMV responded to the wave of preference share issues, driven by banks' desire to strengthen their capital adequacy, by tightening

9 Dated 22-05-2009, 24-09-09, 15-10-09, 23-12-09.

10 Since the entry to force of Royal Decree-Law 6/2010, the CNMV has released two new communications on the publicity used by Nueva Rumasa, dated 20-04-10 and el 17-06-10.

11 Supervisory measures are dealt with more fully in the CNMV's 2009 Annual Report regarding its actions and the securities market.

its vigilance of preference share transactions in both the primary and secondary markets. It also kept liquidity contracts under close scrutiny to check that the exemptions claimed by providers complied with the contract terms. These measures were particularly important because this is a bilateral market in which it is not easy to access data on real transaction prices or on which liquidity providers are eligible for exemption.

Note also the CNMV's new requirement that fixed-income income issues targeting retail investors include a wholesaler tranche or, failing that, are accompanied by reports from independent experts confirming that issue conditions in the retail segment are comparable to those that would apply in a similar issue for the wholesale or institutional market. This criterion, together with the inclusion of CNMV warnings in the registered prospectus and the documentation to be delivered to prospective investors, was instrumental in improving the financial conditions of issues aimed at the retail tranche.

Numerous investors, meantime, approached the CNMV Investor Assistance Office for help in clarifying their doubts about the sale of private fixed-income instruments (mortgage bonds, bonds, debentures, commercial paper, etc.) and, particularly, the conditions and characteristics of preference shares.

The supervisor responded to this demand by bringing out a factsheet on preference shares, stressing their perpetual nature, limited liquidity and the fact that their market price could be lower on occasion than the acquisition price.

The investor newsletter *Boletín del Inversor* for the third quarter of 2009 also included an explanatory note on the trading venues for fixed-income securities and **preference shares,** and a specific question was devoted to these instruments in the FAQ section of the Investor Portal.

The abovementioned CNMV warnings can also be consulted on the Investor Portal in a section titled "warnings regarding retail issues".

Rating downgrades of investment fund guarantors

Investor enquiries also revealed concern about the possible implications for guaranteed investment funds when the guarantor's rating drops below the level required by UCITS rules. The CNMV accordingly published a notification on past cases of guarantor downgrades, remarking that in the course of its supervisory activities it had found instances of credit institutions acting as fund guarantors whose current ratings were below the minimum legal threshold.

The regulations regarding UCITS significant events oblige the managers of funds with an internal guarantee whose guarantors no longer hold the required level of credit rating (due to intervening revise-downs) to issue a significant event notice as soon as the downgrade comes to their notice, for publication by the CNMV and notification to investors in the next periodic statement.

Listed companies

The delisting of companies is a common topic of enquiry, with 2009 cases including Dogi International Fabrics, S.A. and La Seda de Barcelona, S.A. Shareholders wished to know how long these situations would last and how they had come about. These concerns were addressed through an explanatory note in the third-quarter edition of the *Boletín del Inversor*.

The swap ratios offered in listed company mergers and the share price impact of company delistings were other recurrent topics.

Fees and expenses for investment services

Enquiries about the fees payable for determined investment services tend to focus on securities transfers to other entities or the amounts charged for administration and custody. Among the most vociferous complainants in 2009 were shareholders of delisted companies obliged to go on paying administration fees because their shares form part of the book-entry system.

To deal more comprehensively with this issue, the CNMV published a factsheet on "Tariffs and Fees for Investment Services", as well as inserting a question in the enquiries FAQs of its new Investor Portal.

Also, the newsletter *Boletín del Inversor* included a short article on administration fee payments in the case of delisted companies. Shareholders in a company whose shares are withdrawn from stock market trading, must go on paying fees if their shares are registered in the book-entry system, because this system of title representation requires the upkeep of accounting records. A different case would be paper based securities, which the holder could administer directly.

It is possible however to stop paying these fees in certain conditions, the first of which is that the company has ceased trading.

This is instrumented through a procedure to voluntarily relinquish the maintenance of book entries. Investors should ask their custodians how to initiate this procedure and what they will be charged for doing so.

The procedure was applied, for instance, to the shares of Papelera Española, S.A., such that investors so wishing could approach their custodian with a voluntary relinquishment to the maintenance of the corresponding entries in the books kept by Iberclear.

The shareholders of delisted companies must first of all decide what is in their best interest. Maintaining account records has its costs and it is now possible to avoid them through voluntary relinquishment. On the other hand, leaving the book-entry system means the shares cannot be sold except by applying for readmission.

Information requirements of securities custodians

Investors also enquired about the information requirements that entities are bound to meet, with particular reference to takeover and delisting bids and transactions like Gas Natural, SDG, S.A.'s tender offer for Unión Fenosa, S.A.

Non registered entities

A salient 2009 development was the growing number of investors enquiring about entities offering investment services in the forex market, asking whether or not they were under the regulatory control and supervision of the CNMV.

The forex market or international currency market includes any exchange of one currency for another, wherever it takes place. In other words, it is a non organised market with no physical location. But though the market itself is not regulated, the sale of forex products by financial intermediaries certainly is.

Investors, accordingly, must take care to buy these products though entities authorised to provide this service in Spain. Note that products like exchange rate or currency swaps or currency forwards can only be sold by entities so authorised by the CNMV.

In the case of spot currency transactions, the opening of deposits (in euros or any other currency) is confined to credit institutions authorised by Banco de España.

To all enquirers, the CNMV stressed that such investments should only be made through an intermediary duly authorised by the competent financial regulator.

CNMV public warnings on non registered entities. TABLE 9

DATE	ENTITY
12/01/2009	WWW.GESTIONFOREX.COM
16/02/2009	ASSOCIACIÓ CORPORATIVA D'EMPRESARIS IMMOBILIARIS
09/03/2009	SYSTEM WORLD INVESTMENT CORP. (DEXTRAPLUS)
16/03/2009	EVOLUTION MARKET GROUP INC (FINANZAS FOREX) PESMIR TRADING, S.A. WWW.PESMIRTRADING.COM
27/04/2009	BANCO DE PESMIR TRADING STRATEGIC INVESTMENT GROUP
04/05/2009	MORGAN FINCH INTERNATIONAL MORGAN FRANKLIN CONSULTANTS, S.L. HTTP://WWW.MORGANFINCH.NET MARTIN HOWARD ASSOCIATES, S.L. GLOBAL VALORES
21/12/2009	HTTP://WWW.GLOBALVALORES.ES RECOBOLSA, S.A. HTTP://WWW.RECOBOLSA.ES CAPITALSYS EUROPEAN MARKETING TEAM, S.L.

Source: CNMV.

Annexes

Annexe 1 Statistical tables

Monthly distribution of complaints filed and resolved in 2009

TABLE A.1

Month	Complaints filed	Complaints resolved
January	18	32
February	144	18
March	163	86
April	132	48
May	154	62
June	245	63
July	260	39
August	293	66
September	133	128
October	236	83
November	172	106
December	204	92
TOTAL	**2,154**	**823**

Source: CNMV.

Geographical distribution of complaints resolved in 2009

TABLE A.2

Provenance	No. of complaints	Percentage
Andalusia	100	12.1
Aragón	29	3.5
Canary Islands	35	4.3
Cantabria	15	1.8
Castilla La Mancha	16	1.9
Castilla y León	63	7.6
Catalonia	83	10.1
Ceuta	0	0.0
Madrid Region	240	29.1
Navarra	6	0.7
Valencia Region	79	9.6
Extremadura	13	1.6
Galicia	41	5.0
Balearic Islands	8	1.0
La Rioja	4	0.5
Melilla	1	0.1
Basque Country	47	5.7
Asturias	20	2.4
Murcia Region	15	1.8
EU countries	6	0.7
Others	2	0.2
TOTAL	**823**	**100**

Source: CNMV.

Distribution by entity of complaints against banks

TABLE A.3

Banks	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ALTAE BANCO, S.A.	2	x	x	2	x	4
BANCO BANIF, S.A.	3	4	2	5	1	15
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	47	31	1	7	6	92
BANCO CAIXA GERAL, S.A.	x	x	x	2	x	2
BANCO DE ANDALUCÍA, S.A.	1	1	x	1	x	3
BANCO DE FINANZAS E INVERSIONES, S.A.	x	1	x	5	x	6
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA	x	1	x	5	x	6
BANCO DE MADRID, S.A.	x	1	x	x	x	1
BANCO DE SABADELL, S.A.	8	14	x	4	x	26
BANCO DE VALENCIA, S.A.	x	x	x	1	x	1
BANCO ESPAÑOL DE CRÉDITO, S.A.	3	15	x	10	7	35
BANCO ESPIRITO SANTO, S.A., SUCURSAL EN ESPAÑA	4	x	x	1	x	5
BANCO GALLEGO, S.A.	x	3	x	2	x	5
BANCO GUIPUZCOANO, S.A.	2	1	x	x	x	3
BANCO INVERSIS, S.A.	2	7	x	22	x	31
BANCO PASTOR, S.A.	x	2	x	1	x	3
BANCO POPULAR ESPAÑOL, S.A.	2	6	1	3	6	18
BANCO SANTANDER, S.A.	43	44	3	21	5	116
BANKINTER, S.A.	18	12	1	23	7	61
BARCLAYS BANK, S.A.	1	10	x	31	2	44
BNP PARIBAS ESPAÑA, S.A.	x	x	x	4	x	4
CITIBANK ESPAÑA, S.A.	2	4	1	42	x	49
CRÉDIT SUISSE AG, SUCURSAL EN ESPAÑA	x	6	x	1	x	7
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	2	5	x	14	x	21
ING DIRECT, N.V. SUCURSAL EN ESPAÑA	4	x	1	2	x	7
OPEN BANK SANTANDER CONSUMER, S.A.	10	6	x	7	1	24
POPULAR BANCA PRIVADA, S.A.	1	1	x	x	x	2
SOCIÉTÉ GÉNÉRALE, SUCURSAL EN ESPAÑA	x	1	1	x	x	2
RBC DEXIA INVESTOR SERVICES ESPAÑA, S.A.	1	x	x	2	x	3
SELF TRADE BANK, S.A.	2	x	x	1	x	3
UBS BANK, S.A.	x	1	1	x	x	2
UNOE BANK, S.A.	1	x	x	3	x	4
TOTAL	**159**	**177**	**12**	**222**	**35**	**605**

Source: CNMV.

Distribution by entity of complaints against savings banks

TABLE A.4

Savings banks	Accommodationt	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
BILBAO BIZKAIA KUTXA, AURREZKI KUTXA ETA BAHITETXEA	1	x	x	x	x	1
CAIXA D´ESTALVIS DE CATALUNYA	x	1	x	3	x	4
CAIXA D'ESTALVIS DE MANRESA	x	1	x	1	x	2
CAIXA D'ESTALVIS DE SABADELL	x	x	x	x	2	2
CAIXA D´ESTALVIS DEL PENEDÈS	x	x	x	1	x	1
CAIXA DE AFORROS DE VIGO, OURENSE E PONTEVEDRA (CAIXANOVA)	x	1	x	2	x	3
CAJA DE AHORROS DE ASTURIAS	2	1	x	2	x	5
CAJA DE AHORROS DE GALICIA	3	4	x	6	x	13
CAJA DE AHORROS DE LA INMACULADA DE ARAGÓN	x	1	x	x	X	1
CAJA DE AHORROS DE MURCIA	1	1	x	x	x	2
CAJA DE AHORROS DE SALAMANCA Y SORIA	1	1	x	2	1	5
CAJA DE AHORROS DE SANTANDER Y CANTABRIA	x	1	x	1	x	2
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	2	3	x	3	1	9
CAJA DE AHORROS DE VITORIA Y ÁLAVA–ARABA ETA GASTEIZKO AURREZKI KUTXA	x	1	x	x	x	1
CAJA DE AHORROS DEL MEDITERRÁNEO	2	4	1	6	x	13
CAJA DE AHORROS MUNICIPAL DE BURGOS	1	1	x	x	x	2
CAJA DE AHORROS Y MONTE DE PIEDAD DE CÓRDOBA	x	1	1	1	x	3
CAJA DE AHORROS Y MONTE DE PIEDAD DE EXTREMADURA	x	2	x	x	x	2
CAJA DE AHORROS Y MONTE DE PIEDAD DE GUIPÚZCOA	x	1	x	1	x	2
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	7	16	1	8	5	37
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA	1	1	x	x	x	2
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	x	7	x	3	x	10
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CÍRCULO CATÓLICO DE OBREROS DE BURGOS	1	x	x	x	x	1
CAJA DE AHORROS Y PENSIONES DE BARCELONA	2	6	1	7	4	20
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	x	5	x	x	1	6
CAJA GENERAL DE AHORROS DE CANARIAS	2	2	x	x	x	4
CAJA INSULAR DE AHORROS DE CANARIAS	2	1	x	1	x	4
MONTE DE PIEDAD Y CAJA DE AHORROS DE HUELVA Y SEVILLA	1	3	x	x	x	4
MONTES DE PIEDAD Y CAJA DE AHORROS DE RONDA, CÁDIZ, ALMERÍA, MÁLAGA Y ANTEQUERA	x	2	x	x	x	2
TOTAL	**29**	**68**	**4**	**48**	**14**	**163**

Source: CNMV.

Distribution by entity of complaints against credit cooperatives

TABLE A.5

Credit cooperative	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
CAIXA DE CRÈDIT DELS ENGINYERS- CAJA DE CRÉDITO DE LOS INGENIEROS, S. COOP.	x	1	x	x	x	1
CAJA LABORAL POPULAR COOPERATIVA DE CRÉDITO	x	x	x	1	x	1
CAJA RURAL DE ARAGÓN, SOCIEDAD COOPERATIVA DE CRÉDITO	x	1	x	x	x	1
CAJA RURAL DE CIUDAD REAL, SOCIEDAD COOPERATIVA DE CRÉDITO	x	x	x	1	x	1
CAJA RURAL DE CÓRDOBA, SOCIEDAD COOPERATIVA DE CRÉDITO	x	x	x	1	x	1
CAJA RURAL DE GRANADA, SOCIEDAD COOPERATIVA DE CRÉDITO	x	1	x	x	x	1
CAJA RURAL DE TOLEDO, SOCIEDAD COOPERATIVA DE CRÉDITO	x	x	x	1	x	1
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	x	1	x	2	x	3
TOTAL	**0**	**4**	**0**	**6**	**0**	**10**

Source CNMV.

Distribution by entity of complaints against IFs, UCITS managers and others

TABLE A.6

IF or UCITS mgr	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
AHORRO CORPORACIÓN FINANCIERA, S.A. SOCIEDAD DE VALORES	x	x	x	1	x	1
AXA IBERCAPITAL, AGENCIA DE VALORES, S.A.	1	x	x	x	x	1
BBVA ASSET MANAGEMENT, SGIIC, S.A	x	3	x	x	x	3
BOURSORAMA, SUCURSAL EN ESPAÑA	x	1	x	x	x	1
DELFORCA 2008, SOCIEDAD DE VALORES, S.A.	2	1	x	2	5	10
EURODEAL AGENCIA DE VALORES, S.A.	x	x	x	1	x	1
FINANDUERO, SOCIEDAD DE VALORES, S.A.	x	x	x	1	x	1
GESMADRID, SGIIC, S.A	2	x	x	1	x	3
GVC GAESCO GESTIÓN, SGIIC, S.A	x	1	x	x	x	1
GVC GAESCO VALORES, SOCIEDAD DE VALORES, S.A	x	x	x	1	x	1
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA	x	1	x	1	x	2
INTERDIN BOLSA, SOCIEDAD DE VALORES, S.A.	x	x	x	2	x	2
INVERCAIXA GESTIÓN, S.A., SGIIC	x	1	x	x	x	1
INVERSEGUROS GESTIÓN, S.A., SGIIC	x	1	x	x	x	1
IB-KAPITAL VERMÖGENSVERWALTUNG GMBH	x	x	x	2	x	2
MAPFRE INVERSIÓN, SOCIEDAD DE VALORES, S.A.	x	x	x	1	x	1
LA CAIXA GESTIÓN DE PATRIMONIOS, S.V., S.A.	x	1	x	1	x	2
RENTA 4, SOCIEDAD DE VALORES, S.A.	1	1	x	1	1	4
SANTANDER ASSET MANAGEMENT, S.A., SGIIC	1	x	x	x	x	1
SANTANDER REAL ESTATE, S.A., SGIIC	1	x	x	x	x	1
TRESSIS, SOCIEDAD DE VALORES, S.A.	1	x	x	x	x	1
TOTAL	**9**	**11**	**0**	**15**	**6**	**41**

Source CNMV.

Rectifications following reports favourable to the complainant

TABLE A.7

Entity	Report favourable to complainant	Rectified	Unrectified
AHORRO CORPORACIÓN FINANCIERA, S.A. SOCIEDAD DE VALORES	1	1	0
ALTAE BANCO, S.A.	2	0	2
BANCO BANIF, S.A.	5	1	4
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	7	2	5
BANCO CAIXA GERAL, S.A.	2	1	1
BANCO DE ANDALUCÍA, S.A.	1	1	0
BANCO DE FINANZAS E INVERSIONES, S.A.	5	2	3
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA, S.A.	5	0	5
BANCO DE SABADELL, S.A.	4	4	0
BANCO DE VALENCIA, S.A.	1	1	0
BANCO ESPAÑOL DE CRÉDITO, S.A.	10	1	9
BANCO ESPIRITO SANTO, S.A.	1	0	1
BANCO GALLEGO, S.A.	2	0	2
BANCO INVERSIS, S.A.	21	1	20
BANCO PASTOR, S.A.	1	1	0
BANCO POPULAR ESPAÑOL, S.A.	3	2	1
BANCO SANTANDER, S.A.	21	12	9
BANKINTER, S.A.	23	1	22
BARCLAYS BANK, S.A.	31	0	31
BNP PARIBAS ESPAÑA, S.A.	4	1	3
CAIXA D´ESTALVIS DE CATALUNYA	3	3	0
CAIXA D´ESTALVIS DE MANRESA	1	0	1
CAIXA D´ESTALVIS DEL PENEDÈS	1	0	1
CAIXA DE AFORROS DE VIGO, OURENSE E PONTEVEDRA (CAIXANOVA)	2	2	0
CAIXA DE CRÈDIT DELS ENGINYERS- CAJA DE CRÉDITO DE LOS INGENIEROS, S. COOP.	1	1	0
CAJA DE AHORROS DE ASTURIAS	2	1	1
CAJA DE AHORROS DE GALICIA	6	0	6
CAJA DE AHORROS DE SALAMANCA Y SORIA	2	1	1
CAJA DE AHORROS DE SANTANDER Y CANTABRIA	1	0	1
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	3	0	3
CAJA DE AHORROS DEL MEDITERRÁNEO	6	1	5
CAJA DE AHORROS Y MONTE DE PIEDAD DE CÓRDOBA	1	0	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE GIPUZKOA Y SAN SEBASTIÁN	1	0	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	8	3	5
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	3	0	3
CAJA DE AHORROS Y PENSIONES DE BARCELONA	7	0	7
CAJA INSULAR DE AHORROS DE CANARIAS	1	0	1
CAJA LABORAL POPULAR COOP. DE CRÉDITO	1	1	0
CAJA RURAL DE CIUDAD REAL, SOCIEDAD COOPERATIVA DE CRÉDITO	1	0	1
CAJA RURAL DE CÓRDOBA, SOCIEDAD COOPERATIVA DE CRÉDITO	1	0	1
CAJA RURAL DE TOLEDO, SOCIEDAD COOPERATIVA DE CRÉDITO	1	1	0
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2	0	2
CITIBANK ESPAÑA, S.A.	42	1	41
CRÉDIT SUISSE AG, SUCURSAL EN ESPAÑA	1	0	1
DELFORCA 2008 S.V., S.A.	2	0	2
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	14	0	14
EURODEAL AGENCIA DE VALORES, S.A.	1	0	1
FINANDUERO, SOCIEDAD DE VALORES, S.A.	1	1	0
GESMADRID, S.A., S.G.I.I.C.	1	0	1
GVC GAESCO VALORES, SOCIEDAD DE VALORES, S.A.	1	0	1
IB-KAPITAL VERMÖGENSVERWALTUNG GMBH	2	0	2
IG MARKETS LIMITED, SUCURSAL EN ESPAÑA	1	0	1
ING DIRECT, N.V. SUCURSAL EN ESPAÑA	2	2	0
INTERDIN BOLSA, SOCIEDAD DE VALORES, S.A.	2	1	1
LA CAIXA GESTIÓN DE PATRIMONIOS, S.V., S.A.	1	0	1
MAPFRE INVERSIÓN, SOCIEDAD DE VALORES, S.A.	1	1	0
OPEN BANK SANTANDER CONSUMER, S.A.	7	0	7
RBC DEXIA INVESTOR SERVICES ESPAÑA, S.A.	2	0	2
RENTA 4, SOCIEDAD DE VALORES, S.A.	1	0	1
SELF TRADE BANK, S.A.	1	1	0
UNOE BANK, S.A.	3	1	2
TOTAL	**292**	**54**	**238**

Source: CNMV.

Type of entities complained against and rectification

TABLE A.8

	Report favourable to the complainant	Rectified		Unrectified	
	number	number	%	number	%
Credit institutions	**277**	**50**	**18.1**	**227**	**81.9**
Banks	222	36	16.2	186	83.8
Savings banks	49	12	24.5	37	75.5
Credit cooperatives	6	2	33.3	4	66.7
Investment firms	**13**	**3**	**23.1**	**10**	**76.9**
UCITS managers	**2**	**1**	**50.0**	**1**	**50.0**
TOTAL	**292**	**54**	**18.5**	**238**	**81.5**

Source: CNMV.

Distribution of non accepted complaints by motive for rejection

TABLE A.9

No. of complaints	2008	2009	% change 09/08
Not competence of CNMV	41	86	109.8
No evidence of submission to CSD	94	167	77.7
Unidentified	24	20	16.7
Within deadline for response	10	25	150.0
Other	8	16	100.0
TOTAL	**177**	**314**	**77.4**

Source: CNMV.

Distribution of accommodations and withdrawals by subject of complaint

TABLE A.10

Subject	2008 complaints		2009 complaints	
	number	%	number	%
Investment funds and other UCITS	**65**	**58.0**	**69**	**31.5**
Information requirements	15	13.4	13	5.9
Transfers between UCITS	19	17	23	10.5
Unit subscriptions and redemptions	18	16.1	24	11.0
Fees	13	11.6	8	3.7
Other incidents	0	0	1	0.4
Securities market transactions	**57**	**42.0**	**150**	**68.5**
Order transmission, execution and settlement	32	28.6	84	38.3
Fees	11	9.8	26	11.9
Information requirements	13	11.6	35	16.0
Other incidents	1	0.9	5	2.3
TOTAL	**122**	**100.0**	**219**	**100.0**

Source: CNMV.

Annexe 2 List of companies not registered with the CNMV enquired about in 2009

102 CAPITAL
A.S.G. CONSULTORES INTEGRALES
ACM ADVANCED CURRENCY MARKETS
AFFIRMO GRUPO INVERSOR
AFINCA
AIM LAW ASSOCIATES
AIM WARRANTS
ALEGRO
ALEXANDER COLDFIELD VENTURE FUNDS LLC
ALEXANDER ROTHKO & ASSOCIATES
ALEXANDER SOLUTION
ALPEN RESSOURCEN ESPARKASSA
ALZICAPITAL, S.L.
AM WARRANTS
AMP TRADING
ANÁLISIS E INFORMES DE MERCADO
ARGENT TRADING
ASESORAMIENTO FINANCIERO S.L.
ASESORIA FINANCIAL IMPRO
ASPECTA
AUREA NEGOCIOS
AVAFX.COM
BANK OF LONDON AMERICA LIMITED
BANQUE ROYALE
BARBELL
BELLFIELD INTERNATIONAL ESPAÑA S.L.
BENJAMIN FISHER
BERKELYS FINANCIAL
BFS CORPORATION
BLANBACK 21, S.L.
BOLSA 10
BOLSACANARIA.NET
BOSQUES NATURALES
BR CONSULTANCE URGENT
BROKERS FX
BULL FOREX. INVERSIÓN EN DIVISAS.
CAPITAL 4 INVESTMENT
CAPITAL SYS, TRADING IDEAS, HIBBER BOTHWELL
CAPITAL SYSTEMS GLOBAL
CAT Y VER CONSULTORES
CHADWICK MYERS
CITISOLUCIONES
CITY BANK ONLINE
CITY BANK SERVICES & SECURITY PLC
CONS CABEZAS LIVIANO S.L.
CRYSTAL FINANCIAL SOLUTIONS S.L. CIF
CSL CAPITAL SISTEM GLOBAL
DAILER CONSULTING
DEALERS QUALITY CONSULTING
DESTRA PLUS
DIAGONAL DIVISAS
EC DG MARKT STUDY
EL DINERO PRIVADO
EMERGING EQUITY / PIONEER EQUITY ADVISORS
EMPORIO & YUPI Y AFFIRMA
ESDINERO
ESICAMO
ETORO
EUROPEAN INVESTMENT AND CONSULTING GROUP
EVOLUTION MARKET GROUP
FINANCIAL IMPROVE
FINANTIA FOFILONC
FINANZAS FOREX
FINANZAS FOREX COLOMBIA
FINANZAS FOREX MÉXICO
FOREX CAPITAL
FOREX CAPITAL MARKETS LTD
FOREX GESTIÓN S.A.
FOREX MACRO
FOREX MARKET
FOREXYARD
FOX CAM ETRADING
FUTUROS BURSÁTILES GESTIÓN
FX BARNA
FX SWISS
FXBOT
FXCM CLUB
FXCM ESPAÑOL
GALDIX
GASTRON FIRST, S.L.
GFX GROUP, S.A.
GLOBAL MONEY MANAGEMENT
GLOBAL VALORES, S.A.
GLOBAL VOICES
GLX MANAGEMENT
GOLDBURN MANAGEMENT
GRUPO BALDER CONSULTORES
HAMILTONS ASSET GROUP
HISPAFINANZAS
HTTP://LABOLSADEROBINHOOD.NET
HTTP://WWW.LUCRA-LUCRA.COM
IBEX TRADING
ICM MARKET
IMA GLOBAL, S.L.
IMPROVING PROMOTIONAL LINKS
IMPROVINK ASESORES, S.L.
INGESTA CAPITAL S.L.
INPACSA
INPROFIT
INPROLINKS, S.L.
INPROVINKS ASESORES FINANCIEROS
INTELECTIA
INTERBAN, INVERSORES PRIVADOS
INTERNATIONAL INVEST
INVERCADE
INVERFOREX

INVERSER CONSULTING, S.L.
INVERSIONES FOREX
INVERSIONES PIKAIA
INVERSIONES SECURITIES, S.A.
INVESTMENT ENQUIRY
INVESTMENT WORLD BANCORP
IPL
JENARO BROKERS
JOSETXE FINANCIEROS
JOSETXE INVESMENT
KBOURBAKI FINANCIAL ADVISORS
KHMIRI CONSULTANTS
KOSTAROF
LJ FINANCE GROUP
LJF ASESORES
LONGITEL
MACROFOREX
MARINE TRUST BANK PLC
MARKET & BUSINESS CONSULTING ADVICES, S.L.
MARKET AND INVESTMENT ADVISE
MASTERFIELD INVESTMENT
MB CONSULTING.
MELANTERIT S.L.
MERCADIA ASESORES
MERIDIAN CAPITAL ENTERPRISES LTD
MIG INVESTMENTS
MITCHELL FINCH INTERNATIONAL
MJ FINANZAS GROUP
MORGAN FINCH INTERNATIONAL
MORGAN STANFORD
MULTI TRADING
PANORAMIC FINANCIAL SOLUTIONS S.L.
PESMIR TRADING
PPP MARKETS
PRIEUROPA-PRIMERICA COMPANY
PRIMA PRIVATE
PRIMA PRIVATE CLIENT
PRIMERICA
PROFINK
PROFITOR SPAIN
PROVINK ASESORES
RANGOL
RECOBOLSA
ROYAL CREDIT FINANCIAL
SAFINANCIEROS E IG FINANCIEROS
SALARIO PLUS
SCB, S.L.
SEARCH PROFIT CORPORATION
SHARE ADVISORY FIRM
SISTEMA DE GESTIÓN RETRIT Y CREGESA
SLX CAPITAL
SMART TRADE GROUP
SOCIEDAD GENERAL INVERSIONES
S-TRADE ESPAÑA - GRUPO FINANCIERO ORION
STRAIGHTHOLD INVESMENT
SUIZMARKET
SWIFTTRADE
TANA CORUM
TECNOFINANZAS
TECNOFOREX
THOMAS MOORE GLOBAL.
TIRN CLUB PRIVADO DE INVERSIÓN
TRADE INTERNATIONAL
TRADING BOLSA, S.L.
TRAMITA FUNDS
TRIBU INTERNATIONAL INVEST, S.L.
UNIPAL FINANZAS
VALOR ÓPTIMO
VALVERDE ASESORES S.L.
VANFUNDS
WAN FINANCIAL
WASKMAN AND MURPHY FINANCIAL, S.L.
WORLD SPREADS
WORLDSEP INVERSIONES POR DIFERENCIAS
WWW.BROKERFINANCES.COM
WWW.ESDINERO.ES
WWW.FOREXMACRO.COM
WWW.GRUPOHERNANDEZ-PEREZ.ES
WWW.GRUPOINVERSORAGR.COM
WWW.HISPATRADERS.COM
WWW.INCAPACIFIMINING.COM
WWW.SALARIOSPLUS.COM
WWW.S-INVEST.COM
WWW.VANFUNDS.COM
WWW.X-TRADEBROKERS.COM
XTB BROKER
ZURICH

Annexe 3 Summary of complaints with report favourable to complainant

A3.1 Investment services (securities)

A3.1.1 Order reception, transmission and execution

Incidents relating to order execution: delays or non performance

R/738/2008 - **Caixa d´Estalvis de Catalunya.** It was found that an order to buy bonds failed to comply with the parameters in the client's instructions, having been executed by the entity's appointed market member at a price above the limit price stated.

R/739/2008 - **ING Direct, N.V. Sucursal en España.** The complainant was unhappy about the failure to execute a transfer of securities deposited with the entity ordered by his wife and daughter – a minor – to another entity.

The transfer failed because the account holders recorded at the delivering and receiving entity were not the same. While the delivering account was in two names – mother and minor daughter – neither of the two securities accounts at the receiving entity (the respondent in this case) was in these joint names. As the account holders did not match, the transfer order could not be executed.

It seems that the problem giving rise to the complaint was that the receiving entity for the securities does not allow the opening of joint ownership accounts in the name of a minor and with a person of legal age as representative, which was the case with the delivering account.

Given the repeated fruitless attempts to complete the transfer – nine in total – the entity should have recontacted its client to explain the reasons for the repeated rejections and the need to solve the issue by drawing up a third securities agreement.

The CNMV found that the entity had acted incorrectly by failing to notify the client of why a transfer that was requested nine times had been repeatedly rejected and was therefore ultimately not executed.

R/790/2008 - **Bankinter, S.A.** The client claimed that he had placed an order to sell securities during the closing auction, expecting that the sale would be executed during trading hours. The order was ultimately executed the next day, during the market opening period.

Regulations stipulate a closing auction period from 17:30 to 17:35 when orders can be placed, amended or cancelled but not executed. The auction ends at any point in a random period of up to 30 seconds after 17:35. This is when orders submitted to the market during the auction period are filled at the auction price. So the entity was wrong in stating that the order placed during the auction period could never be executed.

Also, the entity explained that there was a small time difference between the time recorded by its server and the server at the exchange. This 59 second difference could have been due to a difference between the two clocks.

It was found that the entity was responsible for the 59 second gap in passing online orders to the market and wrong to inform the client that his order had been submitted when the market was already closed.

R/874/2008 - Caja de Ahorros del Mediterráneo. The complainant repeatedly asked the entity for information on why sell orders were not executed.

The entity failed to either execute these sell orders or respond to the investor's letters to the Customer Service Department. It was found that the entity should have provided clear, accurate, precise, sufficient and timely information to explain why, in accordance with its order execution policy, these instructions had not been followed.

Furthermore, following a request by this department it emerged that the entity had failed to conserve the securities account opening agreement. Such agreements must be kept on file as long as the relationship with the client continues and the entity should therefore have been able to provide a copy.

R/943/2008-Banco Español de Crédito, S.A. The client complained about the delay in executing a securities transfer between two Iberclear members. The entity offered no explanation as to why the transfer to another entity took so long to complete from the time of its reception. The delay was deemed to be excessive and unjustified and the entity was therefore found to have acted incorrectly.

R/949/2008 - Caja de Ahorros del Mediterráneo. The investor complained about the entity's failure to execute a number of her orders to sell securities and transfer foreign securities.

In one case, the entity's explanation for the failure to execute an order – that it could not find sufficient counterparties – did not square with the type of instrument concerned. These were shares traded on the Spanish stock exchange which, in contrast to what the entity alleged, were deeply and widely enough traded for the sell order to be executed without difficulty. As a result, the reasons given for its failure to execute the sell orders made no sense.

In the second case, the securities concerned were units in a foreign investment fund that had for a while been registered in the CNMV's Official Register of foreign UCITS. In this case, the entity should have informed the investor that their units could only be redeemed through channels authorised by the fund's manager and by application to the distributor of the units.

It was therefore found that the entity had failed to act with due diligence in its processing and execution of these sell orders.

R/992/2008 - Banco Inversis, S.A. The entity was considered to have acted incorrectly in failing to execute sell orders on warrants with the required speed. It also repeatedly tried to justify its actions with information that was completely untrue and failed to explain to the client the real problems it was having in processing and executing the orders.

The complainant ordered the sale of 116,000 warrants for a particular share issue at 16:54 on 3 October 2008. The order was placed using the entity's website with a

limit price per warrant of 0.33 euros. One minute after the order had been placed the complainant noticed that the order had not been executed, even though market conditions should have allowed this. The complainant immediately cancelled the order. At 16:59 the order was placed again with the same conditions, this time by telephone. However, this order was not executed either.

The entity claimed that the first order was sent to the market at 16:54:23 and was cancelled before it could be executed at 16:55:34. The second order was sent to the market at 16:59:30 but could not be executed as there was insufficient volume and it expired at the close of day's trading.

However, from an analysis of orders on the warrants concerned that were executed on 3 October 2008, and from the order book supplied by the stock exchange manager Sociedad de Bolsas, it appears that the 16:54:23 order and its subsequent cancellation never reached the market. The sell order that the entity claims was sent to the market at 16:59:30 actually arrived at 17:15:47.

It was also found that, had the first of the orders been sent to the market at 16:54:23, it would have been matched with the position of the market maker who subsequently placed repeated bids at this price, with orders for 300,000 securities at 0.33 euros.

Likewise, if the second order had been entered at the time stated by the entity (16:59:30), it would also have been executed against the position of the market maker who was buying 300,000 warrants at 0.33 euros between 17:01:21 and 17:11:27.

However, as the order did not arrive at the market until 17:15:47 it was not possible to find a buyer at this price. In effect, from this time until the end of trading the best bid price never rose above 0.32 euros.

R/933/2008 - Banco de la Pequeña y Mediana Empresa, S.A. In this case the client complained about a delay in the transfer of a securities portfolio deposited with the entity. The complainant stated that he had instructed the receiving entity to initiate the transfer on 8 May 2008, so it would formally go through on 21 May 2008.

The complainant could not, however, substantiate his request to begin the transfer on 8 May 2008, while the entity was able to supply evidence of a transfer order dated 16 May 2008.

The guidelines that regulate the transfer of book-entry securities between members of the Securities Clearing and Settlement Service (SCLV) state that members must action securities transfer orders before the end of the working day following receipt of the order. The SCLV will then debit and credit the corresponding securities and/or cash accounts the same day.

Based on these SCLV guidelines it was held that the entity had acted incorrectly. Had the order been actioned the day it was received, that is Friday 16 May 2008, then the securities would have been transferred by 19 May 2008.

R/932/2008 and R/1448/2009 - Banco Santander, S.A. The complainants were holders of preference shares issued by Unión Fenosa Preferentes SAU, admitted to trading on the Luxembourg Stock Exchange.

The first complainant signed a sell order dated 18 February 2008, which did not set a lower price limit or good for date. The second did not place a firm order, but in May 2008 informed the entity of his intention to sell.

Under a liquidity agreement signed between the issuer and Banco Santander, Caja Madrid and BBVA, the latter entities agreed to make a market for the holders of the preference shares by quoting bid and ask prices.

However, the market makers would no longer be obliged to offer liquidity if the total balance of the preference shares they held was equal to or greater than 10% of the nominal value of the issue placed by them.

Within the timeframe stated above, only Banco Santander was released from its obligation as a liquidity provider on having reached the above cut-off point. Nevertheless, we consider that the bank still had a responsibility, not under the liquidity agreement but as custodian of the shares and agent for its client's sell order, to use all readily available methods to find a counterparty for the order. This would have meant using the Luxemburg Stock Exchange's trading mechanisms to look for buy positions. Failing this, the entity should have consulted the issue's other market makers in order to check their buy prices and see if they were acting as counterparties.

Based on its own submissions, the entity acted incorrectly as it did not carry out the required consultation with other liquidity providers in order to seek a counterparty for its clients' sell orders.

R/169/2009 - **Banco Santander, S.A.** The complainant claimed the bank failed to action a telephone order to sell shares placed on 7 January 2009.

Although there was no proof that this sell order had been made, it was established that the buy order leading to the purchase of the shares was placed by a telephone call of which the entity conserved no record, despite having a telephone banking service in place.

The entity was therefore found to be in breach of regulations governing investment service providers and, specifically, the requirement to keep records of transactions and evidence of orders.

A further fault also came to light, as the entity unilaterally sold the shares that were the subject of the dispute on 10 February 2009.

The company argued in this second case that it had wanted to cancel its contractual arrangements with the client. Clearly, the unilateral sale was not defensible either under the securities administration agreement or under regulations governing investment service providers.

On this point, we consider that the entity should first have asked the complainant to order the transfer of securities to another entity. Failing this, the prudent course would have been to deposit the securities in escrow (consignación judicial) rather than unilaterally disposing of another party's property.

R/171/2009 - **Unoe Bank, S.A.** The client was unhappy that an order to sell shares traded on the Spanish continuous market (SIBE) was executed after 17:35. He did not think that the system would have accepted orders during the auction period.

Trading sessions on the SIBE end with a five minute auction lasting from 17:30 to 17:35 and ending at a random point during an additional thirty second period. Orders can be placed, amended or cancelled while the auction period is ongoing. The resulting auction price is the closing price for the session.

So, the SIBE's market rules allow orders to be placed during the auction. This is made clear in the registered user pages of its website in the section on trading hours.

It was established that the investor's order had been correctly entered into the system during the closing auction. Once the auction was over, it was executed at the daily closing price with an execution time of 17:35.

However, it is equally clear that the entity recorded in its system an execution time that was outside normal trading hours and the time set for the closing auction, and which did not correspond to the actual time the order went through.

Incidents relating to order execution: AIAF fixed-income market

R/23/2009 - Banco Popular Español, S.A. The complainant objected to the failure to execute an order to sell preference shares issued by Unión Fenosa Financial Services USA. It was found that, during the time when the order was good, similar trades were matched and not all liquidity providers for the issue were exonerated from rendering this service.

R/114/2008, R/887/2008 and R/197/2009 - Banco Santander, S.A. The complainants in these two cases owned preference shares issued by Endesa Capital Finance, LLC and by Unión Fenosa Financial Services USA, LLC, respectively, which were traded on the AIAF market.

Having submitted various sell orders, it was established that in the first case the entity was still bound by the obligation to make a market in the shares, since the number of preference shares on its own account was less than the cut-off point stipulated in the issue prospectus. Since it did not show that it had done this, we conclude that the complainant's sell instructions were poorly managed.

In the second case, Banco Santander's own holdings had exceeded the cut-off point below which it was obliged to make a market in the securities concerned but, even so, it had continued to act as principal counterparty to some of its clients. It also acted as broker in numerous transactions on clients' behalf and, finally, failed to show that it had contacted the other liquidity providers for the issue to try and fill the order.

R/804/2007 - Caja de Ahorros y Monte de Piedad de Madrid, R/215/2008 - Banco Español de Crédito, S.A. and R/266/2008 - Banco Popular Español, S.A. The complainants owned preference shares issued by Endesa Capital Finance, LLC which were traded on the AIAF market.

In neither of the first two cases could the entities, who were custodians and took the sell orders for their clients, show that they had adequately fulfilled their mandates. They provided no evidence that they had contacted market makers for the issue to try and find a counterparty.

In the case of Banco Popular, it was also shown that the entity had been dealing on its own account, offering to buy at prices well below those at which it had been transacting for its clients.

R/234/2009, R/302/2009 and R/737/2009 - Caja de Ahorros de Galicia. The complainants held preference shares (ISIN ES0112805009) issued by Caixa Galicia Preferentes, S.A. and traded on the AIAF market.

In none of these cases was the entity able to show that it had appropriately managed the sell orders. For instance, it had brokered a large number of transactions with similar terms and maturities and presented no evidence that it had contacted the liquidity provider for the issue to try and find a counterparty.

R/611/2008 - Caja de Ahorros de Salamanca y Soria. The complainant held mortgage bonds issued by the savings bank itself, traded on the AIAF market.

It was established that, after a sell order was submitted, the entity had applied a system for managing mortgage bond sell orders on behalf of clients that, in our view, did not comply with its best execution policy.

Counterparties were only sought in the branch where the client had his securities account and, exceptionally, through a non-standard ad hoc procedure based on sending e-mails to the managers of other branches in the same banking zone. This clearly restricted the liquidity of the issue and put the complainant at a disadvantage to clients of other, bigger branches or banking zones.

R/418/2009 - Banco Bilbao Vizcaya Argentaria, S.A. The complainant owned preference shares (ISIN ES0112805009) issued by BBVA Capital Finance, SAU, and traded on the AIAF market. On 6 October 2008, he gave the bank instructions to sell. The sell order was executed in various tranches, between 5 December 2008 and 24 April 2009.

Given the high volume of similar transactions brokered by BBVA during this six-month period, it was found that if the order had been correctly processed and had remained valid after 6 October 2008, it would have been executed much earlier than it actually was.

R/269/2009 - Banco Inversis, S.A. The complainant held preference shares issued by SOS Cuétara Preferentes, SAU, traded on the AIAF market, and approached Inversis to arrange for their sale at par.

The staff who took the order told the client that the price of SOS Cuétara preference shares was 75% of their face value. This was incorrect, as the concept of market price cannot be applied to the AIAF market.

Also, this price was manifestly different from the quotes being published by AIAF at the time.

In fact, it was established that in the weeks following the client's statement of intent, the entity brokered a number of transactions to sell SOS Cuétara preference shares for clients at a price above par.

The entity had been matching and seeking counterparties for other similar orders and none of these were matched at less than par. This contradicts the entity's assertions regarding the complete lack of market liquidity.

Finally, based on the entity's own submissions, it was clear that it had not called on the other liquidity providers to fulfil its obligations to seek counterparty prices.

R/782/2008 - Banco Popular Español, S.A. The client asked the entity to sell his preference shares in Endesa Capital Finance, LLC.

The bank replied that at the moment there was no interbank market and that trades matched on the AIAF market were either cross-trades between clients or entities

buying on their own account. It also claimed that the liquidity providers had stopped acting as counterparties. It was therefore impossible to place the client's sell order on the market and so he could not sell his shares.

From the information given, we consider that the entity's argument, repeatedly stressing the "lack of a market" and the impossibility of selling the client's shares, was incorrect.

The correct course would have been for the branch staff not only to advise the client about the options for executing the order and the risks that the sale price might be less than the nominal, but also to explain the decentralised nature of the AIAF market, the absence of any market price as such for the shares and the disconnection between the prices applied to different transactions.

For all these reasons, we find that the entity could have accepted a conditional sell order for preference shares specifying a minimum price of face value, even though the same security was being traded at lower prices, instead of putting off its client.

Incidents regarding preferential subscription rights

R/134/2009 and R/353/2009 - Bankinter, S.A., R/779/2009 - GVC Gaesco Valores, Sociedad de Valores, S.A. and R/1521/2009 - Banco Inversis, S.A. In the course of various capital increases by listed companies, the complainants bought subscription rights on the secondary market. These transactions were processed and executed without incident. Afterwards the complainants placed no orders to subscribe for shares in any of these companies in exercise of the acquired rights.

In no case were the clients apparently informed of 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 the rights before the expiry of the trading period.

R/1003/2008 - Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja. The client complained that he had been unable to sell the subscription rights received as an Inmobiliaria Colonial shareholder in the first two days of trading, i.e., on 8 and 9 December 2008.

The savings bank affirmed in its submissions that the securities were made available to the complainant as of 12:24 on 9 December 2008, thereby accepting that the complainant could not trade his securities on 8 December or for much of the morning of 9 December.

The rights in this case had been awarded as part of a special convertible bond issue designed so the company's main shareholders could swap debt for equity. As a result, market trading was very thin and the only securities changing hands did so at 0.01 euros. This ultimately prevented the complainant being able to sell his rights when he finally entered his order on 11 December 2008.

When trading in a security is thin due to a near total lack of demand, as in this case, the time the order is submitted to the market is particularly important for investors wishing to sell: basically, the sooner they are submitted, the further up the seller queue.

Accordingly, the CNMV found the entity to be at fault for not having taken steps that would allow the client to deal in his rights from the earliest possible moment,

in circumstances where the speed of orders reaching the market was particularly important.

R/516/2009 – Barclays Bank, S.A. The complainant claimed that Barclays failed to follow the instructions for an order to sell subscription rights in Banco Santander shares: i.e., "sell at the last minute on the last day".

The entity confirmed in its submission that it did not sell all the share subscription rights as instructed, i.e. "at the last minute" of the trading day as the IT system did not allow it to specify the time an order was executed, although it did allow it to limit the order to a particular price, which the complainant had not done.

In the CNMV's view, the problem hinged not on whether the entity, having accepted the order, should therefore have carried it out according to the client's instructions but on whether the instructions given were clear in their scope and meaning and whether they could have been carried out. In this sense, the term "last minute" should have been flagged up as imprecise and ambiguous and therefore failing to meet the requirement that securities orders be clear and precise.

It is therefore clear that before accepting the order Barclay's should have sought clarification from the client on the content, asking for greater precision, so that the bank understood its scope and meaning and, once this had been clarified, could tell the client that it could not accept orders with such conditions, as it claimed in this case.

Accordingly, we consider that the entity was at fault for accepting an order whose scope and meaning it did not understand and then failing to seek clarification from the client.

R/682/2008 - Delforca 2008, S.V., S.A. The complainant submitted a series of orders to buy preferential subscription rights, each cancelling the previous ones.

Apparently, the first order could not be traded through the usual procedures, so the entity rerouted it through a different channel. This resulted in the order not being cancelled and duplicate orders going to market. The entity claimed the client had not told it about this initial order and had not cancelled it. However, it ought to have found out this out for itself in the course of pre-execution risk control procedures, and informed the client of the status of his orders in progress.

R/110/2009 - Banco Pastor, S.A. The complainant held shares in an Australian company and received an e-mail from the bank about an upcoming capital increase. This included information about the subscription period and trading period of the rights, the size of the issue, the premium, the estimated date the rights would be received (5 November 2008) and the deadline for submitting instructions (13 November 2008). The client was also informed about trading restrictions on shareholders resident in countries such as Spain, although it left open the possibility of trading through the CECA omnibus account, pending future confirmation.

Based on submissions by the respondent and the timeline of events, it is clear that the initial information was wrong. It gave the date of reception/assignment of rights as 5 November instead of 14 November as stated in the prospectus or information document for the corporate measure included in the evidence sent to the CNMV.

Also the time period quoted for the client to place instructions, ending 13 November 2008, was clearly erroneous given the actual delivery date of the rights. Even if its

purpose was to establish the moment after which the entity would act on its own initiative, it would still be absurd as it left the client with no leeway to transact.

Incidents with online or distance trading

R/732/2008 - Open Bank Santander Consumer, S.A. The complainant sent an e-mail to ayuda@openbank.es complaining about the failure to execute a sell order for foreign shares and explaining that he intended to buy shares in Inmobiliaria Colonial with the proceeds of this sale.

We accept the entity's argument that e-mails are not a valid way to submit securities orders as they do not adequately identify the sender. However, we consider that, on receiving the e-mail at the address for customer enquiries, complaints and suggestions, it should quickly have contacted the client to advise him of this fact.

From the documentation submitted, however, it seems the message about the share sale was not dealt with in an appropriate and timely manner, since there is no evidence that any reply was sent.

R/912/2008 - Bankinter, S.A. The complainant regularly trades through the entity's online brokerage service.

In this case, an incident occurred affecting the transmission of foreign fixed-income orders, but the website showed no warning or alert about an incident that would cause delays in processing orders to foreign markets or indeed about any other kind of problem.

The only way for the client to find out his order had failed was by checking the "order details". But the information there made no reference to technical problems saying only that the order had been rejected by the broker. This was open to many interpretations and could have misled the client as to the nature of the incident. Nor did it direct the client to alternative channels.

R/935/2008 - Interdin Bolsa, Sociedad de Valores, S.A. The entity was found to have acted incorrectly in providing the client with real time information on his balances without being able to guarantee its correctness, and in failing to warn him that this was the case.

Specifically, the entity stated with regard to his open positions in a EuroFX futures contract that any distorted prices received via the trader feeds during trading hours (8:00 to 22:15) were instantaneously detected and resolved. But it also admitted that outside these times, data feeds continued to function unsupervised and so a distortion in the price of this future could result in incorrect information on the true balance of the client's account.

From the information provided, we judge that the entity was remiss in failing to warn its clients that the real time balances quoted outside trading hours could contain errors.

R/1030/2008 - Caixa de Aforros de Vigo, Ourense e Pontevedra (Caixanova). The entity admitted that, between 18 and 20 December 2007, the value shown for the complainant's portfolio was wrong, being based on an incorrect number of shares, but did not feel that this warranted suspending the client's access to online trading.

As this fault was not considered enough to suspend the online service, it appears the incident alert protocol was not triggered, even though, according to the entity's own documentation, it was designed specifically for such situations.

Our view in this case is that it is the entity which maintains the business relationship with the customer and is therefore responsible for its correct performance. However it had failed in its obligation to provide him with clear, accurate, precise and relevant information.

It cannot absolve itself of responsibility for the information on the composition of the client's portfolio. Nor was it shown that between 18 and 20 December 2007 the client received any alert or message on his screen explaining the nature of the problem and the alternatives available.

The CNMV's view regarding the anomalies in the savings bank's online service, whatever their cause, is that clients should be encouraged to see this as a complementary channel alongside face-to-face or telephone trading, and to make use of these alternatives during incidents like the above.

R/48/2009 - Deutsche Bank, Sociedad Anónima Española. Shortcomings were found in the information provided by the entity about one of the securities cited in this complaint. These mainly arose from a failure to update trading prices, so that the figure shown as the last trading price had no basis in reality.

The bank was also found to have erroneously confirmed the cancellation of a sell order submitted by the complainant which had in fact gone through. Specifically, after the order to cancel, the order status message indicated "cancellation effected".

R/156/2009 - Banco Bilbao Vizcaya Argentaria, S.A. The entity accepted that between 25 September and 10 October 2008 a technical incident made it impossible for some clients to trade normally on BBVA Net. However, it was unable to substantiate that any warning message had appeared on the website indicating a technical or other fault.

The CNMV's view, as in similar cases, is that clients should be encouraged to see BBVA Net as a complementary channel alongside face-to-face or telephone trading, and to make use of these alternatives during incidents like the above.

R/0921/2008 – Banco Inversis, S.A. The bank mistakenly offered online trading in a euro-yen futures contract which they did not in fact market. A client's frustrated attempts to trade the contract gave rise to this complaint.

Incidents relating to orders on securities deposited in joint accounts

R/507/2008 - Banco Santander, S.A. Clients complained that the title of a securities account had been changed without the knowledge or consent of the joint account holders. In 1990, the complainant was recorded as usufructuary and the children as remaindermen for some shares deposited at the bank. In 1998, all three appeared as full owners, altering the real rights that they exercised over the shares.

The entity offered no explanation or reason for changing the title under which the securities were deposited, converting a usufructuary into full owner and so extinguishing his right of usufruct over the securities. Since the entity, as well as custodian for the securities, is also the account-keeper and responsible for registering title to securities held under the abovementioned service, it should evidently have been in a position to justify or explain why these changes were made.

R/793/2008 - **Banco Santander, S.A.** Securities held in an account at the bank were subject to different types of ownership rights, namely co-bare ownership and real usufruct. This situation of co-ownership encumbered by usufruct resulted from an inheritance. The entity was aware that steps were under way to bring the legal status of the securities into line with their status in the register, but also knew these had not yet been completed.

In these circumstances, it allowed trading to take place that violated the legal ownership of the securities, by processing sell orders from persons not entitled to submit them. The entity was accordingly at fault, even though it subsequently restored the position prior to the incident.

R/853/2009 - **RBC Dexia Investor Services España, S.A.** The complainant, along with her spouse, had signed an agreement with an investment firm to pass buy and sell orders to the Spanish stock market. The securities account and associated current account were held at RBC Dexia and both husband and wife figured as co-owners of a securities portfolio.

The complainant went to an RBC branch to explain that the joint account holders were going through separation proceedings and to specifically request that the securities account should be blocked, so that any movement would require the signature of both holders. The same instruction was sent to the investment firm by e-mail and registered fax.

Although the instruction was initially processed, the other joint account holder was later allowed to dispose of the securities without the complainant's knowledge.

The securities account where the portfolio was deposited was opened at RBC in the name of two co-owners exercising full and equal rights.

Any change to the full rights provision applying to the co-owners in a securities contract requires a formal request by at least one of them to revoke this situation.

So, if one account holder contacted the entity where the co-ownership account was held to formally request the revocation of the full and equal rights over the account, then the instructions should have been respected. The authorisation of both account holders would only be required in the case of a dual signature (mancomunada) joint account.

The written instructions sent to the investment firm and RBC asking that in future both co-owners should have to sign for any securities transaction should be seen not as an instruction to block free transfer of the securities but as a request to change the terms of their title. Having received this document, the bank should have processed the request and applied a dual signature regime to the account from then on.

Since it did not do so, it was found to be at fault for not honouring the complainant's instructions.

Conditional orders

R/449/2008 - **Bankinter, S.A.** The claimant placed a stop loss sell order for three thousand warrants with a limit price of 1.15 euros and a trigger price at or below 1.15 euros.

The investor claimed the order should have been executed the same day it was placed, assuming that, as stated on the entity's website, conditional orders were activated if the bid or ask price reached the trigger level even if they were not matched.

The entity's explanations made no sense and it was held to be at fault for failing to offer any meaningful justification for its improper handling and management of the order.

It was also found that the information downloaded from the entity's website, as provided by the complainant, failed to meet the required standard of clarity. It could be wrongly interpreted as suggesting that where a stop loss sell order had a limit price below the trigger price its execution was ensured if the trigger condition was reached.

Further, even if it is normal practice for this type of order to be triggered by executions, the web pages referred to above did not specify whether an order would be activated in this way or when the best bid and/or ask prices on the market met the condition in the order.

R/55/2009 - Cajamar Caja Rural, Sociedad Cooperativa de Crédito. In this case, the complainant placed a stop loss sell order for 110 Volkswagen shares at a minimum price of 950 euros and a trigger price of 940 euros or above. The order was only good until the end of trading on the day it was introduced.

The order should have been interpreted as meaning that once a price of 940 euros had been reached, and while the order remained valid, the entity was required to submit a conditional sell order at a minimum price of 950 euros.

The processing and execution of this type of order require active management by the intermediary, since the continuous market system SIBE does not recognise them as standard transactions.

As a result, any entity that allows its clients to place such orders must be able to render the service diligently and efficiently. In this case the entity failed to act diligently in processing the client's order.

R/477/2009 - Banco Inversis, S.A. The client's complaint centred on a failure to execute a sell order for 2,951 Telefónica shares, with a limit price of 14.99 euros and conditional on a share price at or below 15.27 euros. The complainant then sold the shares the day after the conditional order was rejected at a price of 13.79 euros.

On reviewing the submissions it was clear that the order failed because when it was sent to the exchange it did not comply with the regulatory requirements of SIBE, which set a static range for Telefónica shares of 4%.

The static range is the maximum permitted deviation from the static price at a particular time, which is derived in turn from the share's last auction. The last auction of Telefónica shares before the complainant's order was sent to the exchange had fixed this price at 15.83 euros. The static range would thus run from 15.20 to 16.46 euros until a new auction modified the static price. No further auctions took place while the complainant's order stood.

As the disputed order carried a limit price of 14.99 euros, it was outside the static range indicated in the paragraph above.

However, the entity only stated that the order had been rejected because its price was in breach of market limits, without specifying what these limits were. The CNMV accordingly considered the entity to have failed in its informational duties.

R/685/2009 - **Barclays Bank, S.A.** The client complained that an order to sell 90 Google shares with a limit price of 340 dollars failed to complete on 6 January 2009. The order was placed on 5 January 2009 and sent to the NASDAQ exchange. It remained good for at least 5 and 6 January.

The order was not executed on 6 January 2009 even though the Google share price reached a high of 340.77 dollars that day. The entity submitted orders to international exchanges on a daily basis because its IT system does not allow orders to placed with a longer period of validity. Any unexecuted orders that remained active were renewed the following day. The entity sent the order to the NASDAQ exchange on 5 January but failed to resend it on 6 January, as this was a public holiday in Spain.

It is impossible to know whether the order would have executed had it been resubmitted on 6 January, as the volume of shares traded when the price was above the order price (340 dollars) cannot be ascertained. However, it is possible to conclude that Barclays acted incorrectly as they did not inform their client on 5 January that they would be unable to send a sell order dated 6 January to the NASDAQ as this was not a Spanish working day.

Takeover bids

R/743/2008 - **Bankinter, S.A.** The complainant claimed the entity had first settled a takeover bid for his shares in cash and then withdrawn part of the amount credited and instead deposited shares in a different company.

Although both parties acknowledged the complainant's wish to receive the proceeds of the sale in cash, this did not accord with the information in the bid prospectus, which stated that part of the payment could comprise shares in the bidding company.

The entity was found to be at fault for failing to inform the complainant about how the shares in its custody might be settled under the bid.

R/883/2008 - **Caja de Ahorros de Asturias.** A takeover bid may be accepted by any shareholder who still owns shares before the close of trading on the day of the acceptance deadline.

Securities custodians are obliged, in the event of bids for shares held in their clients' portfolios, to inform them of the bid and procure their instructions on how to proceed. In this case the entity met its obligations by writing to the home address of the complainant explaining the various bids for Metrovacesa.

These communications, which followed a standard model, met the minimum requirements for such notices in setting out the deadlines, type of payment and default action to be taken by the entity in the absence of client instructions.

However since there was more than one competing bid, the entity "considered and decided" that it would not take acceptance instructions through its distance banking facility. This was a one-off measure that did not correspond to the entity's normal procedures so should have been expressly mentioned in the letters sent out to clients.

Not only was this essential information for the client, it also contradicted the publicity for the online service posted on the entity's website (www.cajastur.es), which read "The following transactions are available through Cajastur Directo: (...) Securities: Takeover bids and share offerings".

Deficiencies in orders

R/0745/2008 - **Banco Banif, S.A.** The entity was held to be at fault for failing to check the disputed share subscription and/or purchase orders were clear in their scope and meaning. Further, the text of the second order affirmed that a non-existent document had been made available to the claimant.

The order to subscribe for shares did not specify whether it referred to a capital increase and/or a rights offering or to the immediate purchase of securities on the secondary market. Consequently, as the shares had already been trading on the Austrian stock exchange for a number of years, as the entity states, it could have been interpreted as an order to buy shares in the secondary market and not to subscribe for shares in the ongoing capital increase.

The order to buy shares set a limit price of 0.00 euros, which was obviously meaningless as the price paid would invariably be greater. Equally meaningless was the expiry date specified in the order (01/01/0001).

Further, this last order included a statement by the complainant acknowledging access to the prospectus and summary document registered with the CNMV, despite the fact that the supervisor had received no filings on this offering. The report stressed that such clauses should only be included when documents have actually been delivered and/or made available, and to avoid confusion it is recommended that they are signed for in a separate document.

Trades executed without orders from the client

R/776/2008 - **Caja de Ahorros y Monte de Piedad de Córdoba.** It was found that the complainant had not submitted any specific instruction to sell his share package, and had only given generic verbal instructions regarding his intention to terminate a securities custody and administration agreement.

Such a statement of intent by a client cannot be interpreted as an instruction to sell the assets held in his account, since the agreement could, for instance, be terminated via the transfer of his portfolio to another custodian.

The entity acknowledged its mistake and showed a willingness to rectify the situation, although only after the client had lodged a complaint with the CNMV. It was accordingly found to have acted incorrectly.

R/893/2008 - **Caja Rural de Toledo, Sociedad Cooperativa de Crédito.** The entity was at fault for concluding transactions which it could not prove were ordered by the client, who had furthermore registered her disagreement within the time limit allowed.

Identification of clients

R/1028/2008 - **Delforca 2008, S.V., S.A.** Recordings of telephone orders showed that the only step taken by the investment firm to check that the person placing the orders was authorised to do so was to ask for the securities account code. It had not

asked for additional data such as an alphanumeric code or the DNI (national identity number) of the title holder, nor did the caller have to key in any kind of password before getting through to the trader. In his letter of complaint the client expressly acknowledged that the orders has been placed by his father with his knowledge and consent, and that he was not questioning the actual content of the transaction.

In our view, the entity had failed to adequately identify the person placing an order and was also in breach of confidentiality requirements from the moment the information was included in an account statement or settlement slip.

Order records

R/329/2008 - Banco de Andalucía, S.A. and R/972/2008 - Caixa d´Estalvis de Catalunya. In neither case was the entity able to furnish signed purchase documents. This indicates a procedural error either in the selling process or in the filing and conservation of supporting documentation for securities orders.

A3.1.2 Customer information

Acquiring investment products

R/711/2008 - Altae Banco, S.A. The complainant reported that two years after buying a structured note marketed by the entity, the coupon had shrunk to 0% and its value was 20% below acquisition price. He complained that he had not been advised beforehand of the risks of this investment.

On examining the evidence it was found that the purchase order signed by the complainant included a clause saying that the signatory was aware of the terms of the bond's issuance, trading and settlement and of the associated risks. However the document in question did not match the standard format for securities orders in use by investment service providers, Altae among them.

The date of the order was correctly entered, but there was no identification of either the securities, their issuer or the amount or quantity of instruments being acquired. Nor was mention made of their acquisition price, the maximum validity of the order, whether it was to be executed in the primary or secondary market, etc.

The bond's liquidity conditions were insufficiently and inadequately explained, being confined to a simple mention that they were exchange traded, without specifying the exact venue or indicating whether or not they had the support of a liquidity provider or similar.

The document, in short, set out the general conditions that the "structured bond" should supposedly comply with, but did not provide detailed conditions of the exact product being acquired.

In our view, the fact that no other written information was given on the product obliged Altae to include all its characteristics in the purchase agreement, which it had manifestly failed to do.

It was also established that Altae had been sending the complainant regular statements on the make-up of his portfolio that may have misled him as to the real value of the structured bonds in his possession, since the unit value shown was 100% of face value, when in reality their price had fallen.

R/0870/2008 - Banco Banif, S.A. In this case, although the entity did not admit that the disputed investments had been made on its recommendation and/or advice, the fact that it claimed to have conducted the mandatory suitability tests on its clients, following the entry to force of the MiFID, was considered sufficient evidence of this fact.

The entity was deemed to have acted incorrectly in offering investment advice and/or recommendations without having first gathered information from its clients about their financial situation, investment experience and objectives, and in omitting to inform them about the relationship between it and the supplier of the product being advised on.

R/1001/2008 - Banco Banif, S.A. The complainants and the entity had entered into an advisory relationship. From the statements furnished, it was clear that movements in the first weeks of this contractual relation were confined to government debt securities and term deposits. However, as of a certain date, they increasingly corresponded to another kind of asset that came to dominate their portfolios, namely preference shares of foreign issuers.

This change in the mix meant the bulk of the portfolio now comprised risky investments. Not only that, the advisors failed to uphold the principle of diversification, including a series of assets that were strictly non standard for an average investor with a conservative profile.

Considering that it had previously gathered information on the complainants in its informative and advisory capacity, it is hard to understand why the entity chose to include such products among the investment options supposedly tailored to their risk profile and investment goals. Despite earning higher returns than bank deposits at that time, these were perpetual instruments traded on foreign secondary markets with no guaranteed return, as well as potentially incurring higher custody and administration costs than other assets and deposits.

R/013/2009 - Banco Caixa Geral, S.A. The complainants held notes of MBIA Global Funding LLC (ISIN code XS0211328538) issued in February 2005 by MBIA Insurance Corporation and listed on the Luxembourg exchange.

The fact that this note had returns linked to interest rates and a time horizon of thirty years places it in a risk category that demands special care in the prior information given to clients and in deciding its suitability for their circumstances and investment profile.

The complainants in this case lacked previous investment experience in marketable securities of these characteristics, and there is no evidence that they were advised via some clause or warning that they were acquiring a comparatively high-yielding product but one whose risk might exceed their tolerance threshold.

Nor was there proof that the clients had been informed in advance about the investment's characteristics in writing or some other durable medium.

The entity also failed to substantiate possession of a structured bond purchase order or mandate issued by the complainants, so was deemed to be at fault in either the selling of the bonds or in failing to conserve a copy of the relevant orders, remembering that transaction records must be kept on file for a minimum of six years.

R/300/2008 and R/317/2008 - Banco de Finanzas e Inversiones, S.A. The complainants alleged that the product recommended and sold to them in May and April 2005 respectively was unsuited to their investment profile and had caused them losses.

The product in question was a structured note listed on a foreign secondary market whose main conditions were a fixed rate of 8.25% for the first three years and a floating rate thereafter (linked to movements in the two- and ten-year swap curves) and an initial maturity of 30 years.

The entity could not substantiate having provided the investors with information on the product before their investment decision, or advising them that the risk it carried might exceed their tolerance.

This lapse was not corrected in the signed purchase order, which was also missing certain standard elements: identification of the securities to be acquired and the issuer's complete, verifiable corporate name.

R/078/2008 - **Banco de la Pequeña y Mediana Empresa, S.A.** The entity had wrongly included a certain product among the investment options supposedly tailored to the profile and goals of a seventy-year-old customer. Despite yielding higher than bank deposits at the time (fixed rate of 7.25% over the first five years and floating thereafter), this product had an initial maturity of thirty years, was traded on a foreign market and would generate higher administration and custody costs than other assets and deposits.

R/857/2008 - **Banco de la Pequeña y Mediana Empresa, S.A.** The complainant disputed a preference share investment offered by the entity.

Although no contractual evidence or documentation was provided, it was deduced that a legal advisory relationship had been established for this transaction, such that the entity was obliged to gather information on the client's financial situation, investment experience and objectives. This was implicit in the entity's own submissions, which described how the complainant had contracted the product, its selection from among its product and services range and the guidance offered by its employees. This guidance, it alleged, was based on background data which the sales team had borne in mind when orienting his choice to a suitable product.

In this case, the entity was aware of the client's investment objectives but had not gathered enough specific information on his investment experience, since they could produce no record of the complainant having previously transacted in assets of a similar nature and risk. It was also found to be at fault in not providing full information on the product's characteristics and risks.

The purchase order was formally deficient in omitting details which in this case were mandatory in the absence of other information on the product contracted.

R/1014/2008 - **Banco Español de Crédito, S.A.** The entity was considered to have acted incorrectly in distributing commercial material in which a risky product was repeatedly compared to a financial deposit, and which failed to give sufficient warning of the high risk associated with the investment.

R/848/2008 - **Banco Inversis, S.A.** The entity was unable to prove that it had gathered sufficient information on the client to know if he had the experience and knowledge to trade in futures.

R/855/2008 - **Banco Santander, S.A.** The complainant affirmed that before formally contracting a product called "Enhanced Autocallable BBVA", the entity had sent him a written proposal of an investment portfolio which he had decided to accept.

This personalised investment proposal, which was delivered to him in writing and was the main informative medium used in the distribution of the corresponding products, defined the structured product "Enhanced Autocallable BBVA" as "paying a coupon even if the reference asset matures at below 100% of its initial value, provided the pre-set barrier has not been reached (70% of initial value). It is consistent with a bullish view of the underlying asset, offers a return substantially higher than that of other products with the same maturity and has a double safety feature".

Its general conclusion was that structured deposits allowed the investor to take market positions "(...) obtaining guaranteed returns".

Besides the material error committed by the entity is making this last general claim, we believe the information supplied was insufficiently balanced and failed to comply with the regulatory requirement to offer transparent, correct, accurate, relevant and timely information. It could also mislead investors by omitting the mandatory explanations about the risks and costs of the structured product, stressing only its advantages.

The information given was judged to be partial and insufficient, though not to be interpreted in isolation from the content of the structured product purchase agreement, which should, as stated, establish all the conditions binding on the parties.

R/1019/08 - Bankinter, S.A. The complainant pointed out that he had a conservative risk profile and, until becoming a client of Bankinter's, had never acquired a structured product without capital protection at maturity. On joining the entity, however, his new advisor persuaded him to acquire this kind of product, which came to dominate his portfolio.

An advisory relationship entails the duty to be informed about customers' financial situation and investment experience and objectives, so the entity should have gathered information on his financial knowledge, background and current goals and offered him products suited to his "investor profile".

Instead he was steered towards products at odds with the profile shown before and after joining Bankinter, which was incompatible with this kind of speculative investment. The entity was accordingly deemed to have acted incorrectly in the advisory services rendered.

R/535/2008 - Barclays Bank, S.A. On being requested to produce the written material it had provided on the nature and risks of preference shares issued by Popular Capital, S.A., the entity submitted a presentation which, it argued, should have sufficed for the complainant to understand the issue's basic characteristics.

The entity had in fact provided summary data on the terms of a hypothetical investment in preference shares which, though brief, were enough to understand key features of fixed-income transactions like their return, costs and maturity date, and could therefore inform the client's investment decision.

However, this presentation failed to mention such crucial aspects as the issuer's real name, the perpetual nature of the product, the possibility of early redemption, etc.

R/757/2008 and R/846/2008 - Barclays Bank, S.A. It was found on examination that the final terms and conditions document furnished by the bank as proof of having informed the client about the product's characteristics and risks was dated later than the purchase, and, in one case, corresponded to an entirely different issue

to the one the complainant had acquired. It is unlikely therefore that they had been delivered to him at the time of contracting.

The complainants also alleged that they had not signed a specific order authorising the purchase of the disputed bonds. The bank was unable to produce evidence to the contrary, so was clearly at fault in either the transaction itself or in failing to keep a copy of the corresponding order.

In complaint R/757/2008, concerning the post-sale information sent to the client, it was found that the entity was sending him monthly statements on the make-up of his portfolio which were potentially misleading about the real value of structured notes in his possession. In effect, these notes were assigned a unit value equivalent to 100% of their face value, giving a false appearance of stability.

R/738/2008 and R/972/2008 - **Caixa d´Estalvis de Catalunya.** It was claimed that the entity had categorised 4th and 5th subordinated obligations as a "Conservative product suitable for clients wishing to take on little risk or to make a very short-term investment, with a yield approximating money market rates".

Subordinated debt issues like these, with a call option for the issuer, are categorised as a complex instrument, so should never have appeared on the lowest rung of the risk scale envisaged by the entity for its product catalogue.

R/473/2009 - **Caixa d´Estalvis de Catalunya.** The entity was unable to substantiate that it had supplied the complainant pre-sale with a document indicating that subordinated debt securities were callable by the issuer.

On the contrary, the entity had given him a document stating the maturity date as 1 July 2010, with no mention of this call option, which the issuer took up.

The entity contended that the call feature was described in the issue prospectus. However it could provide no evidence that the complainant had had access to this document before making his purchase.

R/841/2008 - **Caja de Ahorros y Monte de Piedad de Guipuzkoa y San Sebastián.** The complainant was the holder of preference shares (ISIN code DE000A0DTY34) issued by Deutsche Bank Capital Funding Trust.

Including a high-risk product among the range of investment options suited to the objectives and profile of a client who had previously acquired only term deposits and money market funds was considered questionable at best. Although the disputed product offered a fixed rate higher than bank deposits and other assets up to January 2010 (fixed coupon of 6%), it subsequently switched to a floating rate (linked to movements in the yield curve). It was also a perpetual instrument callable at the issuer's discretion, traded on a foreign secondary market and incurring higher administration and custody expenses than other assets and deposits.

The product was deemed to have a series of features which should initially have ruled it out for an investor of the complainant's characteristics. The entity, moreover, could furnish no proof of having previously established a customer profile.

R/536/2008 - **Deutsche Bank, Sociedad Anónima Española.** The complainant was the holder of notes linked to a basket of shares and a basket of commodities, with ISIN codes DE000DB6HMH5 and DE000DB0PSG0 respectively, issued by Deutsche Bank AG.

The entity had assigned the product a moderate risk profile on its in-house scale of 0 to 5, equivalent to a risk score of 3, which would initially rule it out for an investor characterised as conservative or very conservative.

Yet it featured among the range of investment options presented to a client who had previously only invested in very short-term instruments, despite: (i) being exposed to a zero return from the second year on, depending on the performance of the reference baskets; (ii) having an envisaged maturity of three years; (iii) it being planned to list the notes for trading on a foreign secondary market; and (iv) carrying higher administration and custody expenses than other assets and deposits.

The product was deemed to have a series of features which should initially have ruled it out for an investor of the complainant's characteristics. The entity, moreover, could furnish no proof of having previously established a customer profile.

R/327/2008, R/358/2008, R/741/2008, R/778/2008, R/891/2008, R/202/2009 and R/476/2009 - Deutsche Bank, Sociedad Anónima Española. The complainants in all these cases shared a similar profile. All were pensioners, including one suffering visual disability and another who had asked his bank for an investment providing stable income to supplement his pension, to be earmarked as payment for a geriatric residence.

The product complained about was the Deutsche Bank AG bond 5%, ISIN code XS0230545740, issued by Deutsche Bank AG and marketed by its Spanish branch in November 2005 under the European passport. The following faults were detected in the marketing of this product:

1º The entity was unable to substantiate that it had supplied written information on the product at the time the purchase document was signed.

2º The entity had assigned this structured product a moderate risk profile (risk score 3) on its in-house scale of 0 to 5, which, in our view, should have ruled it out for investors characterised as conservative or very conservative.

The entity, as we understand it, played an informational role in the product placement and should have thought twice about including such a complex instrument among the investments deemed suitable for the objectives and profile of this group of clients. The bond in question: (i) offered a fixed rate higher than bank deposits for the first two years (fixed coupon of 5%), then switched to a floating rate without guarantee (linked to movements in the yield curve); (ii) had a scheduled maturity of 15 years, with a call feature for the issuer; (iii) was scheduled for admission to trading on a foreign secondary market; and (iv) would incur higher administration and custody expenses than other assets and deposits.

The product was accordingly deemed to have a series of risks which should have ruled it out for investors of the complainants' characteristics. The entity, moreover, could offer no proof of having previously established a customer profile.

3º In some cases, the purchase orders were found to have irregularities of form: dates missing, the name of the securities and issuer not stated in full, absence of client's signature, etc., although complainants were informed that only a court of law could determine whether the documents were therefore null and void.

4º Regarding the bond's valuation at the time of placement with investors, a detailed study by the Secondary Markets Department using two valuation methods (Method 1: implied 2-10 year CMS and Method 2: variation in the curve slope) concluded that the price at launch should have stood at around 87% of its notional value.

The fact that the issue may have been overvalued goes entirely unmentioned in the documentation submitted, implying that clients were denied access to full, reliable information on the value of their investment.

R/740/2008 - **Deutsche Bank, Sociedad Anónima Española.** The entity was at fault in failing to inform the client reliably during his purchase of the bonds "BN EUROPEAN INVEST BK 5.75%".

The issue was not intended for retail investors (the face value of each bond was 50,000 euros) and the entity failed to provide the client with pre-sale written information that would allow him to fully understand its characteristics and risks.

Nor were these shortcomings corrected in the securities order signed by the client.

R/720/2008 - **IG Markets Ltd, Sucursal en España.** The entity was unable to show that it had carried out an appropriateness test to check whether the client had the knowledge and experience to invest in a complex product like CFDs.

Financial swaps

R/545/2008, R/763/2008 and R/206/2009 - Banco Español de Crédito, S.A. In all these cases, the entity was deemed to have applied incorrect procedures during the acquisition of a financial swap, and, in the case of the last contract subscribed, to have failed to include reliable information about the procedures and costs of early termination in the contract clauses.

It was clear from the submissions that the complainant had signed a buy order for an interest rate swap. The purpose of this order was to "put on record the purchase commitment being acquired" by the client, although "it was not the definitive transaction contract", which would later be concluded between him and the bank.

From a formal standpoint, this way of proceeding is incorrect. Although signing a buy order is a firm mandate on the client's part, it is not possible to subscribe for a product on the basis of a provisional or non-definitive document, since the act of contracting is indivisible.

Nor, we found, was the client adequately informed at the moment of subscription about the terms and costs of voluntary early termination of the swap.

Although the framework agreement governing the transaction made general mention of this possibility, it simply referred signatories to the corresponding annex clauses. However the said annex made no reference to the parties being empowered to bring forward termination. And the contract made no provision for how costs would be calculated in such an event.

In R/206/2009, as well as deficient information in contract clauses about voluntary termination of the contract, it was found that the client had not been properly advised about the periodic settlements applied or the costs of executing his early termination order.

R/315/2008 and R/785/2008 - Banco Santander, S.A. In both cases, the contract was found to contain insufficient information regarding the terms and costs of early termination.

No mention was made that early termination could be initiated voluntarily by one of the parties, either among the grounds for early termination or the list of unforeseen circumstances that figured in the framework agreement governing the interest rate swap. However, we considered that both parties might have agreed this point ad hoc.

The contract included general criteria for calculating the costs applicable in the event of early termination, but no specific instructions for determining the net value of the cashflows to be exchanged. This was a serious omission of vital import for clients' investment decisions.

Early termination could, in any case, generate a payment whose amount could not be known by the client on signing the contract, but which he could at least have been told of upon advising the entity of his intention to terminate.

Based on the evidence provided in R/785/2008, it is clear that the early termination procedure was correctly formalised in writing and that clients were informed of the amount of the termination payment, though not how it had been arrived at.

R/468/2009 - Bankinter, S.A. The product in this case was a foreign exchange insurance contract for the forward purchase of U.S. dollars at different dates and exchange rates, under terms agreed with the entity. This is considered to be a complex product with considerable risk.

The bank addressed an e-mail to the client concerning the possible termination of the exchange insurance contract in terms which were open to misinterpretation, and without any reference to the costs this hypothetical operation would incur.

This contravenes the rules of conduct applying to investment service providers, which require them to offer retail customers clear, reliable information, optionally in a standard format, on the total price payable for the transaction or service sought.

Purchase of Lehman products

R/138/2009 - Altae Banco, S.A. The complainant was holder of a bond issued by Lehman Brothers Treasury Co. B.V (ISIN code XS0229584296), rating A+/A-1, with a fixed rate of 7.25% to 5 October 2010 and floating thereafter, scheduled maturity in 2035, albeit callable every five years, and capital protection at maturity.

It was established that complainant and entity maintained a financial advisory and mediation relationship and that this bond was acquired on the advice of Altae after the client had enquired about some product to improve his portfolio returns.

The entity was unable to substantiate having supplied the client with written information on the bonds prior to his investment.

R/856/2008 - Banco de la Pequeña y Mediana Empresa, S.A. The complainant was holder of structured notes issued by Lehman Brothers Treasury Co. B.V, with the commercial name Lehman BROS. Float 5/35 and ISIN code XS0218304458 and main characteristics as follows: (i) a fixed rate to May 2010 (7%) and floating thereafter (linked to yield curve movements); (ii) scheduled maturity of 30 years; and (iii) traded on a foreign secondary market (at least Euronext Amsterdam).

These features categorise it as a risky product, about which customers need to be adequately informed before deciding their investment.

The bank implicitly admitted that it lacked any data on the complainant's previous investment experience, since it had only borne in mind his "family history with the branch". In fact, he had made no previous investments of a comparable nature through the entity, and did not hold a securities account.

Nor could the entity prove that it had supplied him with information in writing or some other durable medium prior to his investment.

The buy orders, moreover, lacked basic elements like the ID of the security to be acquired and the full verifiable name of the issuer. These formal defects were especially grave in the absence of other clear and unequivocal information on the bond's characteristics and risks.

R/886/2008 - **Banco Español de Crédito, S.A.** A buy order and one other document accrediting the acquisition of bonds issued by Lehman Bros UK Capital Funding IV LP specified "Maturity date: 25-04-2012".

The inclusion of this detail in both the order and the other document was liable to mislead the client as to the nature of his investment, since it corresponded not to the scheduled maturity, as he might logically suppose, but to the first call date, with substantial implications for his investment planning.

It was also found that the entity had offered potentially misleading information on the real value of bonds under his co-ownership in electronic portfolio statements. Specifically, the values stated for these bonds was 99.5% of face value on 13 November 2008, and 104.77 and 104.85% on 27 March and 1 April 2009, when in fact these were securities listed on a foreign market whose price had by then plummeted, with Lehman Brothers in liquidation.

R/69/2009, R/70/2009, R/530/2009 - **Banco Inversis, S.A.** Complainants had been sold a structured product denominated Bono Himalaya (ISIN code XS0235429437) issued by Lehman Brothers Treasury Co. B.V and listed on the Luxembourg stock exchange, with a floating rate linked to a basket of investment funds, a scheduled maturity date of 5 July 2010 and capital protection at maturity.

Its financial structure was based on a "Himalaya option" with various underlying assets and sample periods. At each sampling date a return is calculated based on the best-performing security in the basket, which is then removed.

This bond could be considered a low-risk product – with capital guaranteed at maturity (four and a half years) and what was then a solid rating – amenable to distribution among the retail public without constraints regarding client categorisation.

Asked whether clients had been provided with information in writing or some other durable medium before making their investment in Bonos Himalaya, the entity replied that it had details on the bond posted on its corporate website, and furnished as proof a provisional terms and conditions document dated 10 November 2005.

Bono Himalaya, however, was not sold on the Internet, even though Banco Inversis has a strong bias to online transactions. It was therefore unlikely that complainants would have found this document on its website, and it was the entity's responsibility to ensure the same information was available through the available subscription channels (face-to-face or others).

There was accordingly insufficient evidence that this information had effectively been delivered or supplied at the time of purchase.

The buy orders submitted by the entity were also confusingly worded and did not conform to the standard format for transactions of this type.

The entity confirmed that it waited until 12 December 2008 to send its customers the first detailed communication about the Lehman bankruptcy and its implications for their investment, including the options available to defend their rights against the issuer. This was considered a grave delay, since insolvency proceedings were initiated in mid September.

R/973/2008 - **Bankinter, S.A.** The entity had sent the investor an e-mail with summarised information on the Bono Senior Lehman Brothers Cupón 6.375% as part of a comparative table of investment options. In it, the bonds were presented as risk-free assets with a guaranteed annual return of 6.375% to their maturity on 10 May 2011. Their rating was A1 according to Moody's and their market price at the time was 103.46%.

Classing these assets as a risk-free investment and offering them alongside other supposedly risk-free investment and saving products (a guaranteed fund or term deposit) is contrary to the rigour demanded of investment firms. Despite being fixed-income securities devoid of issuer credit risk, these bonds nevertheless had the risks inherent to any product traded on a secondary market.

The communication also omitted to state whether the price shown was cum or ex coupon and how this would affect the client in terms of costs and net return, i.e., he was not informed of the date when the coupon would be paid or the net amount receivable after discounting the accrued interest factored in the purchase price.

The buy order was correctly completed with the issuer's name, the type of security and the date of signature, but was missing one vital detail to permit a reliable understanding: the distinction between the face and cash value of the purchase.

Also, the entity eventually bought the Lehman Brothers bonds for a nominal amount high above that stated in the order, obliging the complainant to lay out more cash. Our conclusion was that it failed to follow the instructions conveyed by the client through his written mandate.

R/1034/2008 - **Bankinter, S.A.** In January 2006 and 2007, the complainant acquired preference shares issued by Lehman Brothers UK Capital Funding II LP and Lehman Brothers UK Capital Funding IV LP, with a subordinated guarantee from Lehman Brothers Holdings, Inc., ISIN codes XS0233128916 (subsequently XS0229269856) and XS0282978666, and projected annual returns of 5.125% and 5.75% respectively.

Our analysis of the complaint permitted the following conclusions:

- Bankinter was unable to prove that it had supplied the client with information on the characteristics and risk of the preference shares prior to his investment.

- The signed purchase orders had defects of form in that the securities and their issuers were not properly identified, although at least it was clear that they were Lehman issues.

- Bankinter was also deemed to have acted incorrectly in destroying an investment preferences questionnaire which the complainant had completed, without

asking his permission. This form would in theory have specified the degree of investment risk he was willing to tolerate, thus ensuring he was not offered products inconsistent with his profile, unless specifically requested.

R/688/2009, R/935/2009 - Bankinter, S.A. In February 2008, the complainants purchased a structured note issued by Lehman Brothers Treasury Co. B.V under the commercial name Bono Fortaleza (ISIN code XS0342637872). Among the bond's main features were a variable return linked to the price of Deutsche Bank AG and ING Groep NV shares, the absence of full capital protection at maturity (18 February 2016) and listing on the Irish stock exchange.

Bono Fortaleza can be considered a complex product in that it is structured and carries risk – as well as the chance of obtaining zero returns, there is no guarantee of recovering capital at the bond's maturity.

The entity had not done enough to determine whether the client could understand the characteristics and risk of the product being acquired. Not only did he lack previous experience in investments of this kind (a single investment in similar bonds or in risk products is not enough for this purpose) but the entity had no indication that he might be in possession of the required knowledge.

In addition, the signature date was missing from the purchase order.

R/772/2009 and R/1618/2009 - Bankinter, S.A. A formal defect was identified in both cases, namely the absence of a signature date on the Bono Fortaleza purchase order.

R/15/2009, R/64/2009, R/84/2009, R/106/2009, R/158/2009, R/191/2009, R/208/2009, R/215/2009, R/225/2009, R/288/2009, R/328/2009, R/364/2009, R/365/2009, R/372/2009 R/379/2009, R/454/2009, R/455/2009, R/659/2009, R/673 /2009, R/804/2009, R/865/2009, R/1045/2009, R/1272/2009 and 1778/2009 - Barclays Bank, S.A. The complainants were holders of structured bonds issued in February 2007 by Lehman Brothers Treasury Co. B.V, rating A1/A+. One was the three-year Bono Autocancelable BBVA+TEF (ISIN code XS0282087718) with variable returns (minimum of 1% a year) linked to the share prices of BBVA and Telefónica, scheduled maturity on 9 February 2010, albeit with the possibility of early redemption, and capital protection at maturity. The other was the Bono 100% Participación sobre EuroStoxx-50 (ISIN code XS0282208049) with variable returns linked to movements in this stock index, scheduled maturity on 9 February 2012, albeit with the possibility of early redemption, and capital protection at maturity.

The characteristics of both bonds – capital protection at maturity (three years) and what was then a high credit rating – suggested a low-risk investment amenable to distribution among the retail public without constraints regarding client profile.

In one case (R/455/2009) the bonds were offered alongside a loan for which the bonds themselves would stand as collateral. This meant, in effect, compounding financing risk with the specific risk carried by the bonds, which made them an unsuitable choice for a conservative investor.

The entity furnished two documents as proof of having supplied its clients with sufficient information prior to their investment,: firstly, the indicative and/or final terms and conditions document and, secondly, an internal document from its asset management department which was used for commercial purposes during bond marketing.

The "Indicative Terms and Conditions" included the essential elements to facilitate understanding of the scope of the investment: the ID of the security – ISIN code, corporate name of the issuer, milestone dates, capital protection, trading venue, etc. The document's publication date served to decide whether it had in fact been delivered, i.e., disregarding all those whose date was later than the purchase order.

The five-page commercial document furnished by many of the complainants was clearly insufficient. Not only did none of its sections identify Lehman Brothers Treasury Co. B.V as the issuer, but the inclusion of the distributor's logo and corporate details might even have led clients to believe that the bonds were its own products.

Further, the documents formalising the purchase all used the commercial name which the entity had assigned the product. In our view the distributor's use of a reserved trade name for its products, governed by its own criteria, meant the orders lacked any objective element allowing the bond's complete identification by third parties. This omission is especially important given that no mention was made of the issuer's identity in the preceding information.

Finally, several complainants furnished securities account statements which not only omitted the bonds' market price but made no reference to the fact that their issuer was Lehman Brothers Treasury Co. B.V.

R/1031/2008 - BNP Paribas España, S.A. (BNP) and Banco Gallego, S.A. (Banco Gallego). In September 2005, the complainants acquired a product issued by Lehman Brothers Treasury Co BV under the name Lehman 30yNC5y Steepener Notes Bonus Certificate, with the guarantee of Lehman Brothers Holdings Inc. and ISIN code XS0229584296.

Its main characteristics included a fixed rate for the first five years (7.25%) and a floating rate thereafter (linked to yield curve movements); a scheduled maturity of 30 years, though with the issuer entitled to buy back at par on pre-set call dates; and listing on a foreign secondary market (Euronext Amsterdam).

The securities were acquired through BNP and deposited at Banco Gallego at the time the Lehman Brothers group collapsed.

Here too the distributor had failed to include the full name of the issuer, though at least it was clear that the issue proceeded from the Lehman Brothers group.

The custodian was also at fault, we concluded from the information furnished by the parties, because it had confined itself to sending clients regular securities statements instead of issuing a special communication in the wake of the Lehman Brothers collapse. Not only that, it had failed to respond adequately to their enquiries about the situation, and to meet subsequent requests for a certificate attesting to their investments.

R/877/2008, R/911/2008, R/928/2008, R/947/2008, R/951/2008, R/959/2008, R/962/2008, R/982/2009, R/995/2008, R/1002/2008, R/1011/2008, R/1016/2008, R/5/2009, R/37/2009, R/44/2009, R/85/2009, R/116/2009, R/124/2009, R/135/2009, R/136/2009, R/145/2009, R/150/2009, R/178/2009, R/187/2009, R/244/2009, R/267/2009, R/268/2009, R/279/2009, R/378/2009, R/442/2009, R/458/2009, R/547/2009, R/559/2009, R/583/2009 R/782/2009, R/834/2009, R/877/2009, R/979/2009, R/1016/2009 - Citibank España, S.A. All these cases refer to incidents to do with structured products issued by Lehman Brothers Treasury Co. B.V. These

were low-risk investments with capital protection at maturity which at the time enjoyed a positive credit rating.

Some of the entity's sales material wrongly informed that the investment was part covered under the Investment Compensation Scheme, potentially creating a false sense of security. Specifically, it stated that "the bonds are partially guaranteed by the deposit guarantee scheme or the investment compensation scheme under the terms laid down in current legislation".

However, the investment itself was not covered by the Investment Compensation Scheme, which protects investors against the insolvency of the custodian entity, but not against capital losses or any credit risk the securities may carry.

In some cases, the entity was also at fault for including generic disclaimers of its own design regarding the unsuitability of the product and/or the failure to run appropriateness tests. Disclaimers of this kind should appear in a separate section and require a second signature from the client acknowledging that his personal circumstances have been taken into account.

In complaints R/928/2008 and R/5/2009, the entity had catalogued a structured, i.e. complex product in the lowest rung of the risk scale (very low).

In complaint R/244/2009, the entity had sent the clients several statements on the composition of their portfolios in which there was not one reference to Lehman Brothers Treasury Co. as the issuer of bonds under their ownership.

R/952/2008 - Crédit Suisse AG, Sucursal en España. In late 2006, the complainant acquired a capital-at-risk structured product, Bonus Certificate Plus Spanish Stocks, issued by Lehman Brothers Securities N.V. with the guarantee of Lehman Brothers Holdings Inc. (ISIN code ANN5214A1035).

The securities' maturity and returns (positive or negative) were determined by the market price of two Spanish shares on pre-set dates, and capital was not protected at maturity, on top of the risks associated to issuer and/or guarantor insolvency.

The entity had not gathered the information necessary to establish the complainant's investor profile before offering him the investment. Nor could it substantiate supplying him with all relevant information on the characteristics and risks of the product being sold.

Also, the purchase order had several formal omissions like the name of the issuer, who was at no point identified.

Finally, both the payment form and the monthly statements sent to the complainant up to and including August 2008 not only failed to identify in full the securities issuer, but also featured the initials "CS" at the start of the "Description and/or name of security" field in place of the word "LEHMAN". Moreover, in statements sent between September 2007 and August 2008, the issuer was actually stated as belonging to the Crédit Suisse group.

Information on the execution of guarantees and liquidation of positions

R/487/2008 - Open Bank Santander Consumer, S.A., R/698/2008 - Banco Inversis, S.A. and R/1026/2008 - Interdin Bolsa, Sociedad de Valores, S.A. The entities were found to have acted incorrectly in closing the customer's margin account without

prior notice and selling off the associated securities. In the case of the investment firm, the position closed was in derivative products.

The complainants operated a margin account for securities investments. The clauses of their agreements expressly and irrevocably empowered the respondent entities to sell off the securities associated to margin accounts in the event that the valuation of the corresponding investment portfolio was equal to or less than a contractually established minimum percentage of the receivable balance.

In the case of the investment firm, the general conditions of the derivatives trading agreement obliged the client to post and adjust margin in respect of the contracts in his account. The client also authorised the entity to unilaterally close out all his market positions should the sum on deposit be insufficient to meet his obligations under the said agreement, including the payment of premiums, fees, interest and other expenses due. To this end, the entity would have the right to require the futures contract holder to post the corresponding margin and, in the event of a shortfall, to proceed to the full or partial liquidation of his portfolio of securities until collecting the minimum sum required.

In accordance with current regulations, 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.

Among the informational requirements of entities providing investment services is to keep clients properly informed at all times.

Therefore, given that the resolutory condition of due payment or liquidation was not automatically enforceable but simply optional for the lenders under the terms of their agreements, it was deemed that entities should first have advised their customers, indicating how they could regularise the situation and the time available to do so.

It was also noted that customers can have no foreknowledge of the course the lending entity will adopt, as the latter has full discretion in deciding whether or not to cancel a facility.

R/685/2008 - Banco Inversis, S.A. The entity was deemed to be at fault in cancelling the complainant's credit and selling the associated securities without respecting the terms and deadlines stated in its notice of execution.

Specifically, although the entity had sent the client a registered fax giving him one calendar day from its receipt to make up the margin shortfall, it cancelled his credit with the sale of the associated securities a few hours later without the addressee even having received it.

R/699/2008 and R/1023/2008 - Bankinter, S.A. The entity acted incorrectly in cancelling a securities loan without notice of execution, closing the complainant's position through the purchase of the corresponding securities, without proof that it had kept him fully informed of the margin payable to maintain his position, in accordance with daily calculations.

In complaint R/699/2008, although the entity assured that it had sent mobile alerts regarding the margin shortfall, these messages did not advise him of Bankinter's decision to exercise its right to liquidate his position if the margin payment was not forthcoming.

Another point at issue was the information the complainant had received about the margin payable. It was considered here that the entity was remiss in its informational duties by not keeping the client up to date with the margin posted and callable in future on the basis of the daily calculations made to this effect.

In R/1023/2008, the entity affirmed that an employee at his branch had advised the client by phone, but was unable to substantiate this claim.

In any case, whether or not this communication took place, a circumstance neither substantiated nor admitted by the complainant, what was submitted as the notifying e-mail did not ask the branch to pass the information onto the client or to wait for confirmation that he had been advised of the margin shortfall and the time available to regularise his balance. It simply notified branch staff of its intentions in case they thought fit to tell their client ("We are letting you know in case you feel the client should be informed (...)".

Information during and after investment

R/709/2008 - **Bankinter, S.A.** The complaint concerned the losses the client had incurred on a sale of preference shares, which went through at 57% of their face value. This was considerably below the price quoted in the statement he had received 23 days before the sale.

Although no incident was detected with the sale price of the securities – the sell order submitted was not subject to a minimum price – Bankinter was found to have acted incorrectly in not informing the complainant about the current market price before the trade, as he had wished.

The complainant also disputed the euro/dollar exchange rate applied in a securities purchase. It was established that the parties had agreed to apply the lowest exchange rate on the day of the purchase, and the entity admitted in its submissions that it had done so in the first of the two transactions closed. The CNMV noted in its conclusions that the entity had accorded a differential treatment to the first over the second transaction as regards the exchange rate applied.

R/207/2009 - **Caja de Ahorros y Monte de Piedad de Madrid.** The entity was considered to be at fault for not informing the client correctly about the calculation of the second coupon accruing on a bond it had sold him, denominated Eurozone Harmonised Index of Consumer Prices-linked Notes due 2016.

Although the coupon paid was found to be correct according to the calculation instructions in the issue prospectus, it was also evident from a review of the written communications the entity had delivered to its client and the CNMV that it had been incapable of explaining to the client exactly how the amount of the coupon was worked out.

R/717/2008 - **Caja de Ahorros del Mediterráneo.** The entity sent its client a securities account statement whose movements included a transaction which, though ordered by the client, had not gone through. This misrepresentation of the situation of his account could have led the client into error.

R/1013/2008 - **Caja de Ahorros del Mediterráneo.** The entity had sent the complainant a settlement form for a purchase of subordinated debt securities (perpetual maturity callable by the issuer as of 20 October 2008) which misstated their maturity date as 20 October 2008.

R/66/2009 - **Open Bank Santander Consumer, S.A.** The complainant alleged that he had been assigned returns which he had not in fact received. Although he had been paid 565.16 euros in respect of dividends, the tax information sent by the bank showed a gross payment of 720 euros and a withholding tax charge of 129.60 euros. He accordingly claimed back the difference in his favour of 22.33 euros.

It was found that the content of the dividend payment statement was incomplete and misleading for the client, as it made no reference to key aspects of the transaction, like the fact that the net amount received per share was after withholding tax at source or that a second retention would be made in Spain. The client accordingly gained the false impression that the net amount receivable was 565.16 euros, when it was in fact 435.56 euros due to double taxation; a fact he would need to be aware of when filing his annual income tax return.

Aside from this information defect, the amounts paid, assigned and withheld by Open Bank were found to correspond overall to the reality of the dividend transaction.

R/1028/2009 - **Banco Santander, S.A.** The entity had sent the complainant a statement detailing the sale of preferential subscription rights in which all items featured correctly except for the time of execution, which was misstated.

R/251/2008 - **Banco Banif, S.A.** The complainant held shares in DIMETAL, whose General Meeting on 25 February 1997 agreed, among other measures, to wind up and liquidate the company and apply to the CNMV to delist its shares.

From a review of the statements furnished by the entity, it was clear that since 2000 it had been sending him periodic statements in which his DIMETAL holding invariably appeared with a valuation of 1.35 euros per share.

The fact that this same information was sent for years without alerting the client to the company's real situation, while sending him tax information that quoted an unrealised capital loss of 2.27 euros on his investment, could easily have misled him as to the real value of the DIMETAL shares. It also falls short of the minimum standards required for the specialised, personalised management of a securities portfolio that the client was paying for.

We also understand that the entity's management duties included advising the complainant about the possibility of voluntary removal of the shares from the book-entry system, which would have allowed him to stop paying administration and custody fees.

In order to take up this option, envisaged in Circular 7/2001 of 18 July of the Securities Clearing and Settlement Service (SCLV) on delisted issues without activity, proof must be given that at least four years have lapsed without any entries on the issuer's sheet in the Mercantile Registry. This procedure, which may involve a fee, was applied to the shares of DIMETAL, S.A., with the result that as of 29 October 2007, shareholders could present their custodian with a request for voluntary relinquishment of the upkeep of the entry of these shares in the book-entry system run by Iberclear.

R/700/2008 - **Banco Gallego, S.A.** The complainant alleged that she had not been receiving periodic statements regarding a structured product acquired through another entity in March 2006.

Although the bank assured the CNMV that it would henceforth send the complainant regular statements with an indicative valuation of the structured product, it could provide no evidence of having done so in the past, despite being over a year into the corresponding contractual relationship. The complaint was accordingly upheld.

R/702/2008 - **Banco Español de Crédito, S.A.** The complainant was the holder of preference shares of Endesa Capital Finance LLC. However, neither the purchase order formalising the investment nor the successive statements sent to his home address identified the product correctly. All these documents referred to "corporate bonds issued by Endesa" without ever mentioning the term preference shares.

R/100/2009 - **RBC Dexia Investor Services España, S.A.** The complainant held a securities account in RBC which sent him periodic statements that were manifestly lacking in clarity and precision. Valuation criteria, for instance, were never disclosed so the recipient had no way of knowing if a price quoted was the face or market value, and, in the latter case, the date of the observation.

As the securities in the account were listed on foreign markets, and therefore harder to track than national equivalents, the need for clear, unambiguous information was even greater in this case.

R/127/2009 - **Barclays Bank, S.A.** Defects were found in both the content of purchase orders, which lacked any reference to the bond issuers, and that of the periodic statements sent to the client, which omitted to show the market value of the bonds acquired.

R/741/2009 - **Bankinter, S.A.** Among the duties of entities providing securities administration and custody services is to dispense certificates attesting to the balance in the holder's account, at his request or, as in this case, at the request of his legitimate heirs. The more so when this certificate is needed to fulfil a legal obligation, namely the payment of inheritance tax to the regional government.

So when the complainant approached the entity to request a certificate of the balance in her father's accounts at the date of his death, she should have been given a document signed by duly authorised personnel and faithfully setting out all the securities acquired by the deceased and their valuation on that date.

In this case the entity was prompt in issuing the certificate but its content left much to be desired, considering that this kind of document must clearly identify each financial instrument and its issuer along with its face and cash value, calculated in the latter case as specified in the contract.

R/504/2008 and R/705/2008 - **Banco Inversis, S.A.** On 31 May 2005, Banco Inversis, S.A. acquired all the shares of the flagship company of Grupo Safei, whose subsidiaries included broker-dealer Eurosafei, S.V., S.A.

The customers and portfolios of the investment firm were transferred over the following months in a process that culminated in its definitive closure at end-2006, at which point remaining clients and assets were taken on directly by the bank.

In both complaints, the bank was deemed to have acted incorrectly in the process of migrating clients from the investment firm, since (i) it did not offer them accurate information and (ii) it failed to act with due diligence in formalising their new contracts.

The letter sent to former Grupo Safei clients explaining the handover was, in our view, insufficiently clear about the implications of the process. For instance, it failed to specify a date as of which the bank would take over the services previously rendered by the investment firm. Clients accordingly had no way of knowing when their account with Safei would cease to function. Also, from the content of this general communication, it appeared that it was left to clients to get in touch with the bank's telephone service to request the delivery of contracts.

Inversis was found to be at fault in passing the responsibility for initiating the formalisation of new contracts directly onto clients and in failing to point out the consequences if this step was not taken. With the information given, it is quite possible that clients could have found themselves for an undetermined time unable to access the securities held by Grupo Safei.

R/1005/2008 - **Caja de Ahorros y Pensiones de Barcelona.** The entity was found to have acted incorrectly in not responding to a request for a copy of the tape recording of certain telephone orders with sufficient diligence, and even refusing access to them in a first instance.

R/1047/2008 - **Bankinter, S.A.** The entity wrongly informed the complainant that before lodging a complaint about a sell order on a futures contract which could not be entered because the trading terminal was closed at the time, he must first close out his position at the start of the next day's trading.

It should be pointed out that while it is right for entities to tell clients about the criteria used to quantify complaints, in no event should they condition their acceptance to the closure of positions or demand that they be closed at a specific time. On the contrary, whether the positions in question remain open or not, clients should be urged to present complaints as quickly as possible, to avoid speculation by the client and a delay occurring that may be construed as an accommodation with the incident.

A3.1.3 Fees and expenses

R/0138/2008 - **Bankinter S.A.** The entity was unable to substantiate that it had processed the complainant's orders in conformity with the rules of the Madrid Stock Exchange, so that they would all be ascribed to the same end client for the purpose of stock market fees.

Specifically, the complainant had made a number of trades on the same share on the Madrid Stock Exchange with the same price and sign, summing a total of over 140,000 euros.

The fee brochure of the Madrid exchange stipulates a total fee of 13.40 euros in this case, despite which Bankinter charged on higher amounts.

The Madrid Exchange Ombudsman informed the complainant in writing that the incident had arisen because his intermediary entered the orders with different end client references, preventing them from being grouped together for fee purposes.

R/328/2008 and 879/2008 - **IB-KAPITAL Vermögensverwaltung GMBH.** The commercial relationship between complaintants and entity was by way of Invernet Invest Consulting, S.A., as agent or representative in Spain of the German company.

The clients considered that the fees charged by the entity were excessive and inconsistent with what might be considered the standard practice for this kind of transaction. A fixed fee was charged for each option acquired, and there was no way to tell whether the amount corresponded to the real cost of the service rendered.

The fact that the fees applied for the execution of several buy orders on put and call options traded on secondary markets came to 45-48% of their cash value is at odds with the principle of proportionality required of any investment service provider, although the CNMV cannot rule on their possible abusive nature, since this is the sole competence of the courts of law.

The entity's fee brochure also failed to meet the required standards of clarity and precision, which demand that information should be offered in a clear, correct, accurate and sufficient manner so the client has a full grasp of its effects.

R/896/2008 - Banco de Sabadell, S.A. The client explained that the exchange rate applied in a securities transaction had occasioned him an unreasonable economic loss. The entity, in turn, explained that the AUD/EUR applied did not correspond to the official European Central Bank rate, which the client assumed would be the case.

Rules in this respect say 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 (Banco de España Circular 8/1990, 1 bis).

The customer, however, should be properly informed beforehand of the exchange rate applicable to his transactions (or how it will be determined). In this context, current regulations, and those then in force, oblige providers to meet a series of informational requirements regarding the costs borne by retail clients. In particular, they stipulate that entities must state the exchange value of the result of the transaction or, failing this, notify the client of the exact exchange rate to be applied. The entity had failed to meet this obligation and was accordingly at fault.

R/658/2008 - Renta 4 Sociedad de Valores, S.A. Until 21 November 2007, the client's portfolio had entirely comprised UCITS units. After redeeming them, he maintained a zero balance in his securities account, while the associated cash account carried a transitory positive balance.

The reason for his complaint was that the entity had charged him an account maintenance fee corresponding to the first two quarters of 2008.

The fee schedule attached to the custody and administration agreement signed by the client set a monthly account maintenance fee of two euros + VAT, but exempting clients holding only investment funds.

It was established that in the time the complainant had been a customer of the investment firm he had never contracted any investment service other than the subscription and redemption of UCITS units, so whether or not the associated account held a transitory balance during the time he was not invested, no service had actually been rendered.

Our view was that the fee would only be justified if the client had required other investment services a posteriori, whereas the entity argued that the fee would only cease to apply if the client returned to a situation of holding only investment fund units in his portfolio.

R/918/2008 - **Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja y R/990/2008** - **Caja de Ahorros de Galicia.** It was found that the securities custody and administration fees charged were contrary to the terms of the entities' fee brochures.

The entry in these brochures regarding the semiannual monthly securities custody and administration fee explained that it would accrue on a semiannual basis or proportionately with the months (days in Caixa Galicia's case) the account was open within the corresponding six-month period.

But the client was instead charged the minimum set for this fee item without heed to the principle of proportionality.

R/780/2008 - **Caja de Ahorros de Galicia.** The complainant disputed the application of fees for the transfer of book-entry securities to another entity and in respect of custody and administration. On analysing the entity's records, it was deduced that the fees charged were in conformity with the terms of its fee brochure.

The entity, however, had erroneously based the application of the transfer fee on brochure item 12.2, "Establishment and cancellation of deposits by means of the delivery, transfer or total or partial withdrawal of securities certificates", and could therefore have misled the client or supervisors as to the nature of his investment and the type of transaction effected.

R/773/2008 - **Banco Banif, S.A.** The complainant disclaimed knowledge of the motive for a charge in his bank account, which appeared in the statement as "payment of SAN bill". From the documents submitted it was deduced that the charge traced to an order for the transfer of his securities portfolio to another entity.

Although the amount charged was correct according to the bank's maximum fee brochure, it could provide no evidence that it had sent the complainant a detailed statement of the charges associated to the securities account transfer in compliance with the legal rules regarding customer information.

R/925/2008, R/985/2008 and R/999/2008 - **Caja de Ahorros y Pensiones de Barcelona.** The clients complained about the fees charged for transferring their securities portfolio to another entity. They claimed that not only did this fee not figure in their securities contracts but they had received no documentation on the charge beyond an entry in their passbook statement.

Although the amount matched with the bank's maximum fee brochure, the entity was unable to substantiate that it had sent the complainants a detailed statement of the charges associated to the securities account transfer in compliance with the legal rules regarding customer information.

Modification of fees and commissions

R/1029/2008 - **Banco de la Pequeña y Mediana Empresa, S.A.** The entity was at fault for not informing the client about changes in its fees with the mandatory notice (two months), the subject of the complaint, and for not specifying the amount of the fee applicable to the transaction ordered.

The complainant was unhappy about the fee charged by his intermediary for brokering a trade in unlisted shares, which exceeded the fee charged on similar transactions

in the past. He added that he had received no formal notice of a change in fees and was unaware of this fact at the time of the order.

No proof could be found in the parties' submissions that the entity had advised the complainant of the change in the disputed fee with the mandatory two months' notice.

Also, although the wording of the entity's submissions was vague on this point, the content suggested that the branch had only explained the fee change to the complainant after the event, when he raised objections.

R/343/2009 - **Caja de Ahorros de Santander y Cantabria.** On examining the customer's complaint about maintenance fees, it was found that the entity had modified its brochure of maximum fees and chargeable expenses.

The regulations on changes in fees state that customers should be informed of them in writing and given at least two months' notice to modify or cancel their contractual relationship, during which time the previous rates would continue to be applied.

In this case, although the entity had sent its clients an informative note, this made no mention of their right to cancel their contractual relationship within a two-month period without being liable for the new fees. The complaint was accordingly upheld.

A3.1.4 Other subjects

Portfolio management

R/527/2008 - **Banco Bilbao Vizcaya Argentaria, S.A.** The entity was found to have managed its client's assets according to criteria and constraints that were nowhere present in the contract signed between the parties and included in the complaint submissions, and which the bank could not substantiate as having been set or agreed by the client.

Nor had the client, it was found, signed a new portfolio management contract adapted to current regulations. The agreement he had signed lacked the minimum content specified by the Ministerial Order of 7 October 1999, and the bank admitted that it had not attempted to adapt it until 2003, without however providing documentary evidence that a revised agreement was signed that year.

R/986/2008 - **Banco de Sabadell, S.A.** The complainant was co-holder with one other person of a contract for the discretionary management of UCITS. On the death of the co-holder, the bank discontinued its management of the portfolio, then comprising 13 investment funds, even though the other holder was still alive. This inaction on the bank's part at a time when these risk-carrying assets were losing value occasioned the complainant economic losses.

When a co-holder of investment fund units dies, a bank has no right to consider itself relieved of its management obligations, even if the change of ownership has been incorrectly processed, unless the relationship has been cancelled by the other co-holder and the deceased person's legitimate heirs.

In sum, the entity should have continued to meet its contractual obligations unless otherwise instructed by the co-holder and heirs.

R/123/2009 - Caja Rural de Ciudad Real, Sociedad Cooperativa de Crédito. The complainant had two securities accounts, one of them managed, with the associated current accounts.

This being so, it should follow that any transaction assigned to the non-managed account should have been based on instructions from the client, in the absence of any contractual agreement empowering the entity to act on its own discretion. Despite this, the entity made a series of equity transactions without the corresponding mandate.

It was also found that the monthly statements being sent to the complainant contained inexact information, namely the inclusion under "Asset management" of the amount corresponding to a "Securities deposit" outside the scope of this contractual modality.

Whatever operational problems might have motivated this situation, the fact is that for months the entity was incapable of offering its client accurate, clear and reliable information on the real value of his investments. This may have led him into error, since the impression given was that the managed portfolio was earning positive returns, when this was not the case.

R/177/2009 - Caja Rural de Córdoba, Sociedad Cooperativa de Crédito. The discretionary, personalised portfolio management contract subscribed by the entity and the complainants specified a conservative risk profile and an investment horizon of over five years. This authorised the entity to act with the widest powers on behalf of its clients, while respecting their conditions and criteria. It did not have to seek their approval or supply them with written information on the characteristics and risks of potential investments, save for exceptional cases.

The clients could also from time to time issue specific, direct orders to their managers, which would go though the normal processing channel.

In this case, the complainants signed purchase orders for preference shares of Lehman Brothers Holding, which were considered outside the management service. These were high-risk perpetual instruments callable by the issuer. They were also admitted to trading on a foreign secondary market and generated higher custody and administration expenses than other assets and deposits.

There was no evidence that the entity had expressly warned that this was a high-risk product at odds with the conservative profile established for the management of their assets. Nor could it prove that the complainants had received written documentation on the product's characteristics beyond the corresponding purchase orders.

These orders, moreover, included a confusingly worded reference to the date 21/09/2009, without any indication that this was the issuer's call date rather than the scheduled maturity.

R/251/2009 - Finanduero, Sociedad de Valores, S.A. The complainant disputed the return obtained from her managed investment portfolio. She claimed to have received information about clients of this service earning a 4% return, but had in fact earned less.

Although there was no evidence of any agreement regarding the return to be obtained by contracting a portfolio management service, a review of the investments

held in the complainant's portfolio revealed irregularities on the part of the respondent entity.

Specifically, it had invested in preference shares "with a variable return", which were not within the eligible investment categories stated in the portfolio management agreement signed on 14 June 2004.

Representatives

R/963/2008 - Eurodeal, Agencia de Valores, S.A. It was found that at the time the complainant signed a standard brokerage agreement with this investment firm, and was therefore recruited as a client by the firm's representative, the latter was not in fact entered in the CNMV registers. Accordingly, despite the firm's arguments to the contrary, he was not authorised to capture clients.

Movements in quoted prices

R/873/2008 - BNP Paribas España, S.A. The entity failed to explain a particularly sharp variation in the prices quoted for a warrant issue between 09:06 and 09:35 in a determined trading session, and those quoted as of 10:02 that same day. They were also unable to explain why only buy prices were being quoted at the start of the session.

Although the entity had sought permission not to act as counterparty from the opening minutes to the end of this particular session, it was in fact quoting spreads almost uninterruptedly all that day.

A3.2 Investment funds and other UCITS

A3.2.1 Customer information

Information on investment fund characteristics

R/388/2008 - ING Direct, N.V. Sucursal en España. The entity had failed to supply the complainant with the prospectus and latest semiannual statement of an investment fund prior to subscription.

Shortcomings were also detected in the information given at the time of purchase (by telephone). The message offered was insufficiently balanced and, most seriously, underplayed the risk associated to investment in this particular fund, whose prospectus described it as a very high-risk product.

R/801/2008 - Caja Insular de Ahorros de Canarias, R/862/2008 - Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja, R/436/2009 - Mapfre Inversión SV, R/665/2009 - Caja de Ahorros del Mediterráneo and R/841/2009 - Banco Bilbao Vizcaya Argentaria, S.A. The respondent entity in all cases was unable to provide evidence of having complied with mandatory informational requirements by supplying their customers pre-investment with copies of the fund prospectus and, where appropriate, the latest semiannual statement; documents which provide the information needed to reach a well-founded investment decision.

Also, in complaint R/801/2008, the entity had failed to keep the fund subscription order on file for the mandatory period, and in complaint R/665/2009 the customer had received no response to his explicit enquiry about fund returns.

R/770/2008 - **Banco Caixa Geral, S.A.** The complainant was convinced she had invested in a product that guaranteed the nominal of her investment, so could not understand why the statements she was receiving showed a lower amount.

The structure of this fund pursued a specific return on maturity, but it was not guaranteed. Not only that, if a pre-set barrier was reached, the unitholder could suffer the complete loss of the capital invested. The prospectus highlighted the fact that the fund carried a high market risk, citing the volatility inherent to equity investment.

On this occasion, the complainant furnished a document bearing the entity's seal which referred to her investment as if it were a deposit. She had also been delivered a personalised communication containing a number of flaws, which may have led her to form a mistaken judgement about the real operation of the product structure and the risks she would be exposed to.

The entity, it was found, had failed to adequately inform its client about the characteristics of her fund investment.

R/926/2008 - **Caja de Ahorros del Mediterráneo.** Replying to an investor's complaints about the information facilitated on acquiring investment fund units, the entity claimed to have supplied him with the corresponding fund prospectuses, containing information on their characteristics, risks and applicable fees.

It was found, however, that the prospectuses delivered had been filed, on the renewal of the funds' guarantee, at a later date than the disputed subscription, with no evidence given that the client had been informed of these new conditions by some other means.

The entity was accordingly remiss in its duty to inform the unitholder of the fund's characteristics prior to his investment.

R/638/2008 - **Banco Español de Crédito, S.A.** The complainant objected to a fee charged on subscribing units in a non guaranteed fund.

Guaranteed funds, generally with all or part of their initial capital protected at maturity, are geared to investors whose time horizon coincides with the fund's guarantee period.

Indeed such funds have a particular asset structure geared to the achievement of their target return within the allotted time-period. One consequence of this rigid structure is that funds attempt to discourage new entries and the exit of existing unitholders by imposing subscription and redemption fees.

Subscription fees are charged on purchases made after the marketing campaigns that precede the guarantee period, while redemption fees are levied on those leaving the fund before the guarantee expiry date.

In view of the subscription dates in this case, we believe the entity should have advised the client that not only would he be charged a 5% subscription fee payable to the fund manager but his investment was not protected in its entirety by the fund guarantee, which assured recovery of the NAV in place at the start of the guarantee period but not the full NAV of the units subscribed for, which was higher than this amount.

Further, the entity should have steered its client impartially towards other investment funds or products that offered a better match with this expectations and were less expensive to acquire.

R/680/2008 - Caja de Ahorros y Monte de Piedad de Madrid. Further to his appeal against a decision of the Spanish tax agency (AEAT), the investor approached the entity for a banker's reference. The savings bank imposed the condition that he establish a guarantee, so he subscribed for units in an investment fund.

After a six-month wait, he received notification that the appeal had been turned down and he had one month in which to make good his debt. He accordingly ordered the entity to settle the payment. The surprise came when he found himself faced with a fee for the early redemption of fund units which he had not been advised of at the time of subscription.

The fund in question had a three-year guarantee period and applied a redemption fee to all unitholders withdrawing during this time.

In view of the reasons behind his investment and the fund's characteristics, we believe the entity should have warned home of the consequences of having to meet the guarantee by redeeming his units before the guarantee expiry date (redemption fee and loss of capital protection). He should also have been steered impartially towards other investment funds or products better suited to his particular goals.

It bears mention that investment service providers are obliged not only to fulfil certain information requirements with unitholders, but also to act impartially and in good faith in defence of their interests.

R/341/2009 - Caixa de Aforros de Vigo, Ourense e Pontevedra (Caixanova). The entity was deemed to have acted incorrectly in offering the complainants a product at odds with their express wishes, requests and instructions and their investment objectives. Specifically, from the submissions made and the verbal testimony of both parties, it was clear that the investors wished to take out a fixed-term deposit with a monthly interest and the respondent entity had instead offered them an investment fund with a medium risk profile.

R/710/2008 - Banco de Finanzas e Inversiones, S.A. The complainant alleged that he had been inadequately informed about a product contracted and that the advice given was unhelpful.

The investment in question was shares in a foreign UCITS acquired under a prearranged instalment plan. The investment would initially be in a sub-fund investing in fixed-income securities then would switch to other sub-funds geared principally to equity investment. As a result, he found himself with European, U.S. and emerging-country equity investments, guided by strategies with a long time horizon and exposed to high levels of volatility and risk.

The subscription orders correctly specified the sub-funds of the selected UCITS, the percentage investment in each, and the terms and amounts of plan contributions, as well as indicating the existence of a subscription fee. Meantime, the investment objectives of each sub-fund, with its corresponding risk and investor profile, were set out in the simplified UCITS prospectus.

However, it transpired that prior to subscription the client had been given a personalised document titled "Asset Allocation Proposal" which included, among other particulars, a summary of his personal situation drawn from a meeting held with his advisor, the entity's expectations for his investments, and a selection of assets across which they judged that he should spread his investment.

We concluded that the documents presented were not sufficiently well balanced in their information and advice, and were not explicit enough about the workings of the product or about the costs and risks of investing in UCITS through this sort of plan. Nor did they specify exactly which sub-funds the client would invest in and the associated risks. Finally, some serious discrepancies were found with respect to the macroeconomic projections conveyed to the client.

The entity was at fault for not informing its client adequately about the right kind of product in light of his declared investment goals.

R/3/2009 - Banco de Finanzas e Inversiones, S.A. The complainant invested in an Irish investment fund though a 20-year capital accumulation plan for a total nominal amount of 50,400 euros.

In accordance with the fund's legal documentation (prospectus), the first subscription included a fee based on this total nominal amount but no fees would be charged on subsequent subscriptions over the lifetime of the plan. It also stated that investors terminating the plan before the end of the period would automatically forfeit the total amount of the subscription fees paid.

The purchase documents signed by the complainant clearly specified the subscription fees payable and others plan particulars.

However the entity had supplemented this with another document describing the plan units and subscription fees which failed to meet the required standards of clarity, precision and relevance.

On the subject of subscriptions, particularly, it neglected to mention that the initial subscription fees of capital accumulation plans were calculated on the basis of the entire plan and not just the initial amount payable, and that these subscription fees would not be refunded if the investor terminated the plan. Furthermore, the wording of the document was sufficiently confusing to disorient investors.

It was also found that the subscription orders had two clauses which contravened current legislation by inviting the client to waive his right to receive the mandatory pre-sale documentation and periodic statements. The law dictates that the former is irrenounceable, and that any renouncement of the latter must be set on record in a separate, signed document after receipt of the first periodic mailing.

Finally, it was impossible to determine from the complaint submissions whether the entity had delivered the mandatory documents to the investor prior to the subscription.

R/497/2008 - Banco Inversis, S.A. The complainant had acquired shares in a closed-ended fund called "New Star RBC 1X HDG" whose investment objective was to track an index referencing the performance of 250 hedge funds. This fund had a number of liquidity constraints (no guarantee of daily liquidity and four redemption windows a year available with up to 120 days notice at the discretion of the management team).

The entity was unable to substantiate that it had supplied the client with written information on these liquidity constraints and valuation specifics. And the verbal information given by his financial advisor was missing some essential points, like the fact that liquidity was not guaranteed – an essential input to his investment decision as it turned out – and that there was a procedure in place to redeem fund holdings on other than the stated dates.

Nor was the client sufficiently well informed about the procedures and observation dates for calculating asset value, which left him confused about the apparent discrepancies in its valuation.

R/315/2009 - **Caja de Ahorros de Galicia.** The entity acted incorrectly in attempting to get their client to complete a standard order form with the following clause: "In view of the lack of information provided for appropriateness testing, I recognise and accept that the entity is not in a position to determine whether the investment service, transaction or product is right for me, according to my knowledge and experience".

Clauses such as this can only be inserted in exceptional cases when a client refuses to supply information on his knowledge and experience, or the information given is not enough.

Information provided during and after investment

R/936/2008 - **Caja de Ahorros de Galicia and Ahorro Corporación Gestión, SGIIC, S.A.** The complainant alleged that the entities had failed in their obligation to provide monthly updates on his investment fund positions.

UCITS regulations in force at the time required the management company to report this information to unitholders at least every three months for FIMs (investment funds) and every one month for FIAMMs (money market investment funds) if any subscriptions or redemptions had taken place (otherwise the statement could wait until the end of the year). However, the complainant had received a document from the fund's management company promising to send a monthly position statement whether or not there had been movements in his inv estments.

As the respondent entities were unable to prove that they had sent this documentation, the CNMV concluded that they had acted incorrectly by not reporting to the complainant in accordance with the commitments entered into.

Incorrect information on the unitholder's position

R/723/2008 - **Banco de Sabadell, S.A.** The client complained that the number of units held in an investment fund fell between two statements sent by the entity even though no transactions had been ordered.

The entity explained the incident by the fact that they were introducing a new IT system at the time to improve the service offered to unitholders. The new IT system included all the positions in investment funds, so all the data on the old application had to be migrated across.

In the run-up to the launch of the new system a number of discrepancies were identified and ultimately resolved.

We therefore consider that, while the bank was quick to resolve the error, it should have provided the client with detailed and precise information on the error and also sent him the documents that were provided during the complaint at that time, as he requested.

R/1128/2009 - **Caixa d´Estalvis de Manresa.** The entity was found to have acted incorrectly when it revoked the co-ownership of units in an investment fund at the request of one of the owners without previously obtaining the consent of all the co-owners.

The information provided by the savings bank on the balance of units held by the co-owners was also found to be inadequate. It failed to meet the required standards of clarity and precision and contained numerous errors that were not corrected with due diligence after being detected.

Specifically, after revoking the units' co-ownership status, the entity recorded them twice in its statements: firstly all the units as co-owned and, secondly, half the units in the personal account of each holder.

This duplication moreover was not confined to the period following the revocation of the co-ownership regime, but was applied retrospectively so that, although the individual accounts were only opened in February 2006, the statements sent out reported the units twice as from their initial acquisition on 28 January1997.

On detecting these errors, instead of correcting them by amending the necessary items so that new statements showed the real movements and balances of units, the entity recorded a fictitious cancellation of non existent units. Not only that, the units acquired under co-ownership reappeared in subsequent statements issued by the entity.

Earnings protection contracts

R/555/2008 - Banco Santander, S.A. The investor complained about the information provided when contracting an option to protect earnings on units in an investment fund. He claimed not to have been informed of the cost of the premium or of the loan arranged to pay it.

On analysing the documentation received it was clear that the earnings protection contract signed did not correspond to the fund in which the client was invested.

Judging by the documents signed by the two parties, particularly the terms and conditions of the earnings protection contract, which did not refer to the investment fund subscribed for, the entity had failed in its duty to inform the client of the true nature of the financial derivative he was contracting and as a result of which the loan was made.

Change of distributor of foreign UCITS

R/774/2008 y R/922/2008 - Banco Inversis, S.A. and ING Belgium España, S.A., Sucursal en España. Under an agreement reached between the two entities, from 9 May 2008, the distribution of foreign UCITS which had been handled by ING Belgium España was transferred to Banco Inversis. This affected the UCITS in which the complainants were invested.

The change of distributor had to be put to the investors, who, although they had no right of veto, had to be informed of the change in a timely and correct manner and offered appropriate alternatives for their investment.

We consider that the two entities failed to manage the transfer of the complainants' portfolio with the requisite speed and diligence. As a result, the change of distributor prevented the investors from trading for a prolonged period, which was then extended even further as new contracts had to be signed. All this without the investors having any say in the matter.

The communications sent to the investors explaining the process were also found to be deficient.

Registration and filing of orders

R/888/2008 - **Bankinter, S.A.** The complainant sought the return of some units in an investment fund that had been pledged by the bank as collateral against two guarantees to the tax agency.

Once the guarantees were liquidated, the complainant applied for renewed disposition of the fund units. However, the entity told its client this was impossible as the units had originally been held under a portfolio management agreement, and had later been redeemed along with the rest of his investment fund portfolio.

Even so, the entity presented no evidence in its submission to show that the fund units had indeed been redeemed, nor that the client had ordered the fund in question to come under the portfolio management agreement.

The CNMV found that the entity had been at fault, at least, in its management and record-keeping of the fund units.

R/554/2009 - **Caja de Ahorros y Pensiones de Barcelona.** The complainant asked the savings bank to send him the contracts signed in respect of various investment funds. The entity, it was found, had failed to provide this information on request and only did so four months later on the client's insistence. The entity was deemed to be at fault for this unjustifiable delay.

A3.2.2 Subscription and redemption of fund units and shares

Order delays and non performance

R/154/2009 - **Banco Inversis, S.A.** The complainant had asked to sign up as a client of the entity and, once registered, placed an initial order subscribing for an investment fund. This order was rejected by the entity on the grounds that the fund management company had turned it down, claiming the investor did not exist.

The CNMV found that this reason for rejecting the subscription was lacking in clarity and precision. The complainant was already contractually entitled to place securities orders through the fund distributor and it is reasonable to suppose that when a client makes his first fund subscription he will not appear on the unitholder register kept by the investment manager. As a result, the reason given for rejecting the subscription order was found to be inadequate.

R/45/2009 - **Banco Inversis, S.A.** The complainant objected to the delay in dealing with an order to redeem units in a foreign UCITS and the NAV that was eventually applied. Examination of the case showed that the cut-off time applied was earlier than the time stated in the prospectus for the foreign UCITS and later than the time the bank said it was using. Also, the entity was unable to substantiate that the client had been informed of this beforehand, as set out in the marketing memorandum.

It was found that the entity had supplied the client with inaccurate information on the period for executing his redemption order in the foreign UCITS.

R/590/2008 - **Deutsche Bank, Sociedad Anónima Española.** The client complained about the time the bank took to redeem units in several investment funds. The fund units were pledged as collateral for a loan that the client had taken out with the entity.

The bank justified the delay by claiming that before fulfilling the redemption order it had to release the pledge on the units. This required the intervention and authorisation of the risk department, a process that took one or two days, since the debt against which the units were pledged had not been settled. Also, according to the general loan conditions, the entity had five days to cancel the loan after receiving written instructions requesting the redemption.

It appears from the documents submitted that the unitholders were entitled to dispose of the units on request if the entity gave its authorisation. It was also established that cancelling the loan early required five days' notice and not, as the entity understood, that five days had to elapse between receipt of the written redemption order and its processing.

The entity should have dealt with the redemption order as soon as it had given its authorisation, and such authorisation can take no longer than two days. The CNMV accordingly concluded that the entity had been dilatory in processing the redemption order.

R/775/2009 - Caja de Ahorros de Salamanca y Soria. The complainant had ordered the redemption of an investment fund holding during one of the liquidity windows specified in the fund prospectus. The units were finally redeemed outside the liquidity window, giving rise to a 5% redemption fee.

The entity claimed that it was unable to meet the complainant's request to take advantage of the liquidity window, because her fund investments had been pledged to a third entity.

The savings bank was found to be at fault for not having taken reasonable steps, as required by standard of conduct regulations, to achieve the best possible outcome for its client, given that the creditor had itself promised the entity handling the redemption that it would do everything necessary in time for its client to redeem the units cost free.

R/903/2008 - Banco de Finanzas e Inversiones, S.A. The complainant was unhappy about the bank's failure to execute an order to suspend regular cash transfers used to buy units in a foreign UCITS.

The entity explained that there was a technical error in the suspension order. One box had been incorrectly completed. As a result, they understood that the suspension order referred to one of the client's other products, in this case a life insurance policy.

However, an e-mail exchange between the parties before the suspension request shows that at that time the entity's employee understood that the client's instruction included the suspension of transfers to subscribe for UCITS units.

Also, examination of the documentation submitted shows that the form given to the investor to enter his two instructions (temporary suspension of cash transfers and suspension of subscriptions to the UCITS) was not as clear and precise as standards require, and this could have been why the client did not fill it in as indicated. Finally, it bears mention that the entity did not flag up any problem with the order at the time it was being processed.

For all these reasons, the CNMV concluded that the entity had incorrectly processed the client's order to suspend contributions to a number of foreign UCITS.

R/1010/2008 - Banco Santander, S.A. The client approached the bank to ask for full redemption of an investment fund, as they had advised him of the existence of a liquidity window. One month later, he found that the transaction had not been executed. The fund was eventually redeemed but at a 5% fee.

Examination of the claim revealed that the redemption order had not been submitted with the notice required by the fund prospectus, so the conditions for redemption during the liquidity window were not met.

However, the entity should have executed the redemption order at the time it was requested, instead of confronting the client with a month-long delay.

R/1032/2008 - Banco Bilbao Vizcaya Argentaria, S.A. The investor complained that the bank had failed to execute a limit order to redeem units in an investment fund.

The entity accepted the order even though its IT system could not execute it automatically. Although it later stated that the branch should have refused it since its IT system did not permit instructions in such terms, the fact is that the order was accepted, with all the obligations this entailed. But the entity neither informed the client about the order's rejection nor executed it in its strict terms. In this respect, it was found to have acted incorrectly.

It was only when a complaint was made to the Banco de España Complaints Service that the entity admitted the problem with the order condition and offered financial compensation. Nevertheless, we find the bank to be at fault for not explaining this to the client before the complaint was made.

R/1038/2008 - Bankinter, S.A. The investor's complaint centred on the execution time of an order to sell units in exchange-traded funds and the information provided by the entity.

The entity admitted that the sale was recorded in its systems at a different time to that recorded by the exchange clock. In fact, there was a gap of one minute and eight seconds.

In our view, as the execution time for trades is determined by the timing of the order as determined by the market, entities should keep their clocks synchronised with the exchange clock. Gaps of this kind can make a significant difference, depending on the share in question and market prices. We concluded therefore that the order information given to the investor failed to meet the standards of precision required by the rules of provider conduct.

Order executions without the unitholder's consent

R/899/2008 - Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja. The complainant and one other person were co-owners of units in an investment fund. It had been agreed that the units could only be accessed by joint signature or joint consent, the agreement of all co-owners being necessary.

Despite this, the entity filled several redemption orders to which only one of the co-owners had consented, ignoring the dual signature stipulation. The entity acknowledged its mistake and put controls in place to prevent any repetition of the incident. However, these controls did not apply to all the channels through which units could be traded.

We found the entity to be at fault for processing orders without obtaining the agreed consent and for failing to deploy measures to ensure the adequate disposal of securities in all channels through which they could be traded.

R/621/08 - **Bankinter, S.A.** Something similar occurred in this complaint. Although it had been agreed that joint signature or consent was required to dispose of securities, a sell order was accepted with the signature, and therefore the consent, of just one co-owner. In this case, the bank was also found to have breached the rules on the registration and filing of orders and supporting documents, as the order omitted both the date and time of the trades.

R/940/2008 - **Banco Santander, S.A.** The bank failed to obtain consent from all those listed as originators of an order to buy fund units for their co-ownership. The bank considered that the account was operated on a joint and several basis, such that the consent of all the originators was not required. It argued that the agreed basis for holding joint accounts normally comes into force once securities have been acquired and refers only to their subsequent disposal. In this case, according to its reasoning, co-ownership had not yet begun. It was found that the entity had acted incorrectly in not obtaining the consent of all the order originators.

R/004/2009 - **Caja Laboral Popular Coop. de Crédito.** The complainant was the joint titleholder and co-owner with three other persons of units in an investment fund. When the units were bought, an associated current account was opened in their joint names to receive credits and debits from the investment fund.

It was agreed that the account should be run on a joint and several basis, such that any co-holder could dispose of investments without needing express consent or waivers from the rest.

One of the co-owners submitted a redemption order, which the entity carried out, but the person placing the order also stipulated a different current account to receive the credit from the redemption. This too was carried out.

Faced with a redemption order stipulating that the proceeds should go to a different current account from that initially agreed, the entity should at the very least have informed the other co-owners and sought their consent, as this order was in violation of the agreement.

R/241/2009 - **Caixa D´Estalvis del Penedés.** The client explained that he had contracted a portfolio of investment funds intending that they should be managed by the entity's private banking arm. He complained that the funds had been sold without his express authorisation or written consent.

The entity explained that the client had ordered two interbank cash transfers to be charged against an account contractually linked to one of the investment funds. Since the amount of the transfer was for more cash than he had on deposit, the entity assumed that the client wanted to redeem the units in that fund. The entity even informed the client that he would have to stipulate a deposit account or redeem the units if the transfer was to go ahead. The complainant indicated a deposit account without sufficient funds to cover the transfer requested. As a result, a sufficient number of units were redeemed to complete the transfer.

In this case, while, as the entity claimed, the order to transfer cash could be interpreted as indicating the client's wish to redeem the funds, it is also true that the entity should have advised him of the need to redeem them and obtained a signed

redemption order to this effect. We found that the savings bank acted incorrectly in failing to obtain such a redemption order.

Deficiencies in order content

R/96/2009 - **Banco Bilbao Vizcaya Argentaria, S.A.** This complaint revealed a formal defect in a fund investment. Specifically, the subscription/redemption orders submitted were not signed by any of the owners.

R/1027/2008 - **BNP Paribas España, S.A.** The entity was found to be at fault for justifying UCITS investment transactions carried out in January 2008 by presenting orders dated January 2008 but with an entry date of January 2007.

R/671/2008 - **Banco de Santander, S.A.** The complainant objected that a subscription for an investment fund had been allowed to go ahead even though the client had insufficient funds in his current account and subsequently went overdrawn. The subscription payment left the account before the cash transferred from another entity arrived.

While the investor did subscribe for units in a fund, the funds to cover this, which the entity had apparently asked for, were ultimately not forthcoming. Santander was also aware that instructions had been given not to complete the transfer order.

We find that both the reason for the rejection and the lack of funds to meet the order should have, at the very least, raised doubts in employees' minds as to the final intention of the investor: whether he wished to revoke the subscription order or for the entity to advance funds so that it could go ahead. It might be concluded that the subscription order was conditional on receipt of the cash transfer from another entity and that Santander should therefore have waited until the transfer had come through before subscribing for the fund.

R/0095/2009 - **Caja de Ahorros y Monte de Piedad de Madrid.** Caja Madrid was found to have acted incorrectly in redeeming units without an order from the legitimate owner or a duly authorised representative and for having credited the proceeds of the redemption to a different account from that designated in the contract.

Determination of NAV

R/657/2008 - **La Caixa Gestión de Patrimonios, S.V., S.A.** The complainant held shares in two sub-funds of foreign UCITS whose documentation as filed with the CNMV stated that "orders placed through distributors, rather than directly to the transfer agent or customer service centre may be processed differently and this could delay their reception (...). Investors should consult their distributor before placing instructions about any of the sub-funds."

The entity, for its part, states in its marketing memorandum filed with the CNMV that orders received before 15:00 on a working day would be transferred to a third party which would send them to the UCITS on the next working day before the cut-off time stated in the prospectus.

The complainant telephoned the entity to find out what NAV would apply if he were to redeem his positions in both funds. He was told that the same-day NAV would apply if the order was placed in the morning. This information was incorrect and could have affected the investment decisions made by the complainant.

R/890/2008 - Banco Inversis, S.A. The complainant objected to the NAV applied when redeeming some units in a foreign UCITS as, in his view, the value applied was one day too late.

The entity's justification for the NAV used in this case was that the UCITS had been in the process of changing transfer agent and this had delayed the transaction. The procedure for changing agent, according to the documentation submitted, meant that the investor could not trade on the days when accounts were being transferred to the new agent through internal procedures. The UCITS, as such, was effectively closed for subscriptions and redemptions.

Rules of conduct require entities that provide investment services to comply with a number of principles when executing client orders. These include the obligation to immediately inform retail clients about any impediments to the smooth execution of the client's order.

As the entity marketing the UCITS, the bank was aware of what this process would mean for order execution and should have warned its clients about the delays they would face.

R/974/2008 - Unoe Bank, S.A. and R/11/2009 - Banco Sabadell, S.A. In complaint R/974/2008 the client affirmed that the subscription value confirmed by an operator of the bank's telephone service was different from the NAV applied on redeeming units from an investment fund.

To prevent bad practice, regulations stipulate that investors may not know the NAV applicable to subscriptions and redemptions at the time of placing their request. The NAV applied is that for the day the order was placed or the next day. It is therefore impossible for the entity to have quoted a firm NAV for the order on the day it was executed.

Nevertheless, on examining the content of the phone conversation, we found that the information given did not include the appropriate caveats about which day the NAV quoted referred to.

The same problem arose with complaint R/11/2009. It was shown that the document received by the investor setting out his position at a specific date contained no concrete warning specifying the day to which this value referred, apart from the general disclaimers at the foot of the page.

R/924/2008 - Caja de Ahorros y Monte de Piedad de Madrid. An order to subscribe for investment fund units submitted on 4 May 2007, which, according to the fund prospectus, should have been executed at the 11 May NAV, was unaccountably executed at the 20 April NAV.

R/212/2009 - Deutsche Bank, Sociedad Anónima Española. The complainant objected to the NAV collected on redeeming a foreign UCITS. The client claimed that the NAV which should have been applied was 69.51 euros per unit rather than the 67.73 euros applied by the entity.

From the complaint submissions and the fund's prospectus and marketing memorandum, it was clear that the correct NAV for the stated redemption was 69.20 euros per unit.

Although the fund was initially settled at a price of 67.73 euros per unit, corresponding to the NAV of 29 October 2008, this was later revised, on 13 November 2008, and resettled at 69.20 euros, which was the NAV for 28 October 2008.

In this case, we found that the entity failed to properly address the consequences of the initial mistake, as the number of units in the receiving fund did not sum the same value as the redemption transaction.

A3.2.3 Transfer of investments between UCITS

Incidents with transfer procedures

R/882/2008 - Caja de Ahorros de Valencia, Castellón y Alicante (Bancaja). The complainant placed an order for a transfer between two investment funds with the savings bank, which managed the receiving fund. While the delivering fund was duly redeemed, the transaction was then rejected by the entity as the proceeds failed to reach the minimum subscription amount of the receiving fund.

The CNMV found that the entity was wrong to accept a transfer order that could never have been completed, given the minimum investment requirement of the receiving fund.

R/21/2009 - Caja de Crédito de los Ingenieros, S. Coop. In this case, it was found that a request to transfer an investment between UCITS was not properly documented in a single specific document that clearly set out the nature of the transaction and guaranteed that the correct procedures would be applied.

Instead, the entity took two successive orders, one to redeem from the delivering UCITS and the other to subscribe for the receiving fund. These orders did not in themselves constitute a transfer request and were therefore open to misinterpretation.

R/662/2008 - Caja de Ahorros y Pensiones de Barcelona. The complainant claimed that a transfer between UCITS had taken two months and the delay in completing the transaction meant he was charged a 5% redemption fee. He had to go to the savings bank, which was the receiving entity, four times to order the transfer. The first three times the order was rejected as the owners were incorrectly identified. It was only on the fourth attempt that the entity responsible for the delivering fund accepted the order.

The entity submitted three of the four transfer orders signed by the complainant. In all except the final order the data on the owners and/or the delivering fund were incorrectly filled in. This resulted in the requests being rejected by the entity responsible for the delivering fund.

The receiving entity must record all data accurately if the delivering entity is to accept the request. The entity should have made certain the units and fund were correctly identified by checking them with the client or the delivering entity.

R/924/2008 - Caja de Ahorros y Monte de Piedad de Madrid and Mutuactivos, S.A., SGIIC. The complainant placed an order to transfer investment funds via Caja Madrid (as receiving entity).

The transfer of the proceeds from redeeming the delivering fund was rejected by the receiving fund because the tax data on the original units was incomplete.

In this situation, the delivering entity, Mutuactivos, S.A. SGIIC, resubscribed for units in the delivering fund. When they received a second transfer request from the receiving entity, they again redeemed the original units and sent the proceeds, this time with all the tax information. However, later on, once the investment had been transferred, they discovered these details were wrong and notified the receiving entity accordingly.

Under current rules, when an investment is transferred between UCITS, the receiving manager must obtain the relevant tax information from the delivering entity on all units and/or shares transferred. Transfers can be rejected if this information is not received. Similarly, if there is any change in fiscal circumstances that would require the receiving manager to obtain additional information from the delivering entity in a previous transfer and/or some other entities, this information must be requested with due speed, diligence and, where necessary, insistence, while keeping the client informed of the actions being taken.

The CNMV opines that with this kind of correctable error, the delivering entity has the duty to immediately contact the receiving entity and resolve the matter directly, while obtaining any necessary information from third parties. It should do so without resubscribing for the original fund and without requiring a new transfer request to be submitted, but by sending a corrected version of the original failed transfer using the same trade number.

It should also act quickly such that when no data need be sought from third parties, the requisite information can be delivered within one working day. After all the only processing required is to correct an error that has already been identified by the receiving entity.

The actions of the delivering entity were therefore found to be inadequate.

Also, while the receiving entity did nothing wrong in rejecting the first transfer, it was at fault for not having informed the complainant immediately of what had happened to his transfer, as evidenced by the submissions of both parties.

R/537/2008 - **Bankinter, S.A.** The complainant asked the entity to transfer an investment between two foreign UCITS. Both investments were denominated in US dollars ("dollars").

Although both investments were in dollars, the Spanish Electronic Clearing System (SNCE) only accepts euro transfers. This meant that the delivering entity would first have to first convert the proceeds of redemption into euros and send the converted amount through the SNCE to Bankinter, which would then have to convert it back before completing the subscription to the receiving fund.

However, in this case, the entity claimed it had been sent the dollar amount of the redemption proceeds. It first converted this sum into euros to enter it into the complainant's account and then back into dollars to subscribe for the receiving fund.

It was found to be at fault for having unnecessarily carried out two conversions before investing the money in the receiving UCITS. It was also found to have acted wrongly in crediting to the client's account, albeit temporarily, the proceeds redeemed from the original fund since the procedures for transferring investments between UCITS are such that the proceeds of redemption should never pass through the accounts of the person placing the order.

Finally, based on the documents submitted to the investigation, it was not clear that the complainant had been informed in advance about the exchange rates applying to the requested transaction, another area where the entity was at fault.

Incidents in the execution times of UCITS transfers

R/307/2008 - **Banco de Valencia, S.A.** The investor complained about the bank's failure to carry out a transfer order from a foreign UCITS to a Spanish investment fund.

Submissions showed that the investor had correctly requested the transfer from the bank, the distributor of the receiving fund, although it also emerged that there was a fifteen-day delay before the order was input to the system.

The entities marketing the delivering and receiving funds were correctly identified on the order file sent to the SNCE. But, for no apparent reason, there was a problem transmitting the order and from e-mail evidence it is clear that both entities were aware of this.

Closer examination of the communications between the managers showed that while the receiving entity, as the party responsible for completing the order, had been told by the delivering entity that the order had not arrived, it failed to seek clarification and correct the obstacles to completing the order received from its client.

The bank was therefore found to be at fault for the delay between receiving and starting to process the order, and for its failure to fulfil its obligations as receiving entity for a transfer request.

R/884/2008 - **Citibank España, S.A.** The complainant submitted a written request to transfer an investment between UCITS. After placing this order, she received a call from the bank saying that the transaction was subject to fees. Nevertheless, she asked the entity to execute the order as soon as possible. After this, she heard nothing further from the bank but noticed in her end-of-month statement that the transfer had not gone through. On contacting the entity to ask about this point, she was told there were some defects of form that she had not been informed of previously.

Following a number of incidents relating to how the order should be implemented, the transfer was finally completed four months after it had first been requested.

The CNMV considered that the entity should have immediately informed the complainant that her order was missing some formal requirements (specific forms that needed to be completed), which were set by the entity not by law. In fact these problems were not reported until two months after the order was placed.

The entity, in sum, took too long to inform the client about the internal procedures required to complete the fund transfer.

R/880/2008 - **Deutsche Bank, Sociedad Anónima Española.** Examination revealed that the transfer of units from a foreign UCITS was delayed due to two mistakes in filling in the transfer request. The first identified the units to be transferred as coming from a fund which had already been transferred. The second gave a tax identification code which was that of the management company.

The entity attributed the delay in executing the transfer order and the associated errors to the complainant's failure to provide adequate information on his investment

in the fund. It thereby blamed the client for the lack of information which meant the transfer order failed. However, the entity had accepted the transfer order with no suggestion that its execution would be conditional on the unitholder providing further information. Nor did the branch appear to have sought additional information from the client after receiving the transfer order or taken any steps to obtain details other than those already figuring in the order and the statement which had been sent.

It was found that the delays in asking for details of the UCITS and in completing the transfer once these were obtained were attributable to the bank, as the entity responsible for pursuing the order.

R/895/2008 - Cajamar Caja Rural, Sociedad Cooperativa de Crédito. The entity required its client to submit a transfer request fifteen days in advance to take advantage of a liquidity window in the delivering fund, even though this was not a condition of either the fund prospectus or the regulations in force.

If this was an operational requirement for the entity, the client should have been specifically warned about it before procuring his instructions.

R/476/2008 - Open Bank Santander Consumer, S.A. The complainant objected to a three-month delay in executing a transfer between foreign UCITS. The entity admitted that an error in its system had cancelled the order submitted by the investor, and confirmed that it had known about this error from the start. However, despite repeated efforts, it was only at the fourth attempt that the order executed correctly.

The CNMV found that the entity was unreasonably tardy in resolving the initial error, since it needed four attempts over a three-month period before it successfully completed its client's order.

R/571/2008 - Banco Espirito Santo, S.A. Sucursal en España and Caja de Ahorros y Monte de Piedad de Madrid. Once again, an investor complained about long delays in transferring an investment between UCITS. From the explanations given by the parties, it emerged that the reason for the delay was that the fields identifying the unitholder to each of the entities in the transfer had been differently filled in. The receiving entity (Caja de Ahorros y Monte de Piedad de Madrid) identified the unitholder using his DNI (national identity number), but the delivering entity (Banco Espirito Santo, S.A., Sucursal en España) did not have this on their file, since the owner was a minor at the time the subscription was made. Unless the owner identification was the same for both entities it was highly likely that the order placed by the receiving company via SNCE would be rejected, as in fact happened.

It was found that both the delivering and receiving managers failed to act with due diligence in processing their client's order. The delivering entity was slow to record the DNI in its files, once this had been notified by the investor. In fact, the change was only made at the request of the receiving entity. The receiving entity, despite having the owner's identity information from the moment the order was placed, did not identify the owner by his DNI in the transfer request, as was mandatory.

Incidents in transfers between funds with the same distributor

R/849/2008 and R/983/2008 - Banco Inversis, S.A., R/331/2008 - BNP Paribas España, S.A., R/629/2008 and R/175/2009 - Open Bank Santander Consumer, S.A. and R/77/2009 - Unoe Bank, S.A. In transfer requests where the entity receiving the order distributes both the delivering and receiving UCITS and processed the

original subscription to the delivering UCITS, the usual regulatory time periods for passing information between delivering and receiving funds and for carrying out necessary checks do not apply.

In other words, when the transfer request comes directly from the investor, the only checks that the entity marketing the UCITS need carry out are those required for redemptions and subscriptions in the schemes in question.

Accordingly, it was found that the effective date for the redemption request at the delivering fund should have been the same day that the client placed the transfer request.

Complaint R/331/2008 had the peculiarity that some of the UCITS transferred were linked to a portfolio management agreement, and it seems that the complainant gave instructions that the management contract should first be cancelled and the securities then transferred to another securities account. In this case, it was found that the date of the request to redeem the investment in the delivering UCITS should be the date and/or time at which these first instructions had been completed.

In R/629/2008, the delivering fund was a real estate investment fund and its failure to complete the transfer in time led to redemption being put back to the next liquidity window four months later.

Also, in R/983/2008, it was clear that the entity had misinformed its client about the transfer, as it sent him various explanations giving different accounts of the redemption transaction, citing alleged changes in the investment manager and with IT systems.

Incidents with unitholder information

R/213/2008 - Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (Ibercaja). The investor in this case complained that the entity had failed to execute several online orders to transfer investments between investment funds, and had also been remiss in its subsequent handling of the incident.

On noting that the transfer orders placed online did not appear in his account, the investor went to the branch in person to confirm that the transactions had gone through. After various enquiries, some days later, his branch contacted him to say that the transfers had failed as he had not completed the transfer process. Specifically, they told him that he had not reached the final screen. In view of this failure, he then decided to order new transfers to another fund.

We consider that the entity should have confirmed to the investor that his transfer orders had not been executed when he came into the branch, and offered him the option of re-ordering them at that time. This should have been done irrespective of any review of internal systems to determine the cause of the problem.

Accordingly, whether the blame for the failed transfer lay with the entity or the investor, which was impossible to determine, the entity should have given him the opportunity to complete the transfer without waiting for the incident to be resolved. This would have avoided the resulting delay.

Ibercaja was found to be at fault in the information it provided following the incident with its online service.

R/428/2009 - **Open Bank Santander Consumer, S.A.** The complainant cited the failure to execute an internal transfer between investment funds. The entity, in its submission, said it could not complete the transfer because the delivering and receiving funds were in the name of different owners.

It was clear that, for tax and ownership reasons, the transfer could not be completed since the owners of the delivering fund were different from those of the receiving fund. The entity therefore acted correctly in not effecting the transfer.

However, we consider that it acted incorrectly in failing to inform the complainant that he could not order a transfer between funds held in different names. Moreover, the conversations between complainant and entity submitted to the enquiry revealed that the entity had promised to call the client if there were any problems with the transfer, something it failed to do.

R/1/2009 - **Caja de Ahorros y Monte de Piedad de Madrid.** The savings bank was found to have acted incorrectly by not informing the complainant that his redemption of an investment in a foreign fund had been rejected as soon as it was advised of the fact.

The redemption was ordered as part of a request to transfer an investment between UCITS. It was rejected by the foreign fund on the permissible grounds that it would have taken the value of the client's investment below the minimum threshold.

From the explanations provided by the parties it seems that the entity took no steps to inform its client that the order had been rejected and only actually told him when he came to a branch to enquire about the matter.

R/92/2009 - **Self Trade Bank, S.A.** The entity was found to have acted incorrectly by failing to tell its client, after a transfer between foreign UCITS had been rejected, that he would have to place new instructions if the order was to be completed.

The page for tracking progress of trades on the company's website, to which the user was directed when placing the order, showed nothing to indicate that a new order would need to be placed for the instruction to go ahead.

Nor did it appear from the explanations given by the parties that the entity had used other means to inform its client and obtain fresh instructions.

A3.2.4 Fees and expenses

R/0442/2008 - **Banco Santander, S.A.** The complainant held units in two investment funds and ordered their redemption at the last minute on one of the dates set as a liquidity window (when redemptions are cost free).

As the order had been placed after the cut-off time established in the fund's prospectus it was processed along with those placed the next day, which were no longer exempt from redemption fees.

We considered that it would be far clearer and more transparent for the unitholder if the sections of the prospectus dealing with fees and the liquidity window contained a clear warning about the hours within which these redemptions could be ordered without incurring fees, in order to avoid confusion. Failing this, the entity should warn that a fee will be charged at the time the redemption is ordered.

For these reasons it was found that the entity's information was insufficiently clear to avoid confusion on the hours when the liquidity window applied.

R/1049/2008 - **Banco Inversis, S.A.** The entity was found to have acted incorrectly as it was unable to demonstrate having informed the complainant in advance of the exchange rate that would be applied when subscribing for investments in a foreign UCITS denominated in a non euro currency.

In this case, the UCITS prospectus provided an option under which investors could ask its central management office to pay for subscriptions in a currency other than that of the units. If the request was accepted, the units could then be paid for in the investor's currency at an amount equivalent to the cost in the investment currency, less costs and exchange commission.

Even though best execution was one of the grounds of the complaint, the entity offered no explanation as to why having the distributor change the currency would be better for the client, under its best execution policy, than asking the UCITS to settle the transaction in euros. In this respect too it was found to be at fault.

A3.3 Testamentary execution

A3.3.1 Incorrect information

R/239/09 - **Banco Bilbao Vizcaya Argentaria, S.A.** The heirs to one of the bank's clients asked to use securities included in the estate to meet their obligations under Spanish inheritance tax. Those liable for this tax may, under Spanish tax rules, invoke the mechanism to request payment from estate assets. This involves asking financial intermediaries, insurance companies or securities brokers to make available deposits, guarantees, current accounts, insurance policies or securities held in the name of the deceased in order to pay the inheritance tax. In this way, the tax can be paid from the estate and there is no need for the heirs to pay out of their own pockets.

In the case in question, the entity told its clients that for this to happen they must first put the investments in the heirs' name. However, a change in ownership of the investments funds is not a necessary precursor to writing a cheque to the corresponding tax authorities, provided they have given their authorisation. We considered that the entity should have informed its client of this possibility and was at fault for not doing so.

R/594/08 - **Banco Santander, S.A.** The bank was found to be at fault in failing to inform its clients about the fees to be applied for changing the ownership of securities acquired mortis causa.

R/447/09 - **Barclays Bank, S.A.** The complainant inherited positions in securities that his father had held in the respondent entity. Once the securities portfolio was inventoried, the heirs asked for documentation about a specific one-off transaction by the deceased.

The entity was found to have acted incorrectly in not responding to the heirs' request for documentation about a specific transaction, and only producing it when the CNMV began investigating the complaint.

R/816/09 - Banco Español de Crédito, S.A. A client complained about the entity's failure to provide information about the redemption of some bonds that he had inherited. The entity justified its actions by citing the age of the subscription for the bonds, although the redemption had in fact taken place much more recently, and within the four-year period over which entities must keep transactions on file. It was accordingly judged to be at fault for not providing information on the redemption terms of the bonds.

A3.3.2 Delays in executing changes of ownership under testamentary instrument

R/633/2008 - Banco Gallego, S.A., R/750/2008 - Caja de Ahorros y Pensiones de Barcelona, R/829/2008 - Citibank España, S.A., R/1055/2008 - Caja de Ahorros y Monte de Piedad de Madrid and R/957/2008 - Banco Santander, S.A. The underlying problem in all these cases was a delay in changing the ownership of inherited securities, which made it impossible for the heirs to sell the securities when they wanted to.

On several occasions, the delays meant that an order to redeem or transfer investment fund units fell outside the validity period of unitholder exit rights, when they are entitled to redeem their holdings free of charge following a major change in the fund's terms and conditions. Once the inheritance has been processed the heirs can then find themselves invested in a fund in which they have no interest, and liable for fees if they wish to sell.

In these cases, the complainants showed that the entities had been tardy in transferring ownership after the death of an investor, despite having received the relevant documentation in sufficient time. The respondent entities were accordingly found to be at fault for unjustified delays in processing these changes.

R/371/2009 - Deutsche Bank, Sociedad Anónima Española. The complainant objected to the time taken to settle her mother's estate.

The entity argued that the complainant had been late in delivering powers of attorney. In addition, the settlement of the inheritance was complicated by the fact that one of the principal heirs was dead and that some assets in the estate were not divisible.

The submissions in this case showed that the entity had been obliged to make a ruling on the division of the inheritance since it had not been sent the deed setting out the partition of the deceased's estate. However, these circumstances did not adequately explain the delay of four months between payment of the inheritance tax (6 June 2008) and the date of this ruling (26 September 2008).

Furthermore, the above evidence included an e-mail dated 20 October 2008 in which the entity sought an opinion on how to liquidate certain indivisible assets, which further delayed the settlement of the inheritance. CNMV considered that this information should have been sought previously. In addition, nearly a month passed between the issuing of the aforementioned ruling and the request for information on how to distribute the indivisible assets.

Therefore, on the grounds given above, the entity was found to have acted incorrectly by taking too long to settle the complainant's inheritance.

A3.3.3 Errors in executing changes in ownership under testamentary instrument

R/508/2008 - Caja de Ahorros y Monte de Piedad de Madrid. The complainant inherited a number of units in a real estate investment fund. The entity was asked to change the ownership of the inherited units. Instead of processing a transfer of ownership the entity organised the redemption of the units on behalf of the deceased and the subsequent repurchase of the same units in the name of the heir. This action was considered to be incorrect.

By acting in this manner the entity precipitated a further problem. The fund in question levied a redemption fee that diminished the longer an investor was in the fund. The entity thought that the time spent in the fund would be calculated from the moment the heir inherited the units, i.e., discounting the time that the deceased had been a unitholder. It accordingly charged the heir a redemption fee based on the length of time invested since the death of the deceased, instead of calculating the fee from the time that the deceased had purchased the units.

The entity was considered to have acted incorrectly as a change in ownership due to the death of the original titleholder does not require that the invested money leaves the fund (precisely what the redemption fee attempts to discourage). Also the heir should have been able to benefit from the reduction in the fee corresponding to the length of time that the deceased had been invested.

A3.3.4 Disposition of assets before distribution of the estate

R/800/2008 and R/707/2008 - Banco Santander, S.A. and R/558/2008 - Caja de Ahorros de Asturias. After the death of one of the joint holders of securities on deposit, her relatives began proceedings to change the name of the account holder. During these proceedings the surviving account holder carried out a transaction that was detrimental to the interests of the deceased's co-heirs. The entity was found to have acted incorrectly in this allowing this.

In R/558/2008 the complainant, as heir, requested information regarding the redemption of units in an investment fund the day after the death of the deceased. The entity presented a redemption order that the deceased had supposedly signed before her death, although the order was not dated. The entity was considered to have acted incorrectly by accepting an order that did not comply with requirements for the documentation of securities orders and conservation of transaction records.