CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquiries of Investors
Annual Report 2007

Attention to the Complaints and Enquiries of Investors. Annual Report 2007

Comisión Nacional del Mercado de Valores

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The CNMV spreads its reports and other publications via the website *www.cnmv.es*

Design: Artegraf, S. A.

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Foreword

In this twentieth anniversary year, the Comisión Nacional del Mercado de Valores (CNMV) is pleased to renew the publication of its Annual Report on investor complaints, setting forth information normally contained in its Institutional Annual Report. The new Report has enlarged its scope to take in investor enquiries and complaints placed before the Investor Assistance Office (IAO).

Through this publication, the CNMV wishes to provide investors and the firms offering investment services with analytical information regarding disputes about these services between operators and their clients, and to explain the criteria used by the CNMV in judging whether a given practice is correct or incorrect. It will hopefully help investors to gain a better understanding of their rights and obligations, and serve as a guide to entities in applying best practices in their relations with customers and in orienting the work of their Customer Service Departments and Client's Ombudsmen.

Introduction

This Annual Report sets out information corresponding to the year 2007 on the complaints filed by investment service users in the course of their dealings with financial providers, and the enquiries made to the CNMV through its IAO.

Its contents are organised into two main chapters. The first one gives an account of the IAO's 2007 activity. It accordingly starts with a brief description of the IAO's functions and procedures, before going on to analyse the volume and nature of the enquiries and complaints received, with details of the types of issues raised, the resolution possible, the entities complained against and the follow-up of reports finding in the claimant's favour.

The second chapter opens with a discussion of the criteria and recommendations applied in dealing with some of the year's most relevant cases, for their frequency or novelty, followed by the summarised contents of the complaints resolved in favour of the complainant. These two sections can help investors identify cases of bad practice or mishandling, providing them with guidance on how to exercise their rights if they find themselves in a similar situation. The third and last section examines the questions brought up most regularly in investor enquiries during 2007.

Finally, a series of statistical annexes presents all the information used in the first chapter along with a list of unregistered firms that investors have checked on with the IAO.

I IAO Activity in 2007

1 The Investor Assistance Office (IAO)

The IAO, forming part of the CNMV Investors Division, is there to assist investors with their enquiries and complaints.

Through its complaints service, investors can bring incidents arising in their relationship with investment firms to the attention of the CNMV. Investors can complain when they feel their interests have been harmed or their rights undermined through the action of a company providing investment services.

The IAO also deals with enquiries and informs investors about securities market products, services and regulations, and about the legal rights that correspond to them.

How the IAO works

The procedure the IAO follows in dealing with investor complaints is itemised below:

– Before making a complaint to the CNMV the investor must first have approached the Customer Service Department and/or Client's Ombudsman of the entity in question.

  If he disputes their decision or two months have gone by without a response, the investor may take his or her case to the IAO.

– Complaints should be made in writing and addressed to the IAO, or alternatively submitted through the CNMV's Virtual Office if the investor has an electronic ID card or digital certificate.

– To be accepted for processing, complaints must contain the issuer's personal details and a description of the events or conduct giving rise to the complaint. Complainants are also urged to furnish any data or papers that they think may substantiate their argument.

– If the matter in question is within the competence of the CNMV and has not been laid before some other administrative, arbitration or judicial body, it will invite the entity complained against to present its submissions. If the CNMV is not competent to attend the matter, it will either pass it on to the relevant agency or advise the investor about who to contact.

– Complaints are resolved through a non binding report 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. The fact that this report is not an administrative resolution means there is not right of appeal to administrative or judicial bodies.

In the case of enquiries, the procedure is considerably simpler:

– Any investor can approach the IAO to settle doubts about his or her rights and how to exercise them or to enquire about the contents of the CNMV's official registers. The only condition is that the question posed should lie within the competence of the CNMV.

  This is a service for investors and not securities market professionals, whose enquiries will be handled by the CNMV division with competences in each case.

– Investors can make their enquiries by phone, e-mail or fax, by letter to the IAO or through the CNMV's Virtual Office.

– The IAO has a telephone helpline (902 149 200) to handle general enquiries from the public. The call centre staff will deal with straightforward enquiries while more complex questions will be referred on to specialist teams.

– Enquiry service users should provide their basic personal details (first name, surname and ID document). This requirement is dispensed with in the case of investors contacting the CNMV with information, suggestions or initiatives by any channel.

Follow-up of complaints resolved in favour of the complainant

The matters that investors file before the CNMV through their enquiries and complaints may give rise to other types of action, precisely because they constitute an invaluable source of information for the CNMV's supervisory function over the markets and financial entities. At the same time, the light they shed on the practical difficulties and procedural mishandling that investors may encounter can guide the supervisor in its regulatory, informative and educational labours.

This year work began on following up the action taken by entities when complaint processes concluded with a report favourable to the claimant. The respondent entity is now asked to provide information, with supporting documentation, on any remedial measures taken as urged in the report's conclusions. This follow-up provides a check on the efficacy of complaints handling and on how well entities are adapting to the criteria and recommendations that result from complaints analysis. It also has a dissuasory force against bad practices while encouraging the adoption of measures to prevent their repetition.

IAO membership of European network FIN-NET

The 2007 implementation of various norms to further the integration of European financial markets and build consumers' confidence in the acquisition of cross-border financial services has persuaded the IAO to apply for admission to European network FIN-NET.

FIN-NET is a cooperation network set up by the European Commission in 2001. Its goal is to aid financial service users' access to out-of-court redress procedures in the case of cross-border disputes, by means of cooperation and information exchange between the bodies in charge of handling such processes in each country.

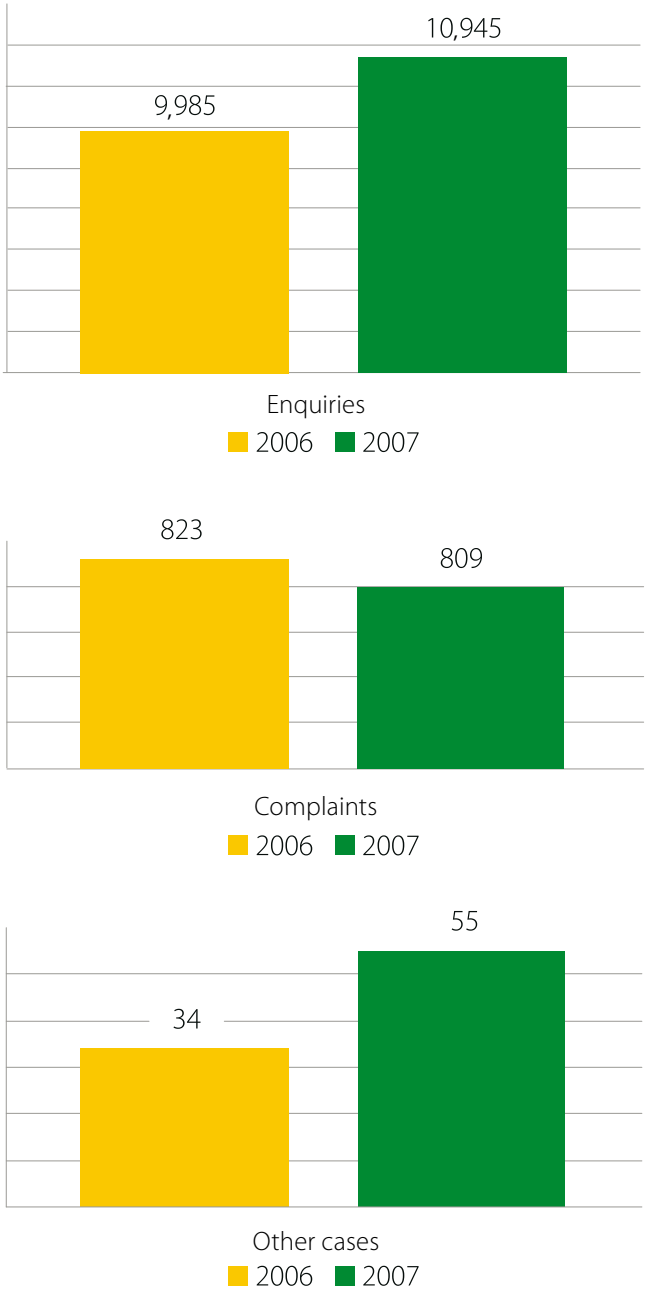
Members must comply with the conditions of Recommendation 98/257/EC on the principles applicable to the out-of-court settlement of consumer disputes. The IAO considers that it meets the quality requisites required of FIN-NET members in their complaints handling procedures, namely, independence, transparency, adversariality, efficacy, legality, liberty and representation.

2 Analysis of the volume and nature of complaints and enquiries

2.1. A summary of the IAO's 2007 activity

The IAO's activity mix underwent some variation in 2007: while the number of complaints reduced slightly (a total of 809 received, 1.7% fewer than in 2006) the number of investor enquiries moved up sharply (10,945, or 9.6% more than in 2006).

Total cases processed by the IAO FIGURE 1



Source: CNMV

Besides complaints and enquiries, the IAO deals with other information requests, communications, initiatives and suggestions of relevance to retail investors. It also reports on the regulations drawn up for the Customer Service Departments or Client's Ombudsmen of supervised entities with a view to their compliance with the applicable legislation. A total of 55 such submissions were received in 2007 as against 34 the previous year.

2.2. Complaints

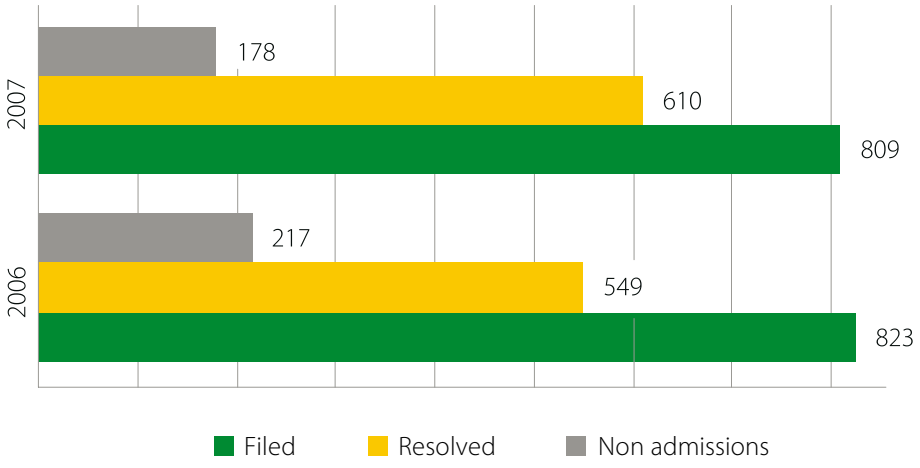
One of the IAO's main functions is to resolve the complaints formulated by investors who believe their interest or rights have been undermined by the actions of a financial entity. In such cases, investors can approach the CNMV after having first laid the matter before the entity in question, when the latter has not resolved the issue to their satisfaction or within a period of two months.

If the substance of the complaint is not within the competence of the CNMV, it will either pass it on directly to the responsible body or advise the investor where next to turn.

2.2.1. Volume and nature of complaints

A total of 809 complaints were received from investors in 2007, 1.7% down on the previous year. Sixty-six percent of complaints were settled within four months of their presentation to the CNMV. The average response time for the 788 complaints processed was 99 days.

Total complaints filed and processed FIGURE 2



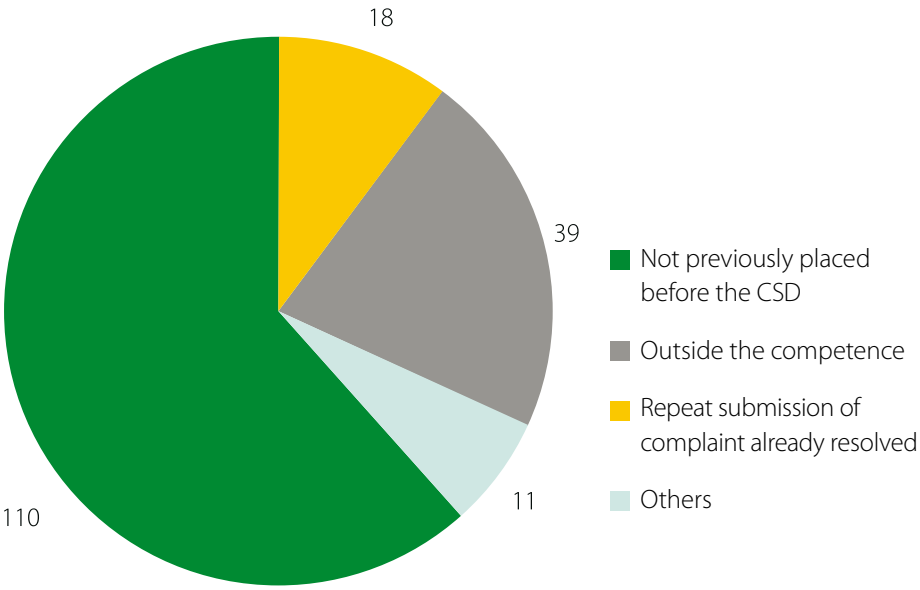
Source: CNMV

The ratio of complaints resolved to complaints filed improved from 67% in 2006 to 75% in 2007. Complainants also did better in complying with the formal requirements for filing a complaint, with the resulting decrease in the percentage of non admissions.

Causes of non acceptance

Of the 178 complaints not admitted in 2007, 39 were directly outside the competences of the CNMV. Most of the other 139 were rejected because the matter had not previously been placed before the Customer Service Department of the entity in question. The second reason, at a considerable distance, was the repeat submission of complaints from the same person concerning an incident already examined and resolved.

Distribution of non accepted complaints by motive FIGURE 3



Source: CNMV

The following publications were launched in 2007 to help investors to file their complaints before the CNMV, avoiding their non acceptance due to formal defects:

- The guide "What you should know about investor protection: making a complaint".

- The factsheet "How to make a complaint concerning financial services", a joint publication of the CNMV, Banco de España, the Dirección General de Seguros y Fondos de Pensiones and the Instituto Nacional de Consumo.

- A standard complaints form available from the Investor's Corner section of the CNMV website.

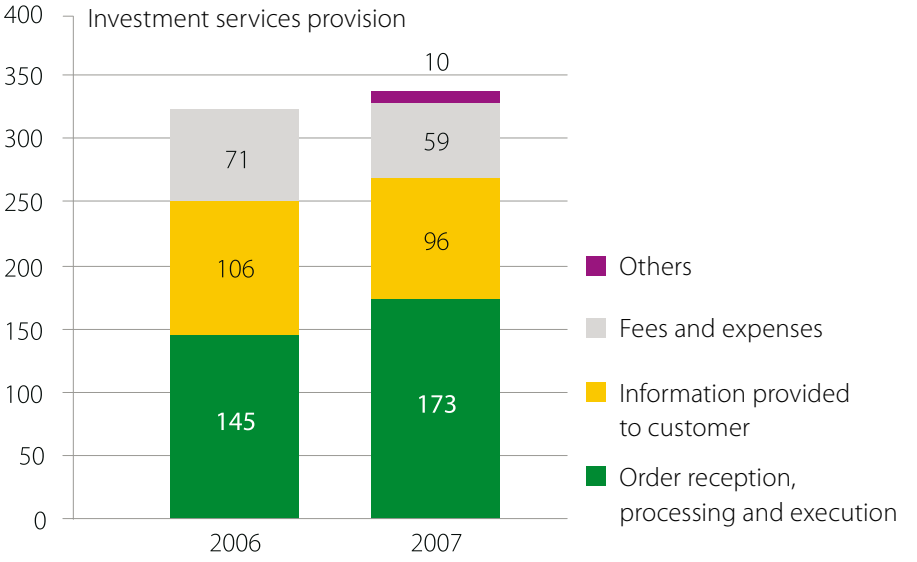
The number of complaints redirected, under the one-stop shop principle, to the competent supervisors (Banco de España, Dirección General de Seguros y Fondos de Pensiones...) rose by 39.3% in the year, though without reaching 5% of the total number.

2.2.2. The subject of complaints

The complaints resolved by the CNMV in 2007 can be classified into two large groups: those arising from incidents to do with the provision of investment services (55.6% of the total) and those concerning incidents with mutual funds (44.4% of the total).

Complaints referring to investment services were also a majority in the previous year, though complaints about mutual funds raised their weight slightly in 2007.

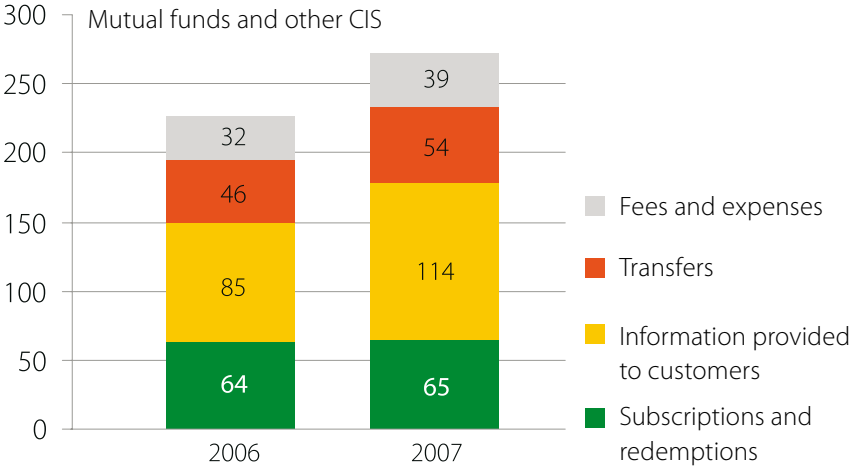
Distribution of complaints resolved by subject FIGURE 4



Source: CNMV

Complaints about investment services were mostly on the subject of order execution processes, while complaints about collective investment schemes mainly concerned the information supplied to clients.

Distribution of complaints resolved by subject

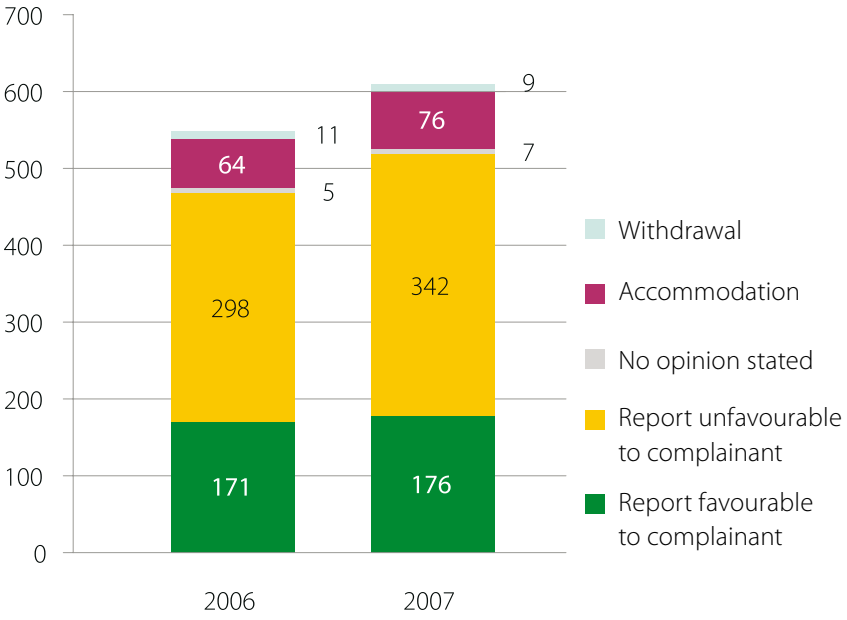


Source: CNMV

2.2.3. Type of resolution

Most complaints were again resolved with a report favourable to the provider entity. Although the number of reports favourable to the investor rose slightly in 2007 (2.9%), those favourable to the entity rose by a significantly higher 14.8%.

Distribution of complaints by type of resolution FIGURE 5



Source: CNMV

Accommodations and withdrawals

Of the total complaints settled in 2007, 76 concluded with an accommodation by the entity and 9 with the complainant dropping the case. 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.

The number of accommodations and withdrawals increased by 13% as far as 14% of the 610 complaints resolved by the CNMV in 2007.

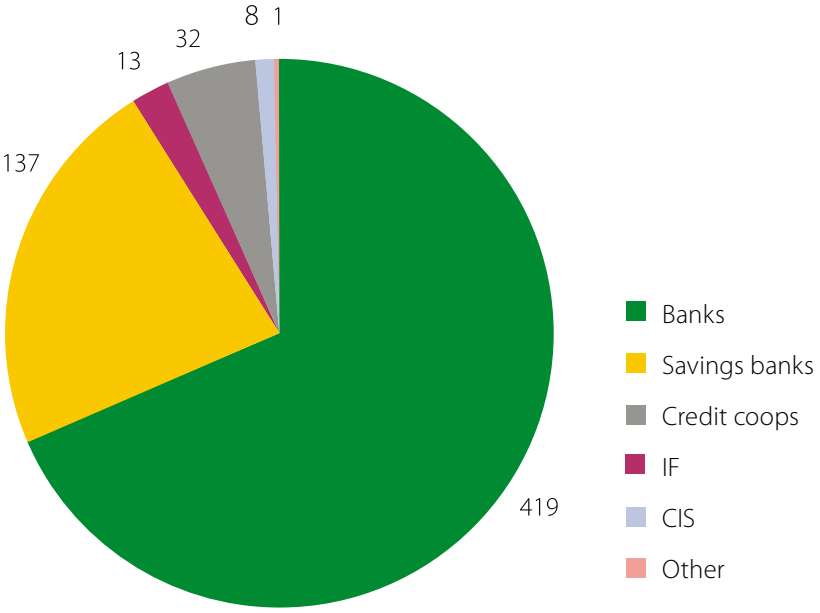
As we can see from table 17 (Annex 1), most accommodations and withdrawals are related to incidents in securities market transactions and a further 35.3% to incidents with mutual funds.

2.2.4. Entities complained against

The entities most complained against are credit institutions (banks, savings banks and credit cooperatives). This is because retail investors predominantly use their branch networks as points of sale for investment products and services.

Of the 94 entities complained against, 77 were credit institutions, 11 investment firms and 6 CIS management companies. Only 33 entities were named in 5 or more complaints, with 10 of them attracting over 15 complaints each.

Distribution of resolved complaints by type of entity FIGURE 6



Source: CNMV

Of the 568 complaints against credit institutions, 74% corresponded to banks, 24% to savings banks and the other 2% to credit cooperatives.

Tables 13 to 16 of Annexe 1 offer a full list of respondent entities whose cases were settled in 2007, along with the opinion issued in the corresponding CNMV report.

Complaints resolved by type of entity and subject matter

We can see from the next table that among the banks, incidents causing complaints were split almost evenly between investment services and collective investment schemes. Among the savings banks, in contrast, the weight of investment service complaints is considerably greater, and the same can be said of investment firms.

Distribution of complaints by type of entity and subject of complaint TABLE 1

	Investment Firms	CIS Managers Firms	Banks	Saving Banks	Credit Cooperatives	Others	TOTAL
Investment services	**21**	**0**	**213**	**97**	**6**	**1**	**338**
Order reception, processing and execution	7	0	125	39	2	0	173
Customer information	5	0	54	35	1	1	96
Fees and expenses	8	0	27	23	1	0	59
Others	1	0	7	0	2	0	10
Mutual funds and other CIS	**12**	**8**	**206**	**40**	**6**	**0**	**272**
Information provided to costumer	7	3	86	16	2	0	114
Subscriptions/Redemptions	0	5	47	11	2	0	65
Transfers	4	0	40	8	2	0	54
Fees and expenses	1	0	33	5	0	0	39
Total complaints resolved	**33**	**8**	**419**	**137**	**12**	**1**	**610**

Source: CNMV

2.2.5. Follow-up of reports favourable to the complainant

Work began in 2007 on following up the action taken by entities when complaint processes resulted in a report favourable to the complainant.

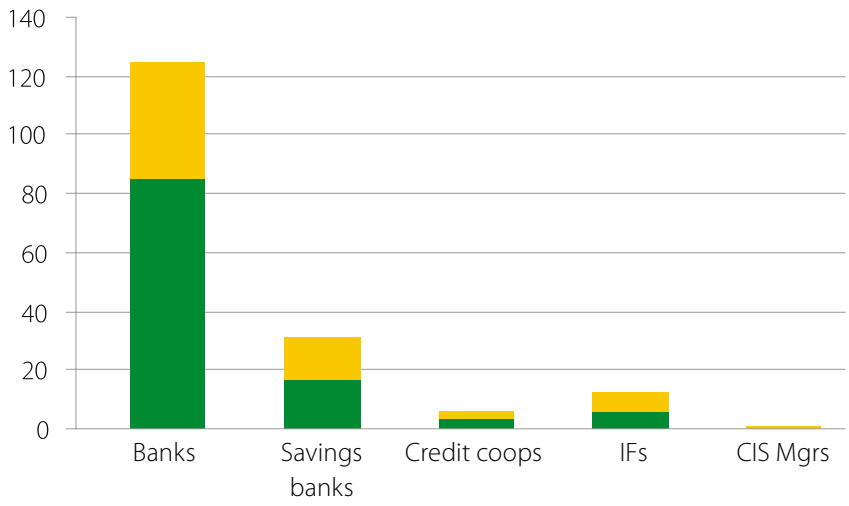
In aggregate terms, in 60.8% of the 176 cases concluding in a report favourable to the complainant, entities have rectified their procedures along the lines indicated in the said report. In 2.3% of cases, the entity only rectified some of the faults detected.

Conversely, in 36.9% of cases the entity took no corrective action. In 5.1% of cases, this was because it did not accept the report's conclusions, while the remaining 31.9% comprises entities not responding which, for statistical purposes, are reported as not having remedied the fault(s).

Table 18 (Annexe 1) offers a full list of entities complained against with a report favourable to the complainant, stating whether or not they have reported some rectification along the lines indicated.

Focusing on the aggregate data for each type of entity, we can see that the banks are the group that has taken most steps to rectify the faults detected, with 68% compared to the 55% of the saving banks.

Rectifications following reports favourable to the complainant by type of entity FIGURE 7



	Banks	Savings banks	Credit coops	IFs	CIS Mgrs
Unrectified	40	14	3	7	1
Rectified	85	17	3	6	0

Source: CNMV

2.3. Enquiries

The enquiries service handled both straightforward questions to do with the CNMV registers or information available though its website or publications, and more complex matters requiring a specialised response.

This service is conceived as a permanent dialogue channel between the regulator and investors. Through the enquiries received, the CNMV can detect information gaps among the investor public or gain real-time knowledge of incidents that allows it to react immediately and prevent later complaints.

These characteristics – immediacy and the absence of administrative formalities in the way of a solution – give enquires an added value with respect to complaints, which invariably refer with hindsight to a particular fault or incident.

For this reason, the IAO runs a telephone helpline (902 149 200) where a team of operators provide real-time responses to enquiries touching on information publicly available. For more complex questions, the caller is passed on to a staff member of the IAO.

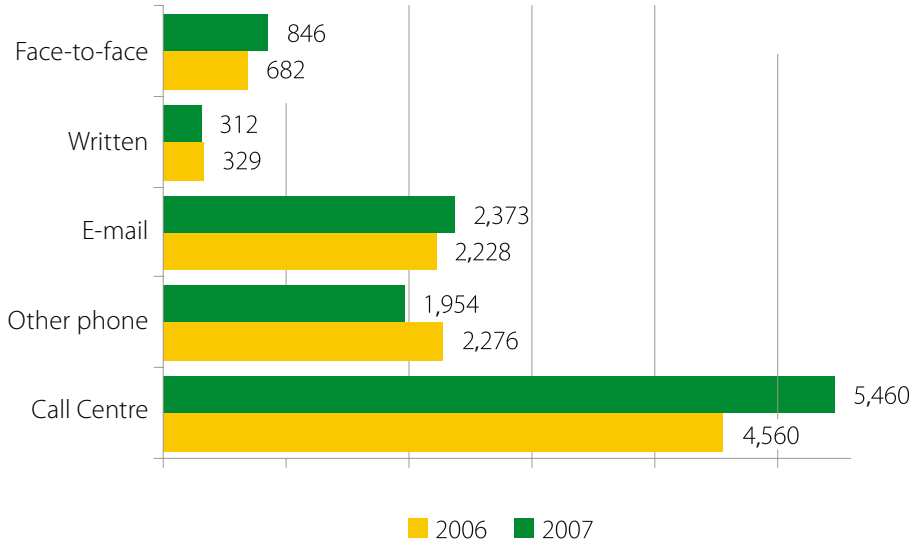
2.3.1. Volume and nature of enquiries

The IAO dealt with 10,945 enquiries in 2007, an increase of 10% with respect to the prior year. 7% of these were received at Bolsalia and Borsadiner, stock exchange and financial market fairs held in Madrid and Barcelona respectively, with the involvement of the CNMV.

The telephone channel remains the most popular with investors, though the year also saw an increase in the number of written and face-to-face enquiries.

The enquiries dealt with by call centre operators amounted to 74% of all those received telephonically and half the total number attended in the year. The other half, almost 5,500 enquiries, were dealt with by the IAO staff team. These last enquiries were mainly formulated by e-mail (43%) and telephone (35%). Those attended personally came to 15% and those presented in writing to 6%.

Distribution by channel of enquiries received in 2007 FIGURE 8

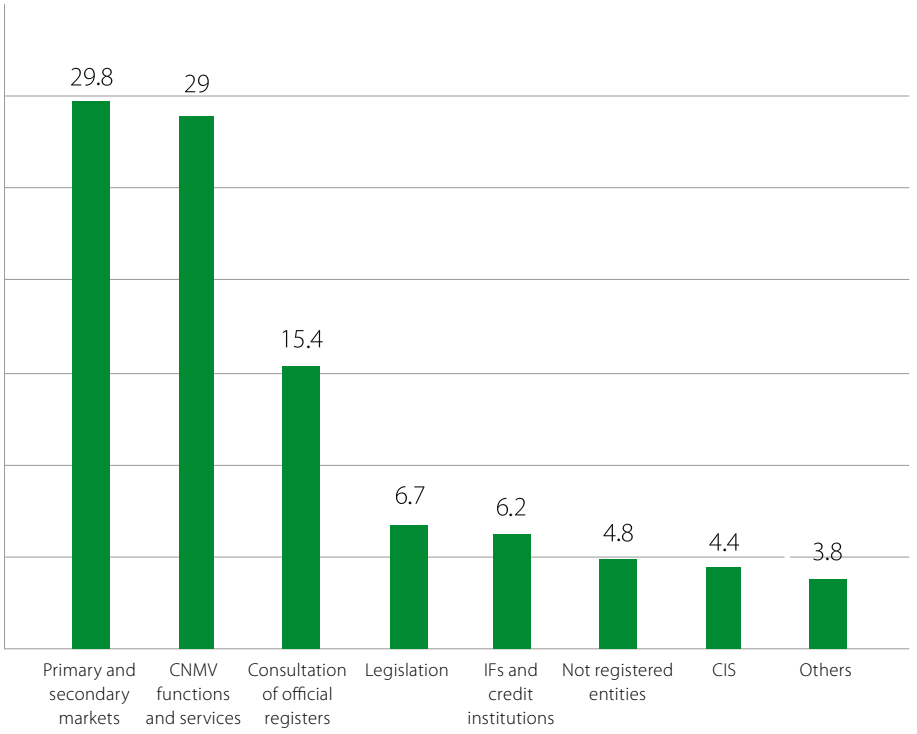


Source: CNMV

2.3.2. Frequently filed enquiries

The kind of enquiries reaching the CNMV tend to reflect the market circumstances of the moment. Corporate and market transactions traditionally motivate the largest number of enquiries.

Subjects enquired about in 2007 FIGURE 9



Source: CNMV

Among the most frequent enquiries are those that concern new securities issues and takeover bids. From November on, there was a flood of enquiries about the Markets in Financial Instruments Directive (MiFID Directive), which brings important novelties in the provider-client relationship. The service also received a good number of enquiries to do with CIS (ETFs and mutual fund transfers) and financial contracts for differences.

II Criteria Applied and Complaints Favourable to the Complainant

3 General criteria and recommendations applied in resolving complaints

The complaints dealt with in a given year pinpoint a series of recurring problems in relations between investors and intermediaries. In this section, we summarise the main issues raised and the approach used in dealing with them.

The following criteria and recommendations are grouped by subject using the same scheme as in figure 6 and table 7 of Annexe 1. In some cases, a more detailed breakdown is offered to facilitate the reader's understanding. The section closes with a set of more general recommendations.

3.1. Provision of investment services

3.1.1. Order reception, processing and execution

Delays in order execution and the fact they have been wrongly processed or executed in the opinion of the client are the main complaints under this head. Among the motives alleged are orders being processed without the investor's consent or in conditions other than those specified, discrepancies about the offset of debit balances, technical problems within the entity and transactional limitations such that orders fail to go through the desired channel.

CRITERIA AND RECOMMENDATIONS

– Regarding temporary inability to process orders by other than traditional means, the CNMV's view is that entities should be held responsible for system failures where they are effectively at fault (i.e., they are not the result of force majeur or third-party liability). This is so because entities providing investment services must equip themselves with the necessary human and technical resources to conduct their business. If they decide to offer clients these services using IT or telephonic means, they must have systems in place to assure their availability and proper functioning and accept responsibility when such systems fail.

  That is to say, the CNMV will resolve in favour of the entity in cases of system failures that impede normal service, when the latter advises its clients promptly and offers them an effective alternative at no additional cost.

– There are more and more cases of Internet fraud in which cybercriminals rob customers' passwords in order to sell their securities and transfer the proceeds to current accounts in other credit institutions.

  Customers must of course exercise due diligence in looking after their passwords. But it seems wrong to assign them full responsibility for a fraudulent transaction and to make them bear the burden of proof that they have kept their details safe, when it is the entity that chooses the system and security mechanisms it deems most suitable at a given time. This is without prejudice to cases being brought before the courts of law against the custodian and those usurping the client's identity.

  As it is important for consumers to understand the implications of accepting any authentication system, entities are urged to warn their clients in as much detail as possible of the risk that their data may be captured for illegal ends.

– Suggesting to investors that they increase their bids in public share or rights offerings is a practice that may go against their interests.

  Bids should be made out for the real amount the investor wishes to acquire to avoid such situations as the number of shares allotted being more than desired, the associated current account being overdrawn, the multiplication of fees payable or inflation of the final placement price.

– In listed company capital increases, shareholders are entitled to operate in the shares acquired as of the day they are admitted to trading.

  In order to defend their rights in any subsequent claim, customers must make sure to have their sale order stamped (with the date and time) the moment they issue it.

  Logically, such complaints multiply when the price of the new shares drops below the floor level of the first trading session, since the inability to operate entails an economic loss.

– The procedures to be followed in primary market placements are set out in the corresponding prospectus and must be strictly adhered to by both entities and investors. Entities must fill accepted and unrevoked bids within the deadline set, unless the customer has been asked to advance funds and has failed to do so in time.

Preferential subscription rights

The conduct of corporate transactions involving the issue and distribution to shareholders of preferential subscription rights motivates numerous complaints directed against the securities custodians. The loss of preferential rights in bonus issues is a particularly regular cause of complaint.

– In capital increases with the issue of new ordinary or preference shares, existing shareholders and holders of convertible bonds may exercise their right to subscribe for a number of shares proportional to the face value of the shares in their possession or those which they would be entitled to on that date if they exercised their conversion option within the terms set to this effect by the company's board of directors (no fewer than fifteen days from the date the offer is published in the Boletín Oficial del Registro Mercantil, in the case of listed companies, and one month in remaining cases).

  Custodians may not unilaterally reduce this term. Nonetheless, some financial institutions have been found to be cutting the time available for clients to issue their instructions by up to two days, after informing them expressly to this effect and stating how they will proceed in the absence of instructions. This practice may benefit rights holders with regard to liquidity, by avoiding an oversell situation which impedes trading in the days before expiry. However, any further reduction must be seen as unacceptable, as it could limit the investor's power of decision.

– With regard to rights issues, the CNMV understand that, in the absence of instructions from clients holding rights by virtue of previous possession of shares in the company, the custodian should opt unilaterally to sell at best before the end of the trading period.

  However, investors not acquiring such rights as existing shareholders but through a purchase order on the secondary market should give their intermediary precise instructions on what course to take. In the absence of such instructions, and unless the securities administration agreement specifies otherwise, the custodian is not obliged to take any action and the rights could be left to expire, occasioning a loss to the holder.

  That is to say, investors purchasing rights on the last day of trading should be advised on completion of the transaction that such rights must be sold or exercised before the end of the session. If the client expresses his wish to take up the capital increase, he should be informed of the steps to take and corresponding deadlines, indicating the most suitable procedure as a function of the channel in use.

– When the holder of rights issues a limit sell order without stating how long it is good for, the order will be considered valid only for the session it is entered for. At the end of that session, the mandate is annulled and the entity must act as if it had never existed, that is, ordering the sell of the rights at the market price on the last day of trading.

– Custodians processing individual or aggregate sell orders on customers' rights on the last day of trading, in the absence of instructions from the same, should adhere strictly to the principles of equity without discriminating between clients.

3.1.2. Information provided to customers

In the sale of investment products

Investors should make sure they receive the mandatory information in financial product sales, remembering that this will vary from one product to another. They should also ask for explanations if there is anything they are unclear about.

Before purchasing mutual funds units, taking out contracts for differences or acquiring subordinate bonds or preference shares, among other products, investors should be given copies of the official documents filed with the CNMV, setting out their characteristics and their risks. It is wise to read through the corresponding prospectuses, whose delivery is mandatory in the case of investment funds and at the customers' request in primary market subscriptions.

Commercial information should be of maximum rigour and quality in the case of financial products combining high risk with an especially complex structure and conditions. Customer information can only be considered effective when it has fulfilled its primary purpose of giving them a firm understanding of the nature of the investment.

CRITERIA AND RECOMMENDATIONS

– In practice, it is hard to resolve in favour of customers complaining about lack of information at the point of sale because there is no documentary evidence to support this assertion. Sometimes, even though they claim to have received nothing, their signature appears on a buy order acknowledging receipt of the relevant documents, which effectively overturns their argument. These cases underline the importance of knowing what you are signing and being ready to accept the consequences. Investors must make sure they understand the scope and content of contractual papers and ask for an explanation if there is anything they are unclear about.

  Informational requirements with retail investors have been affected by the new European issuance regime, which seeks to simplify and eliminate obstacles to the free marketing of financial instruments throughout Europe on the single passport principle as a way to boost market competition and efficiency. At the same time, investor protection no longer rests so much on the pre-commercial checking and registering of product information, but more on the rules of conduct binding on the financial entities responsible for their sale.

– In complaints about not being properly informed about the securities of EU companies, the first thing is to analyse the material available to the client to see whether it was enough to take a correct decision. This material may comprise sales brochures used by branch staff or the purchase order itself when it incorporates the most significant data on the issue.

These situations highlight the importance of compliance with marketing rules of conduct, as reinforced by the MiFID. In particular, it is mandatory for firms to advise customers about a product's risks and costs, and in resolving this type of complaint the first thing to establish is whether the material available was enough for him to take an informed investment decision.

During and after the contractual relationship

The provision of clear, comprehensive and relevant information is an obligation envisaged in securities market rules of conduct, and is vitally important to help the customer make a founded judgement. Information quality refers not only to the information delivered pursuant to legal provisions and contractual obligations, but also to that given in response to customers' specific queries.

In numerous complaints on these matters, it was found that the entity had not satisfactorily complied with its obligations regarding customer information, which was incomplete, vague or potentially misleading.

CRITERIA AND RECOMMENDATIONS

– Custodians must inform investors immediately about the terms and conditions of corporate transactions, so they can issue their instructions in the time allotted. The CNMV insists that registered entities should send notice of certain corporate transactions to their clients as soon as possible, to avoid delays in receiving their instructions.

  This task is especially complicated in the case of capital increases or convertible bond issues with two subscription deadlines to be met. But no effort can be too great, as subscription rights expire and on that date lose all their value.

– Shareholder information requirements do not end when a company has withdrawn from trading. The securities custodian is still obliged to provide all necessary information to the owners in furtherance of their rights under the *"Ley de Sociedades Anónimas"* and the corresponding administration agreement.

  Securities custodians perform a number of services for which they receive a monetary consideration. Both the services and the fees they charge are stated in the securities administration and custody agreement signed between entity and client. Among the entity's obligations are to perform all such acts as may be required to ensure the certificates deposited conserve their value and the rights corresponding to them.

– The CNMV has recommended that the conditions governing the provision of financial advice should be set out in a separate agreement or, if they are supplemental to some other service rendered by the entity such as securities administration and custody, that they at least be included in the clauses of the relevant agreement. This criterion rested on the duration and regularity of advisory activity and the importance that it holds.

– In general, when securities transactions result in an overdraft in the associated current account, securities administration and custody agreements allow the holder's receivables to be used in offset. In such cases, the agreement should specify that notice be given to the customer.

– A fairly frequent question is whether entities are obliged to attend enquiries from the heirs of securities account holders. While there is no question that they must provide data on the account balance at the time of the holder's death, things are less clear when heirs wish to know the movements and other details of the deceased person's account over a considerably longer period.

  The criterion maintained is that legitimate heirs have the right to such information within the time limit the law obliges the entity to conserve it.

3.1.3. Fees and expenses

In general, complaints in this area reveal that clients are insufficiently informed. Most are unaware that intermediaries can legally set their own maximum fees and are only obliged to file them with the supervisor, publicise them adequately and give the client a copy along with the corresponding contractual papers. Specifically, they object to being charged fees for the change of securities ownership mortis causa or for transferring securities to another custodian. They also complain about the potentially misleading nature of the information given

The criteria applied, as explained below, refer to complaints processed in 2007, before the regulatory changes introduced by the transposing of the MiFID.

CRITERIA AND RECOMMENDATIONS

– Information on fees and expenses must be easily understood, so investors can work out the associated costs before embarking on an operation. This requires a precise description of calculation bases, accrual periods and the items to which fees will apply.

  In settling fee disputes that are due to imprecisions in the fee schedule, the interpretation favouring the investor's interests shall be the one that prevails.

– Although entities are free to set the fees applying to their services (regarding both item and amount), customers are entitled to be kept permanently informed of the fees and expenses applicable to their operations. This means that not only must the investor be given a copy of the fee schedule on opening a securities account, he must also know the exact cost of each transaction as this will influence his final return.

  This appreciation is valid for securities transfers to other entities and for changes mortis causa in their ownership, as both are non standard transactions with a high cost attached. In these cases, the entity should inform the customer beforehand in writing of the fees and expenses he will have to meet.

  After a transaction goes through or a service is rendered, the customer should receive a detailed statement in which the charges made are clearly itemised, so he can check them against this initial information.

– The mailing expenses that figure in fee schedules for the service of notifying customers about their portfolio transactions or composition refer exclusively to the postal distribution of the said statements.

  So when information is sent out in a single document, the customer should pay only once, since the preparation and printing of all necessary documentation is already included in brokerage and custody fees and indeed forms an integral part of investment service delivery.

– Entities should notify their customers of any changes in fee schedules that are pertinent to the contractual relationship. Customers have a minimum of two months from receipt of such notice in which to modify or cancel the said relationship. The new charges will not be applied in this period unless they are to the customer's advantage, in which case they will take effect immediately.

  New fees should be notified in writing. However, this need not involve a separate mailing but can be done through any regular communication sent by the entity.

  A frequent problem when processing complaints is that such communications include no proof of receipt, as the law does not require them to be sent by registered post.

  For this reason, when a customer demands the return of amounts charged under the new fee schedule, claiming he had no notice of the same, the Complaints Service asks the entity for some proof that the notification has been sent. Such clarifications may refer to the date it was sent on, the kind of letter and, if it was included in some regular mailing, a copy of the same.

Another aspect factored in resolving disputes is whether the communication was sent to the correspondence address specified by the client, and whether this is the address normally used by the entity without the client ever having complained about non receipt.

If all these conditions are met, the complainant's claim is normally turned down.

– Shareholders must go on paying fees for the administration of delisted shares if they are represented by book entries, because this system of ownership representation requires the upkeep of accounting records. A different case would be physical share certificates, which the holder could administer directly.

  There are same circumstances, however, in which this obligation ceases to apply. Investors can stop paying administration and custody fees on the shares of delisted companies in a situation of inactivity.

  The solution is a voluntary procedure whereby the investor de-registers his shares from the book-entry system. Shareholders should approach their custodians to find out how to initiate this procedure and complain if help is not forthcoming.

– Issuers at times assume certain fees and expenses that investors should be aware of.

  The fees and expenses for processing takeover bid acceptances are set out in the offer prospectus. Normally, the bidder will agree to pay trading and settlement expenses in respect of the sell order, as well as those arising from the compulsory involvement of a market member when appointed by the same. The bidder may at times also pay the transaction fee on the acceptance order when it is placed through a choice of intermediaries specified in the offer prospectus.

  When the investor places his acceptance and sale order though a market member or intermediary other than those designated by the bidder, he will bear the brokerage and other costs corresponding to the sell order, except the stock exchange trading fee and settlement by Iberclear, which will normally be for the bidder's account, as stated above.

  However each operation is a world in itself, and its particular conditions will be as established in the bid prospectus.

  The investor may also be relieved of paying share cancellation expenses if the company so decides.

– In the case of cross-border trades, the usual practice is for the Spanish custodian to subcontract the service from a foreign custodian, while retaining full responsibility for the performance of its obligations.

  These obligations and their consideration will be specified in the securities administration and custody agreement concluded with the client. Among the services and items priced in this agreement will be the transfer of securities to another entity, so customers ordering this service must be prepared to meet the associated costs.

  However it is considered bad practice for both the Spanish custodian and the sub-custodian to charge for this service, since it has effectively been rendered once only.

– Entities are free to set the exchange rate applied to spot and forward currency transactions, and are only obliged to use the published rate in the case of currency and foreign banknote transactions for amounts under 3,000 euros.

  That said, entities must inform clients beforehand of the exchange rate applicable or the exact formula used for its calculation, and subsequently send them a settlement statement with clear details of the interest rates and fees and expenses applied to the transaction, specifying their motive, calculation base and accrual period, taxes withheld and any other information the customer needs to verify the settlement conditions and work out the net cost of the operation. This same statement will specify the rate applied in currency exchanges, as and when appropriate.

3.2. Mutual funds and other CIS

3.2.1. Subscriptions and redemptions

The main incidents detected in this area have to do processing delays, execution failure, the incorrect filling out of orders or the imposing of conditions over and above those legally established.

CRITERIA AND RECOMMENDATIONS

– No specific account is needed to purchase units in Spanish mutual funds. However, their distributors frequently require clients to open a current account. This practice may be warranted for operational and management reasons and is acceptable providing it is at no additional cost to the customer and that the account has no other movements except those corresponding to unit sales and purchases.

– When a fund's conditions undergo significant changes, unitholders are given a time during which they can order the redemption of their units without fees or charges. In cases where a unitholder's death impedes the exercise of this right, the entity must transfer ownership to his heirs as quickly as possible, on receipt of all the necessary legal papers.

  However if the process of transferring ownership under testamentary instrument coincides with the term when unitholders enjoy this free exit right, the heirs must issue an order expressly stating their desire to take up their right to redemption without fees or charges. The management company must accede to this request, regardless of when change of ownership procedures are effectively concluded.

3.2.2. Transfers between mutual funds and other CIS

Unitholders are frequently unhappy about the fees they are charged when they switch mutual funds, occasionally because they confuse tax deferral with managers' rights to collect the fees envisaged in the scheme prospectus.

Another regular complaint concerns delays in transfers, due to entities' refusing orders or other kinds of errors which mean the deadlines are overrun. One consequence could be that the net asset value (NAV) applied is other than it would have been had the transfer gone through smoothly; another could be missing out on a liquidity window (dates on which some funds allow no-fee redemptions).

CRITERIA AND RECOMMENDATIONS

– When a CIS investor cannot enjoy the tax deferral regime provided by law because the scheme does not have a determined number of unit or share holders, the CNMV considers that the entity should renounce the established transfer procedure and instead redeem the units or shares of the delivering CIS and purchase units or shares in the receiving CIS. This is so because investment transfers are generally slower and entail greater uncertainty as regards NAV.

– In inter-fund transfers, the conveying of the transfer request, the cash transfer and the exchange of information between entities is handled by the Sistema Nacional de Compensación Electrónica (hereafter SNCE). The SNCE, which is managed by the Banco de España, accepts only transfers in euros. So in the case of transfers between schemes denominated in other currencies and with different distributors, the outward transfer goes through the SNCE and cannot be in any currency other than the euro. The SNCE can only be sidestepped if the delivering and receiving distributor are one and the same, obviating the need for this double exchange.

– Further to the general principle that requires entities to carry out transactions according to the exact instructions issued by the client or, failing this, in the terms most conducive to his best interest, and bearing in mind the regulations and customs of each market, it is considered best practice for collective investment scheme managers and distributors not to charge redemption fees for fund transfers, when the liquidity window of the delivering fund falls within the legally envisaged transfer deadlines.

– Real estate funds have a subscription and redemption regime that sets them apart from securities investment funds. Their NAV is not calculated daily but at intervals set by the fund manager, though these may not be longer than one month. Likewise, they are empowered to limit unit purchases to one occasion per year.

  In practice, most real estate funds calculate net asset value once a month – using the corresponding closing value – and accept subscription requests at any time up to this NAV-setting date. The applicable NAV shall be the first one calculated after the request has been put in. The value date for subscriptions will be the day following the monthly NAV-setting exercise that determines the transaction price.

  These conditions are specific to each fund and described in full in their respective prospectuses, which must be delivered to the client before a purchase is made. Investors should bear them in mind when requesting a transfer from some other CIS, since such transfers may not be executed until the subscription date of the receiving real estate fund.

  It is important that unitholders are aware of the lag that may occur in completing the transfer, and can decide whether to push back the corresponding redemption order so it coincides with the subscription date, with the risk that NAV may fluctuate in favour or against.

3.3. General criteria and recommendations

The following general criteria and recommendations are generally applied in resolving investors' complaints:

– The CNMV's assessment of incidents due to entity error will not be the same if the entity detects the incident rapidly, informs the client about it and offers a solution, restoring things to their initial status and, if necessary, dealing with any tax implications. In other words, providers' diligence in detecting and correcting errors will count significantly in their favour.

– The CNMV is not competent to pronounce on entities' compliance or otherwise with promotional campaigns to recruit clients in which they offer economic incentives or gifts for the contracting of products or services. However it can issue an opinion on the clarity, truthfulness and sufficiency of the advertising messages such promotions contain.

4 Report favourable to complainants

4.1. Provision of investment services

Investment services: reports favourable to the complainant TABLE 2

SUBJECT	ENTITIES	COMPLAINTS
Order reception, processing and execution	Altae Banco, S.A.	R/227/2007-R/228/2007
	Ibercaja	R/578/2007
	CAyMP de Córdoba	R/557/2007
	Caja Rural Aragonesa y de los Pirineos, SCC	R/111/2007
	Deutsche Bank, SAE	R/165/2007
	Banco Inversis, S.A.	R/202/2007-R/254/2007
	Open Bank Santander Consumer, S.A.	R/594/2006-R/560/2007
	Bankinter, S.A.	R/332/2007-R/110/2007-R/149/2007 R/290/2007-R/766/2006
	Fortis Gesbeta, SGIIC, S.A.	R/549/2006
	C aja España de Inversiones, CAyMP	R/662/2006
	Caja Rural del Duero, SCC	R/248/2006
	Banco de Sabadell, S.A.	R/519/2007
	Boursorama Sucursal en España	R/589/2006-R/722/2006-R/784/2006-R/158/2007
	Banco Pastor, S.A.	R/432/2007
	Uno-e Bank, S.A.	R/019/2007-R/203/2007
	Caja de Ahorros del Mediterráneo	R/174/2007-R/507/2007-R/402/2007-R/209/2007
	Banco Santander, S.A.	R/590/2006-R/696/2006-R/752/2006-R/130/2007-R/138/2007-R/147/2007-R/192/2007-R/218/2007-R/237/2007
	Banco Español de Crédito, S.A.	R/516/2006-R/420/2007-R/580/2007
	Banco Banif, S.A.	R/695/2006
	CAyMP del Círculo Católico de Obreros de Burgos	R/641/2006
	ING Direct, N.V. Sucursal en España	R/603/2006
	Citibank España, S.A.	R/090/2007
	CAyMP de Madrid	R/499/2006-R/751/2006
	Banco Popular Español, S.A.	R/675/2006-R/230/2007
Information provided to customers	Unicaja	R/587/2006
	Banco Español de Crédito, S.A.	R/078/2007-R/273/2007-R/274/2007 R/645/2007
	Banco Santander, S.A.	R/590-2006-R/630/2006-R/262/2007-R/488/2007-R/509/2007
	CAyMP de Madrid	R/638/2007-R/356/2007
	Renta 4, S.V., S.A.	R/360/2007
	Open Bank Santander Consumer, S.A.	R/329/2007-R/160/2007-R/146/2007 R/560/2007
	Caja Castilla la Mancha	R/306/2007
	Caja de Ahorros de la Inmaculada de Aragón	R/259/2007
	Bancaja	R/688/2006-R/757/2006
	Bankinter, S.A.	R/527/2007-R/307/2007-R/058/2007 R/016/2007
	BNP Paribas España, S.A.	R/308/2007
	Banco Espirito Santo, S.A.	R/283/2007
	Ibercaja	R/489/2007
	General de Valores y Cambios, S.V., S.A.	R/335/2007
	Banco Sabadell, S.A.	R/667/2006-R/163/2007
	Caja de Crédito de los Ingenieros, SCC	R/342/2007

Fees and expenses	Gestión de Patrimonios Mobiliarios, A.V., S.A.	R/640/2006-R/659/2006
	Ibercaja	R/713/2006-R/768/2006
	Caixa D´Estalvis del Penedés	R/231/2007
	CAyMP de Madrid	R/356/2007
	Banco Santander, S.A.	R/620/2006-R/749/2006-R/810/2006-R/806/2006
	Open Bank Santander Consumer, S.A.	R/818/2006
	Caja de Ahorros de Salamanca y Soria	R/040/2007
Others	Banco Español de Crédito, S.A.	R/580/2007R/488/2007
	Golden Broker, Sociedade Corretora, S.A.	R/639/2006-R/661/2006
	Eurodeal A.V., S.A.	R/800/2006-R/035/2007
	Ibercaja	R/501/2007
	CAyMP de Navarra	R/567/2006
	Banco Pastor, S.A.	R/217/2007
	Banco Santander, S.A.	R/004/2007
	Boursorama, Sucursal en España	R/114/2007-R/535/2007
	Caja de Ahorros de Galicia	R/268/2007

Source: CNMV

4.1.1. Order reception, processing and execution

Normal trading in securities markets will give rise to incidents relating to the processing, execution and settlement of transactions.

Most incidents relate to delays in execution, to difference between the instructions given and the action actually taken, and even to the execution of transactions without the consent or knowledge of the customer.

On other occasions, the incidents relate directly to the channel used to process the orders. The bulk of these incidents relate to online trading. Others are due to the technical failures or special limitations of the systems involved.

Lastly, incidents can relate to specific markets, such as the AIAF (private fixed- income market), to specific securities such as preferential subscription rights on shares or to specific transactions such as takeover bids.

Incidents relating to the content of the securities order

Current legislation establishes that, in general, all securities orders regardless of the channel must be clear in their scope and content, so both the investor and the broker fully understand their effects.

To this end, entities receiving orders are expected to use the appropriate form for each type of transaction, and refrain from using forms which do not reflect the nature of the transaction and do not include the relevant clauses.

Ideally, written orders should be fully filled out and reflect all essential terms, both to facilitate the investor's comprehension and to offer greater legal certainty to entities themselves.

R/227/2007 and R/228/2007 - Altae Banco, S.A. The orders placed by the complainants were not in the standard format for securities orders in generally used by investment service providers.

The orders did not contain the minimum content required for any securities order. Though they did include the order dates, they were not signed by the supposed investors, nor did they correctly indicate the securities to be acquired, their issuers, or the sum total or specific number of securities to be purchased. They did not indicate the effective acquisition price, the deadline for placing the orders, whether the securities were to be bought in primary or secondary markets, the securities account in which the bonds were to be deposited or the associated current account to which amounts were to be charged and credited. The order described only the generic conditions supposedly to be met by the structured bond acquired.

The final report concluded that the documents used to subscribe the product contained obvious deficiencies in both form and content.

R/578/2007 - Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (Ibercaja). A situation similar to that described above led the CNMV to conclude that the bank had acted incorrectly.

R/557/2007 - Caja de Ahorros y Monte de Piedad de Córdoba. The entity rejected a sell order received by fax, claiming that the customer had not filled out the designated form and that the sell order did not contain the minimum information necessary for proper execution.

Having confirmed that the entity does indeed accept orders by fax, it was inferred that if the customer chose to transmit the sell order by fax, he was probably not in a position to use the standard form provided by the bank. Thus, this part of the bank's case was deemed not valid.

With regard to the content, the CNMV confirmed, based on the documentation provided by the parties and their testimonies, that the sell order received at the entity's branch office was unequivocal.

In this case, given the supposed deficiencies in content, and allowing that the entity might have had doubts about how to interpret the order, a diligent approach on the its part would have been to contact the client to clear up any doubts or ambiguities, and even warn about the possibility that the order might not be executed. However, this did not happen and the final report concluded that the bank was at fault.

R/111/2007 - Caja Rural Aragonesa y de los Pirineos, Sociedad Cooperativa de Crédito. The complainant in this case was the co-owner (together with his parents) of shares which were sold by the entity without his authorisation or consent.

The entity claimed that one of the co-owners had verbally authorised the sale, but it did not provide any documentation to support the supposed sell order.

In this regard, the law establishes that verbal orders placed directly or by telephone must be confirmed in writing by the investor or another person whom he authorises to this effect via some written medium such as telex, fax or similar.

Entities may refuse to process and execute verbal orders or orders via telephone until such orders are confirmed in writing. The order will be deemed confirmed when the broker notifies the investor via any written medium, including those mentioned in the previous paragraph, that the order has been executed and, if applicable, settled as per the investor's instructions, and the investor does not report his disagreement during the time frame established by the entity, which must extend at least 15 days from the date the investor receives this information.

The entity was at fault, given that it did not furnish a document demonstrating the client's consent, and considering that the customer indicated his disapproval within the time limit established by current regulations.

R/237/2007 - Banco Santander, S.A. The complainants stated that their father wished to transfer ownership of his shares by placing the shares on the market and immediately selling them to his daughters, a transaction known as "cross trade." The entity advised the father to perform a cross trade, and to this end, instructed him to fill out and sign a sell limit order matched by a buy limit order for the same amount. However, it then failed to formalise or execute the orders as per the client's instructions and the procedures in place for cross trades.

R/165/2007 - Deutsche Bank, Sociedad Anónima Española. The bank executed an order which was inherently contradictory, and thus unclear in both scope and intent, without obtaining clarification from the client. Current regulations require entities to ask their clients for clarification if an order is unclear in scope or content, or when there are any doubts about its interpretation. This same conclusion was reached with regard to case **R/290/2007** against **Bankinter, S.A.**

R/202/2007 - Banco Inversis, S.A. It became apparent that the bank failed to execute an order to cancel the complainant's securities account, although the order was deemed unequivocal in both content and intent.

R/594/2006 - **Open Bank Santander Consumer, S.A.** The rules governing transfers between entities of book-entry securities state that holders of these securities may order the present or future custodian to transfer the securities. Once the entity has received and duly verified the order, the order should be forwarded to the book-entry clearing and settlement system before the end of the working day following to the day of request. The clearing and settlement system will record the corresponding debits and credits by the end of that working day, notifying the originating and receiving entities so that they may update their records accordingly. The same procedure applies when the transfer is requested by the holder through the receiving entity.

In this case, the transfer of securities to the receiving entity took longer than the two-day maximum allowed by current regulations.

Conditional orders

Most of the incidents in this section involve entities which offer their clients the possibility of placing "stop" or conditional orders. These are buy/sell orders which are executed only when a certain condition is met.

A typical example was the investor who, believing that his shares would drop in value, entered a stop-loss order with an exit price equal to or lower than X euros and simultaneously set a sell limit order with a minimum price equal to X euros. As a result, when the share's value dropped suddenly, the sell order was already impossible to execute within market conditions, even though the intermediary acted diligently and sent the sell order to the market member in a reasonable time period. In another instance, when an order was entered during the opening auction, the opening price already made the order impossible to execute.

It must be stressed that these types of orders require close and active management on the part of the intermediary, given that the SIBE (Sistema de Interconexión Bursátil Español) does not recognise them as standard transactions. Furthermore, entities must provide sufficient information about their nature and characteristics so customers fully understand their uses.

R/332/2007 - **Bankinter, S.A.** The customer placed an order of this type and tried to cancel it after the order had been activated, but before the shares had been sold; he was unable to do so. According to the bank, the reason he was unable to cancel the stop order on the Internet was precisely because the order was active.

The report deemed that the bank had handled the client's stop order correctly, in keeping with the terms displayed on its website. However, given that the stop order had been activated and thus could not be cancelled, what the client had at that point was, in effect, a normal sell limit order.

It would therefore have sufficed for the complainant to have cancelled the order; a fact the bank should have indicated through its website. And it was its failure to do so that motivated an unfavourable report.

R/110/2007 - **Bankinter, S.A.** The entity states on its website that investors may place stop orders (with a trigger condition) even when they don't have enough cash or securities at that point to cover the order. It even allows various stop orders to be issued on the same security, supposedly without risk of overdraft, given that when the condition for an order is met, it effects the corresponding withholdings, executing only those orders with a sufficient balance. The others are not entered and figure in the customer's statement as "Balance Insufficient for Order".

The complainant placed two stop orders on the same security, both of which were entered once their respective conditions were met, but his account balance was insufficient to cover both transactions. As a result, the report was unfavourable to the bank.

R/519/2007 - **Banco de Sabadell, S.A.** The complaint arose because the bank executed a sell order in a way supposedly at odds with the client's wishes. The complainant had intended to give a stop loss order, to limit his losses if share price fell—not a sell limit order.

The bank understood that it had received a sell limit order, not an order which would be executed only if a certain condition was met.

The client's written instructions were found to be clear in scope and content. It was the bank that failed to apply them correctly when it treated the order as a sell limit order. The final report was accordingly unfavourable to the bank.

Incidents related to online trading

Compared to traditional methods, online trading should add value by offering lower costs, greater autonomy, faster handling of orders and more information for making investment decisions. Complaints usually centre on incidents which limit that added value and, in some cases, impair the client's ability to operate.

It is generally understood that entities which offer investment services should organise and control their resources responsibly, adopting the measures and employing the means necessary to conduct their activities efficiently.

Thus, when offering online trading, entities should be able to guarantee their clients that they provide an effective, reliable service with correct, up-to-date information.

R/149/2007 - **Bankinter, S.A**. The complaint arose due to an interruption in the bank's information about share quotes. Though this information is prepared by a third party, the bank provides the information as a resource for its customers, within the context of a contractual relationship whereby the customer undertakes to pay a series of fees.

Consequently, the entity cannot claim that it is not responsible for providing this information, as it is particularly relevant for those transacting in derivative products with very high volatility. An intermediary should not try to limit its responsibility for interruptions in third-party information to those caused only by sudden technical failures in market routings, telephone lines, or similar. In any event, entities should have a contingency plan to inform clients automatically of alternatives when normal services are interrupted, and, to the degree possible, explain the causes of the problem and give an estimate of when it will be resolved.

R/158/2007 - **Boursorama, Spanish Branch.** The entity acknowledged that its website lacks an alert system to advise clients when service is interrupted, a fact which reflects unfavourably on the company in the final report. Entities offering online investment services are expected to establish alert systems to report incidents and to direct customers to alternative channels.

Regardless of the causes of the interruption, clients should consider the Internet a complement to other channels and not rule out the possibility of placing orders in person or by telephone, so they can continue to trade if online service is interrupted.

R/432/2007 - **Banco Pastor, S.A.** The bank was negligent in failing to post on its website the new ISIN code and face value of a company's shares following a split. The result was that for hours customers were unable to transact in these shares online. The website did not state the causes of this situation or direct clients to alternative channels.

R/019/2007 - **Unoe Bank, S.A.** The respondent failed to inform the customer, through either its signed services agreement or its website, that he could not issue instructions online on shares traded on Asian secondary market.

The report deemed that the bank was at fault, not because its website did not offer this possibility (this is at the bank's discretion), but because it failed to inform the client properly.

R/507/2007 - **Caja de Ahorros del Mediterráneo**. The complainant objected to being unable to process sell orders on shares through the Internet on a particular date.

The bank acknowledged that there were problems relating to sell orders on that day, though it had resolved them by the day after. It offered to compensate the client, but only for the loss in share value from one day to the next.

The report found that the bank was at fault for not offering alternative execution channels when its services were down and for failing to inform the customer immediately, requesting instructions on how to proceed.

R/130/2007 and R/138/2007 - Banco Santander, S.A. These complaints were filed by clients trading online who found transactions charged to their securities accounts without their knowledge or consent.

The entity considers customers to be exclusively responsible for transactions made through their accounts, given that they must keep their passwords and electronic signatures confidential. If they suspect that their accounts have been used fraudulently, they should pursue the matter through the courts.

The CNMV, like the Complaints Service of Banco de España, considers that entities which offer investment services should organise and control their resources responsibly, adopting the measures and employing the means necessary to conduct their activities efficiently. Thus, when offering online trading, entities should be able to guarantee their clients that they provide an effective, reliable service providing accurate, timely information, as well as proper security measures which safeguard their accounts and data and prevent access by unauthorised third parties.

Consequently, entities must employ the safest possible systems at all times to authenticate and transmit information, and can be held jointly responsible if their authentication systems are found to be more vulnerable than other systems comparable in cost and technological sophistication.

These considerations are independent of whether or not the client was negligent and revealed his passwords to third parties. The report also deemed that entities which provide investment services are obliged to inform investors of the risks inherent in their authentication systems and how best to minimize them.

Incidents relating to changes in ownership *mortis causa*

The most common incidents relate to delays in transferring ownership of securities following the death of the titleholder; to fees; to matters pertaining to joint ownership (opening accounts upon splitting, or not splitting, an inheritance; ownership of securities when one of the joint owners dies); the failure of entities to process sell and transfer orders adequately; and disclosure to heirs of the accounts of the deceased.

R/516/2006 - **Banco Español de Crédito, S.A.** Decades had passed since the death of a securities account holder, though his heirs did not request the change of title, in testamentary execution, until 2003. The bank had still not taken any action.

Since the titleholder's death in 1969, the bank had recorded amounts in respect of account administration and services to an internal account called "Heirs of the deceased," a name which did not correspond to any person, legal entity, or jointly-held property with a tax ID number or registered address, but rather, to the untouched inheritance.

The book-entry register was not updated for years due to the heirs' inactivity, and the entity's only duty was to safeguard their interests in compliance with its custody and record-keeping obligations, reflecting any changes arising from corporate transactions in the above internal account and debiting or crediting the related amounts in the associated current account.

Securities market and collective investment schemes rules of conduct do not explicitly contemplate the existence of a legal deadline to execute a change in ownership via testamentary execution. However, given that the heirs took steps to normalise the situation in 2003, the entity was found to have acted incorrectly.

R/549/2006 - **Fortis Gesbeta, S.G.I.I.C.** The entity was found to have acted improperly by failing to allocate mutual fund units as stipulated in the papers provided by the heirs. Following the death of one of the co-owners, the entity had allocated the shares equally among the rest.

This action was deemed to be an unwarranted intrusion in the private arrangements of the unitholders.

R/662/2006 - **Caja España de Inversiones, Caja de Ahorros y Monte de Piedad.** The complainant stated that the entity sold mortgage bonds held by her grandparents five days after one of them had died, as per instructions from the couple's son.

The entity was considered at fault in proceeding de facto not only to liquidate what had been the grandparents' joint property but also to split up the estate without being in any sense empowered to do so. It was also negligent in allowing the sale of assets in universal usufruct (the mortgage bonds) on the instructions of the beneficiary but without the consent of the remaindermen.

R/248/2006 - **Caja Rural del Duero, Sociedad Cooperativa Cdto. Ltda.** The complainant objected when the entity executed sell orders on securities owned by his parents, knowing that one of them had died. The entity was deemed to be at fault.

To protect the rights of heirs to jointly-held securities when one of the co-owners dies, the entity should have frozen the securities accounts until the estate had been duly settled.

R/696/2006 - **Banco Santander, S.A.** The entity was found to be at fault in opening accounts without the authorisation of the heirs and for selling securities without their consent.

R/420/2007 - **Banco Español de Crédito, S.A.** The complainant objected to the bank's delay in selling inherited shares, even though he had presented the papers required to transfer ownership within the stipulated time.

The bank was deemed to be at fault, not only for its unjustified delay in selling the securities, but also for executing the sell order only after the complaint was filed with the CNMV.

R/203/2007 - **Unoe Bank, S.A.** The entity was found at fault in failing to transfer ownership of inherited shares in a timely fashion, preventing the heirs from having access to their shares when they wished.

R/192/2007 - **Banco Santander, S.A.** Occasionally delays are caused by the entity's failure to inform heirs that they must provide specific documents to transfer ownership.

Incidents relating to orders on securities deposited in joint accounts

R/752/2006 - **Banco Santander, S.A.** The bank failed to allow the co-owner of securities deposited in a joint account, on which each co-owner had equal and full rights, to sell the securities, claiming that the other co-owner objected to the sale.

The report deemed that either of the co-owners could sell part or all of the securities without authorisation from the other. Requiring authorisation would be equivalent to unilaterally limiting the rights on the account, tacitly transforming it from a joint account into an account where each co-owner's signature was required.

R/174/2007 - **Caja de Ahorros del Mediterráneo.** The final report found fault with the savings bank, since it allowed the co-holder of a restricted joint account to sell securities unilaterally even though the account required the signature of all parties. The entity acted improperly in executing the order in breach of the contractual terms of the account.

R/580/2007 - **Banco Español de Crédito, S.A**. The entity was found to be at fault for executing a sell order on shares without the knowledge or consent of the owner. The sale was ordered verbally by the complainant's father, so the entity had any documentation to support the sale. The report also reprimanded the bank for its refusal to provide information to the complainant about the transaction.

Incidents relating to acquisition and sale of preferential subscription rights

Two reasons can be singled out for complaints under this heading: the custodian fails to act, with the result that the rights expired after the trading period; or the custodian sells the rights in between the deadline for issuing instructions and the close of the trading period, despite the customer's desire to avail of them.

R/560/2007 - **Open Bank Santander Consumer, S.A.** Although the entity had followed its usual procedure and shortened the deadline for instructions by two days, it did not enter the sell order until the last trading day, when it could not be executed due to oversupply. It accordingly deprived its customer of one day in which to instruct his intermediary without any compensating advantages in terms of liquidity.

R/254/2007 - **Banco Inversis, S.A.** The investor purchased preferential subscription rights in newly issued shares and immediately instructed the entity to exercise these rights. Despite being within the statutory time limit for executing the order, the entity refused to do so on the grounds that it had closed its reception period.

R/603/2006 - **ING Direct, N.V. Sucursal en España**. The investor acquired preferential subscription rights in the secondary market and informed the entity of his wish to sell them. The bank said it would execute the order the following day (the last trading day for these rights) with no need for him to place a formal order. However, when the client inquired about the status of the sale after 2 p.m. the following day, he found that the rights had not been sold. At this point he placed a sell order which could not be executed as there were no buyers on the market.

R/402/2007 - **Caja de Ahorros del Mediterráneo.** The entity unilaterally sold subscription rights acquired by the complainant in the open market, alleging that the customer bought them before its deadline for issuing instructions, and it accordingly treated the rights as if they corresponded to deposited shares, which was incorrect.

R/766/2006 - **Bankinter, S.A.** The entity was found to be at fault in attempting to acquire shares in a bonus issue without having been instructed to do so by the customer (although it was finally unable to due to lack of funds).

R/675/2006 - **Banco Popular, S.A., R/090/2007** - **Citibank España, S.A. and R/209/2007** - **Caja de Ahorros del Mediterráneo**. In all of these cases, the customer approached the entity to exercise or otherwise use his subscription rights after its deadline for issuing instructions, but before the end of the period stipulated in the prospectus. Entities are obliged to accept and process these orders if they have not sold the rights in the interim.

In any event, in the case of bonus issues, entities may choose to execute only those orders for which there are sufficient funds.

R/147/2007 and R/218/2007 - **Banco Santander, S.A.** The entity failed to execute an order to transfer preferential subscription rights placed on the last day for receiving instructions. It then sold the rights as if in the absence of instructions, though it was shown that the order had been given before its own deadline (two days before the closing date of the capital increase).

R/641/2006 - **Caja de Ahorros y Monte de Piedad del Círculo Católico de Obreros de Burgos and R/675/2006** - **Banco Popular Español, S.A.** In both cases, it was apparent that the entities had excessively shortened the time available for issuing instructions in a capital increase, which closed more than two days before the formal deadline granted to shareholders and rights holders.

Takeover bids

R/589/2006, R/722/2006 and R/784/2006 - **Boursorama, Sucursal en España.** These complaints centred on the custodian's handling of transactions relating to takeover bids.

The customers in question operated habitually online and were shareholders of Metrovacesa, S.A., a listed company which had received two competing offers with an acceptance deadline of 20 September, 2006.

Each complainant had agreed to accept one of the takeover bids, but after executing his order found that the shares continued to appear in his securities account statement, so decided to repeat the sell order.

When the results of the bids were published on 22 September, 2006, the respondent unilaterally proceeded to purchase the shares necessary to execute its customers' sell orders, thus generating overdrafts in their current accounts.

The complainants felt the entity should have blocked the shares so the clients would not sell them (under the mistaken impression that the shares had been paid and thus could be freely exchanged), or that at the very least, it should have informed them that the shares had been acquired without sufficient funds.

In general, a takeover bid may be accepted only by those shareholders who still own shares before the close of trading on the day of the acceptance deadline.

Under the takeover bid regulations in force at the time, the acceptance statements were irrevocable and unconditional, with the custodian entity vouching for the ownership and possession of the corresponding shares and for the non existence of any liens or limits on their free transferability.

In practice, this means that the intermediary has the option, though not the obligation, to require that the necessary securities be in its power when processing acceptance of a takeover bid, so it may block any movements in the same.

The customers of entities like the respondent, which do not require the securities to be in its possession, should nonetheless be able to produce them once the results of the takeover are announced.

Prior to that moment, the entity's customers could have used their securities as they saw fit. However, if they were not in their accounts when the takeover results were announced, the intermediary would be empowered to activate the buyback mechanism envisaged in the regulations on securities overdrafts.

In all three cases, the entity violated its contractual obligation to inform the client that his securities account was overdrawn. Moreover, in case R/722, the entity did not promptly and adequately inform him of the disadvantages of executing two Metrovacesa sell orders simultaneously (a sell order and subsequent takeover bid acceptance order) or request him for further instructions. These faults were acknowledged by the entity itself in its submissions.

AIAF fixed-income market

This section addresses complaints filed against entities for unjustifiable delays in executing sell orders on securities traded in private fixed-income market AIAF.

Though often grouped with the secondary market for equity securities, the AIAF differs greatly in terms of listing conditions and the confirmation, execution and settlement of orders in securities admitted to trading, since it is a decentralized, bilateral market.

Trades are executed and priced by counterparties who transfer securities when their positions match, unlike the blind, automated systems typical of other markets.

This means the securities complainants hold are not immediately liquid, nor is there any guarantee regarding the capital invested.

R/499/2006 and R/751/2006 - Caja de Ahorros y Monte de Piedad de Madrid. In both cases, there was clearly an undue delay in selling preference shares on the AIAF fixed-income market.

On analysing trading data for the dates in question, the delays in finding a buyer are not easy to explain, given the amounts and numbers of transactions conducted by the respondent.

Moreover, this issue of preference shares was covered by a liquidity contract from the Banco Popular Español, S.A., such that the bank agreed to provide liquidity to the share by quoting bid and offer prices as stipulated in the issue prospectus and the liquidity contract itself. In the event a counterparty cannot be found, we understand that the respondent should approach the liquidity provider in order to expand the buying positions of its clients, in fulfilment of its obligations as an AIAF market member and as a provider of investment services.

The report found a series of shortcomings in the entity's handling of the sell orders.

R/590/2006 - Banco Santander, S.A. The respondent did not search promptly for a counterparty to match the complainant's sell order on preference shares traded on the AIAF market.

R/230/2007 - Banco Popular, S.A. The respondent failed to execute a sell order on preference shares traded on the AIAF market in the absence of a counterparty.

From an analysis of the trades matched on the market, it appeared that the counterparty search need not have taken so long, even allowing for order queues, given the amounts and numbers of transactions conducted by the respondent.

Unjustified delays in executing orders

R/695/2006 - Banco Banif, S.A. The complainant cited the entity's excessive delay in filling a sell order, even though he held a foreign bond portfolio on deposit at the bank. The complainant issued an order to sell his entire bond portfolio on 12 May 2006, and the bank confirmed receipt. However, it then requested written confirmation in order to cancel the pledge established on some of these securities as surety for a loan.

The entity affirmed that the order was entered on 16 May, following this written confirmation and the cancellation of the pledge, so was treated as if it had been processed the following month, with the corresponding valuation impact.

According to the documentation provided, only 110,000 of the 244,000 bonds in the portfolio were pledged against the loan.

4.1.2. Customer information

Before the contractual relationship

The information customers receive before acquiring a product or service, whether from an official source, advertising material or a verbal consultation, has a profound impact on their investment decisions. It is important that entities offer their customers all the relevant information at their disposal, and dedicate the time and attention necessary to each client in order to find the products and services best suited to his or her objectives.

In general, no records are kept of the verbal information provided by staff (with the exception of telephone banking), so such information cannot be evaluated in these reports.

Except in the case of mutual funds, entities are not required to deliver the prospectus filed with the corresponding regulatory body, unless requested to do so by the customer.

The new MiFID rules spell significant progress in this regard, since certain products cannot now be sold without first checking the profile of investors and ensuring that the product is right for their needs.

R/587/2006 - Monte de Piedad y Caja de Ahorros de Ronda, Cádiz, Málaga Almería y Antequera, Unicaja. This entity manifestly attempted to coerce its client into acquiring fixed-income securities. As one of its bond issues neared maturity, the entity contacted the customer in writing to offer him the possibility of subscribing a new bond issue under new terms. The letter informed the customer that he had been granted a preferential right and that, barring instructions to the contrary, it would subscribe bonds in his name for an amount similar to that already invested.

This approach to placing a subordinated bond issue is incompatible with the entity's obligation to supply clients with balanced information for input to their investment decisions. It was inappropriate because, rather than offering impartial advice, it directly urged the client to purchase the product. It even obliged him to actively refuse the transaction, when normally a customer would not have to act unless he was interested in acquiring a product.

R/273/2007 and 274/2007 - Banco Español de Crédito, S.A. A series of complaints were filed against the entity due to inadequate information relating to swap contracts.

A swap is a derivative product which, under Article 2 of the Ley del Mercado de Valores, falls under the supervisory scope of the CNMV. The exception is when the product has been offered to the subscriber in the context of a mortgage loan granted by the same credit institution, as required by current mortgage regulations.

In the course of analysing these complaints, flaws were detected in the way the product was being placed. Customers were obliged to sign a preliminary document, after which the product would take effect, followed by a definitive document, but with different clauses. In addition, both the order and the agreement used by the entity had important omissions regarding product information.

These documents also contained generic clauses referring to the customer's "independence" in choosing the product and the absence of any recommendations or advice from the entity in its regard, in other words, relieving the bank of any responsibility for promoting the transaction. They also alluded to the customer's awareness of the risks involved and his understanding of the product terms.

The final report did not attempt to gauge the customer's real understanding of the product, but did find fault with the entity's sales procedures and aspects of the information provided.

During and after the contractual relationship

Once the customer has contracted for a securities administration and custody service and built up his portfolio, the entity acquires a series of commitments concerning the proper conservation and administration of his securities. These derive from both the contractual agreement and the securities market rules of conduct applying in Spain as regards the effective delivery of the service, and justify the charging of the corresponding fee. The commitments in question comprise informing investors about completed transactions and the events and circumstances potentially affecting the securities deposited, the payment of dividends, correspondence relative to the exercise of economic and voting rights and the custody and conservation of orders and contracts, as well as attending customers' specific requests.

Registering and filing of orders

Entities providing investment services are required to keep their customers' written orders on file for a minimum of six years, and any agreements signed must be kept on record for the whole time they remain in force, and up to six years after their termination.

R/488/2007 - **Banco Santander, S.A.** The entity was considered to have acted incorrectly in not conserving a securities sell order when only a year had passed since its execution. The report concluded that the respondent entity should have conserved a copy of the same in accordance with the applicable legislation. It was also negligent in having lost all the documentation pertaining to the complainant's securities account and associated cash account.

R/630/2006 - **Banco Santander, S.A.** The investor was unhappy with the results of an investment in preference shares and it was found that the entity had not kept, or was not willing to furnish, a copy of the sell order issued by its customer. It was accordingly impossible to determine whether the order had gone through in the terms specified by the customer, on which grounds the entity's conduct was considered to be incorrect.

R/509/2007 - **Banco Santander, S.A. and** R/638/2007 - **Caja de Ahorros y Monte de Piedad de Madrid.** In processing both complaints it was found that the respondent entities had failed to conserve copies of securities administration and custody agreements.

R/306/2007 - **Caja Castilla La Mancha.** This complaint concerned the execution of a share sell order under conditions other than those desired by the customer, who had intended to issue a stop-loss order to limit his losses in the event of a fall in prices that did not transpire.

The entity stated in its response that it could not provide evidence of the client's actual instructions, since the order had been neither consigned to paper nor recorded on tape. It accordingly admitted responsibility for not having kept a copy of the order.

What is at issue here is not just a hypothetical case of inadequate recording and conservation of securities orders, but the execution of a sell order which the customer denies having issued – a stance which the entity was unable to refute – and which he challenged as soon as he was apprised of its execution. The entity was accordingly deemed to have proceeded incorrectly.

R/667/2006 - **Banco Sabadell, S.A.** The entity had failed to keep copies of the orders cited in this complaint (sale of listed shares) for no justified reason and in contravention of the terms established for the filing and custody of orders and other documents.

Delays and failures in complying with customer requests

R/262/2007 - **Banco Santander, S.A.** It was concluded that the bank did not deal properly with the complainant's request for an authenticated copy of the agreement (or agreements) establishing the securities account (or accounts) where his securities were held.

R/329/2007 - **Open Bank Santander Consumer, S.A**. The customer repeatedly asked the entity to deliver the recording of a telephone conversation about a warrants trade, but months passed without his request being met. Current legislation stipulates that intermediaries must conserve recordings of telephone orders for at least three months. However, in the agreement the entity concludes with its clients it undertakes to conserve not only securities orders but the records of any conversation maintained for a period of six years.

The report accordingly concluded that the entity should have met the complainant's repeated request in a timely and proper manner, further to its contractual obligations and the applicable legislation, long before the six months elapsing from his first request and the decision to place the matter before the CNMV.

R/688/2006 - **Caja de Ahorros de Valencia, Castellón y Alicante (Bancaja).** The complainant alleged that having ordered the take-up of the exchange of Telefónica Móviles, S.A. shares for shares in Telefónica, S.A., the entity did not inform him of the number of Telefónica, S.A. shares that had corresponded to him, despite his requests to this effect, thus delaying their transfer to another custodian.

The entity was held to be at fault in not complying with the complainant's request or completing the transfer of his shares to another entity in a timely manner. The complainant produced a document bearing the entity's stamp accrediting that he had asked to be informed about the number and valuation of the Telefónica, S.A. shares and had ordered the transfer of the shares from the exchange transaction to another entity. Bancaja, in contrast, could provide no written evidence that it had complied with this express request.

R/335/2007 - General de Valores y Cambios, S.V., S.A. The entity failed to respond to the customer's legitimate request for information and written documentation concerning its securities trading procedures. Note, however, that such indiscriminate, blanket enquiries are at odds with the basic principles of proportionality, the more so as all this information is delivered to customers under the legal obligations binding on investment service providers.

Shortcomings in information provided to customers

Securities custodians must provide customers with any information at their disposal that may aid them in reaching their investment decisions. Such information must be clear, correct, accurate, sufficient and timely, without any tendency to mislead, so the customer can act on it with confidence.

When procuring instructions from their clients on how to represent them in corporate transactions, entities should offer them the relevant input in a timely manner. Among their obligations in this respect is to facilitate instruction forms for corporate transactions, such as rights issues, involving companies where they hold shares, whether or not these companies are listed.

In any case, custodians must prepare and mail out instruction forms as rapidly as possible to avoid harming clients' interests, since these operations tend to have tight calendars rarely exceeding 15 days.

Forms or accompanying letters should also indicate the deadline for the reception of instructions and how the entity will proceed in their absence, as well as informing of the existence of a second or additional subscription phase, etc.

In general, the information that custodians supply to their customers should be sent to the correspondence address figuring in the custody agreement, though not necessarily by recorded mail.

Capital increases of listed and unlisted companies

R/560/2007 - **Open Bank Santander Consumer, S.A.** The entity was found to have committed an important omission in not advising the customer in the notification sent to this effect of an additional subscription period confined to those exercising their rights in the first phase.

R/645/2007 - **Banco Español de Crédito, S.A.** The notice sent to the customer omitted to mention that there was no secondary market for the subscription rights of an unlisted company. Nor did it warn him that not exercising these rights would oblige him to take a proactive position in their sale. In fact, the opposite message was conveyed, assigning the entity a subsidiary role impossible to fulfil.

The report concluded that, in view of the legal and economic peculiarities of subscription rights in unlisted companies, it was unwise to use the same communication format and textual information as in the case of a listed company rights issue.

Tax information

R/527/2007 - **Bankinter, S.A.** The entity was deemed to have acted incorrectly in furnishing the complainant with inaccurate tax information. The entity argued that in providing this information it did not vouch for the accuracy of the data, which the client should have checked before filing the corresponding tax return.

The report concluded that this information was provided in the frame of a contractual relationship, conducive to a climate of mutual trust in which the customer would assume the details supplied to be correct. It is not enough for an entity to disclaim responsibility for any inaccuracies on the grounds of the communication's purely informative intent.

Securities account statements

R/308/2007 - **BNP Paribas España, S.A**. The entity was deemed to be at fault in providing the heirs of a deceased client with an incomplete list of the securities in his possession.

R/283/2007 - **Banco Espirito Santo, S.A.** The bank was deemed to have acted incorrectly in assigning the wrong value to a customer's shares in a number of account statements. Nor did the statements supplied by both parties as evidence in this complaint process make any reference to the said shares' suspension from trading; a situation which, the entity admitted, had persisted for several years.

R/757/2006 - Caja de Ahorros de Valencia, Castellón y Alicante (Bancaja). The entity was deemed to be at fault in sending the complainant a statement concerning the conversion of convertible bonds that contained a number of errors. The said document notified the redemption of the customer's bonds at a given nominal amount and the crediting of his account with the corresponding sum, without referring to the fact that the operation in question was a bond conversion into shares, or stating the conditions of the same. From reading the document, one would assume it referred to a simple securities redemption rather than a conversion, including a fictitious payment to the client's account.

Transaction settlement statements

R/489/2007 - Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (Ibercaja). A settlement statement was shown to contain inaccurate information on the fee charged for a securities transaction. The statement specified 5‰ of the securities' face value when the percentage applicable was 3.5‰, besides which the final amount of the transaction meant it qualified for the minimum established in the fee schedule.

R/590/2006 - Banco Santander, S.A. The entity sent the complainant a settlement statement referring to the sale of preference shares. The document contained a number of errors, including misstatement of the kind of transaction and the assets involved.

R/356/2007 - Caja de Ahorros y Monte de Piedad de Madrid. The entity was considered to have sent the complainant incorrect information about the subscription date of certain shares traded on foreign markets.

The share subscription date figured in both the securities account statement and the corresponding settlement statement as 11 September 2006, which the customer was able to prove was incorrect.

It was also found that the share subscription date had been entered in the savings bank's IT system with some delay. It did not figure, for instance, in the 7 September statement detailing securities account movements between 14 August and 7 September, 2006, so the client might have wrong supposed that the shares had not been bought.

Unjustified errors and delays in information sent to clients

R/259/2007 - **Caja de Ahorros de la Inmaculada de Aragón**. The custodian was late in sending its customer the attendance cards or forms of proxy for a general shareholders' meeting. The meeting had been called by the issuing company for 26-27 March 2007, but the client claimed not to have received this material at his home address until 27 March, ruling out his participation in the event.

The entity affirmed that it had acted correctly, preparing the information on 21 March and sending it by mail on 22 March 2007, and had no record of any incidents or delays in its distribution. It also argued that the customer could have learned about the meeting by other means.

Among the list of share custodians' duties to their customers is that of providing them with attendance cards for the general meetings of the listed companies whose shares they hold, and indicating the steps they need to follow to participate in these meetings by means of the reception and transmission of their voting instructions or proxy arrangements.

According to the information provided by the respondent company, the process of preparing and distributing customer information regarding the company's general meeting did not get underway until the afternoon of 21 March 2007, so, even in a best-case scenario, the client would have had just one working day to complete the card and send it back to the custodian.

This tight calendar was especially surprising as the issuing company had announced the general meeting on 22 February 2007, that is, a month before the entity sent the notice to its customers. Without going into whether the courier company may have been at fault or whether the client was tardy in collecting his mail, the report concluded that the entity has acted incorrectly in initiating the process so late on.

R/307/2007 - **Bankinter, S.A.** The entity was unable to offer any proof or justification that it had informed its customer in time, as agreed contractually between the parties, of the need to post additional margin to maintain his open position in derivative products.

Information regarding incidents in order processing and execution

R/016/2007 - **Bankinter, S.A.** The report concluded that on detecting its own error in processing a securities purchase order on the open outcry market, the entity should have apprised the customer immediately of this fact and sought his instructions on how to proceed. This is so because cancelling or amending an order in the open outcry market automatically delays its entry to the system, altering the objective conditions for its execution. In these circumstances, clients should have the opportunity to decide which course to follow.

R/163/2007 - **Banco Sabadell, S.A.** The bank failed to inform its customer about the reasons he was unable to place a securities order after attempting to do so online and by phone.

A technical incident affecting customer ID caused the temporary suspension of distance transactions though face-to-face services continued available. However, the entity's telephone enquiries service gave no information on the problem, despite the client having asked for it on several occasions.

R/342/2007 - **Caja de Crédito de los Ingenieros, Sociedad Cooperativa**. The entity replied to an enquiry from its customer informing him that a share purchase order had been executed when this was not in fact the case. He claimed that this misinformation could have influenced him in his short-term investment decisions.

In this case, the entity acted incorrectly in not informing its customer as soon as possible that his standing buy order had been cancelled due to a split in the shares he wished to acquire. The split entailed a change in the shares' ISIN such that, further to Instrucción Operativa 16/97 de la Sociedad de Bolsas, the buy order would be automatically cancelled at the close of the trading session in which the split went through. The entity should have informed the customer at that point, further to its duty to report all order incidents to the interested party as quickly as possible, seeking new instructions as appropriate.

Moreover, entities are required to send their customers a statement for each settlement effectively practised, specifying the fees and expenses applied, along with the valuation bases and accrual period, so they are apprised of the transaction's total cost.

R/160/2007 - **Open Bank Santander Consumer, S.A.** The respondent entity misinformed its client regarding the cancellation of a securities purchase order placed online. The customer furnished evidence that he had entered two separate orders via the Internet service; a buy order then, minutes later, another order cancelling the first.

Although its was established that the cancellation order has been filled in a timely manner before the buy order could go through, the customer's securities and cash accounts registered a series of movements as if the purchase had been executed; information that was repeated in the account details available on the entity's website over a period of four days.

This caused the customer to misjudge the situation of his portfolio, denying him important information for use in his investment decisions.

R/360/2007 - **Renta 4, S.V., S.A.** The customer complained about the use of the proceeds of a securities sale he ordered to cover an overdraft in his current account. Since the age of the debit balance exceeded the conservation period of six years, the entity was no longer obliged to produce a record of account transactions or the corresponding order voucher. However, if these records attested to the existence of an overdraft, it would have seemed logical to conserve them as substantiating its claim. After all, keeping documents on record is a guarantee for the client, but also for the provider.

It is not within the CNMV competences to pronounce on the existence or otherwise of the debt. However, the entity should have at least offered the customer some explanation.

R/058/2007 - **Bankinter, S.A.** The complainant opened a margin trading account with the entity. Six months later, he tried to enter a short sell transaction which was rejected by the system. He made repeated attempts to find out the reason, without success, then a few weeks later received a phone call from the entity informing him that his margin trading account had been unilaterally cancelled and, in fact, had only been opened by mistake as he did not fit the required investor profile.

The entity argued that the account contract envisaged the possibility of allowing or disallowing margin trading and that this decision was the sole prerogative of the bank's Risks Department which could also apply differing criteria throughout the life of the agreement. In use of this faculty, the entity had decided to withdraw this facility following a review of its eligibility conditions for margin trading.

The contract signed by both parties had an extendable duration of one year, though the bank was empowered to terminate it at 24 hours notice. The bank also had a declaratory right to cancel the agreement, withdraw access to the service and close open positions without notice.

In any case, the entity was obliged by the rules of conduct applying to investment service providers to supply clients, at their request, with full information on the transactions contracted. The entity is deemed to be at fault, since the customer was shown to have repeatedly asked for clarification about the discontinuation of this investment service without any response on its part.

4.1.3. Fees and expenses

The fees charged for investment services are a regular source of dispute between investment service providers and their customers. Discrepancies frequently arise over aspects like their publicity or the customer's inability to estimate them beforehand. It is accordingly useful to bear certain general principles in mind:

Free setting of fees: The entities performing investment services are free to set the fees and expenses for all services they effectively provide. This means there is a wide divergence in the amounts entities charge for the same service, and in the accrual periods and bases used in their calculation.

Publicity: Before applying fees, entities are required to file them with the CNMV and/or Banco de España and to publish a schedule of maximum fees applicable to all their standard transactions, which must be available for immediate public consultation at all times, be it through a branch office or the Internet.

Delivery to clients and modifications: Furthermore, these maximum fees and any others agreed upon by the parties as part of their particular commercial relationship should be annexed to the securities administration and custody agreement signed with the entity. Any modifications to the same must be notified in writing to the customer, who will be entitled to discontinue his relationship with the entity, in the meantime continuing to pay the former rates.

Transparency: Where possible, entities should specify the exact amount to be charged for a service before it is performed or, failing this, offer an approximation to the final amount. Also, the fees and charges applied should figure in all settlement statements, with a precise indication of their calculation base and accrual period, so investors can verify the total cost.

Securities administration and custody fees

R/640/2006 - Gestión de Patrimonios Mobiliarios, A.V., S.A. The complainant disputed the amount of the administration fees charged for the second quarter of 2006, since he had transferred his foreign portfolio to another entity at the start of April.

The entity was found to have acted incorrectly because, under the terms of its fee schedule, it should only have charged for services rendered in the month of April. Specifically, administration fees are paid proportionally per month or fraction, and not per quarter.

The entity was also deemed to have acted incorrectly in charging fees and expenses on a securities transfer which did not concur with the terms of its fee schedule.

R/768/2006 and R/713/2006 - Caja de Ahorros de Zaragoza, Aragón y La Rioja (Ibercaja). The custody fee charged was higher than would have resulted from prorating the minimum envisaged in the maximum fee schedule applying during the period of the calendar semester when the securities were effectively deposited with the respondent entity.

Securities transfer fees

R/659/2006 - Gestión de Patrimonios Mobiliarios, A.V., S.A. The customer complained about being charged a securities transfer fee plus another, transaction fee.

The first is deemed to have been correctly applied on the terms figuring in the entity's maximum fee schedule.

As to the transaction fee, although it is effectively envisaged in the securities account agreement furnished by the complainant, the entity was deemed to have used the term "transaction" in a loose way that could give rise to confusion and did not coincide with the definition offered in the schedule (establishment or lifting of deposits through the purchase, sale, transmission or reception of securities), contravening the clear wording which is a principle of fee schedules. Also, "transaction expenses" do not figure as an item in the fee schedule filed with the CNMV, contravening the principle of unity.

Fees for foreign market transactions

R/231/2007 - Caixa D´Estalvis del Penedés. The complainant was concerned about the fees the entity had charged him for the purchase of shares on a foreign market.

The entity had been charging the complainant a regular amount for his foreign market transactions, then it suddenly raised the rate without prior notice for one transaction in particular.

The entity acted incorrectly in charging fees higher than those specified in the agreement and the fee schedule without offering any reasoned arguments.

R/356/2007 - Caja de Ahorros y Monte de Piedad de Madrid. Transactions on international markets tend to occupy a separate section in entities' fee schedules. The fees they specify are not only far higher, but often of an indeterminate amount, with generic references to chargeable expenses of which the supplier has no prior knowledge. This was precisely what led the entity to commit a calculation error in the complainant's bill. In this case, it was deemed to be at fault for its delay in remedying the error committed when calculating the subscription fee applicable to share purchases on a foreign exchange.

Share redemption fees

R/620/2006 - **Banco Santander, S.A.** The customer disputed the fee he was charged for the redemption of shares in Centros Comerciales Carrefour, S.A, held in an account opened with the entity.

The company undertook in the corresponding agreement to deliver 15.6 euros per share, and to bear any fees specified in the custodian's fee schedule in this respect.

The fee schedule then in force specified a maximum fee of 0.40% of the cash amount redeemed, which in this case would be charged to the issuer of the shares.

The entity mistakenly charged this amount to the customer, as evidenced by the subsequent settlement statement.

Change of securities ownership

R/749/2006, R/810/2006 and R/806/2006 - **Banco Santander, S.A.** The bank was remiss in not providing sufficient information on the fees applicable to the transfer of ownership of securities acquired *mortis causa*. Entities must inform their customers well of the fees applied to such testamentary procedures, in view of their infrequency and the large amounts involved.

Internet transaction fees

R/040/2007 - **Caja de Ahorros de Salamanca y Soria.** The complainant tried to place a sell order via Internet, but due to a service interruption had to use an alternative channel provided to that effect. The report concluded that the execution fees applying should be those established for online orders, in view of the differentiated fee scale per channel apparently agreed between the parties.

R/818/2006 - **Open Bank Santander Consumer, S.A.** A customer was overdrawn in his associated current account due to the execution of a series of share purchases for which he had insufficient funds.

The agreement signed by the complainant specified that the entity was empowered to use other accounts or assets in his possession to offset any debit positions. And in this case it had opted to do so, charging the customer the fees associated to the corresponding asset sales.

However, the entity's application of sales fees for non online orders was considered incorrect and harmful to the customer, who normally transacted through the Internet channel, and this should have been the criterion followed by the custodian in charging the fees for these offset transactions.

4.1.4. Other subjects

Investment advice

R/639/2006 - Golden Broker - Sociedade Corretora, S.A. The complainant signed an information and consultancy services agreement with the respondent entity such that the latter would provide telephone advisory services and, for its duration, would also send him certain information. The respondent could neither document nor by any means prove that it had sent such information, so was considered to have acted incorrectly.

R/661/2006 - Golden Broker - Sociedade Corretora, S.A. From the submissions of both parties, it was clear that the investment information and advice given to the complainant did not correspond to the security he acquired on the entity's recommendations but to an entirely different security.

Investment firm agents

R/800/2006 - Eurodeal, AV, S.A. The complainant became a customer of this entity through its legal agent Capital Movimiento, S.L. On his evidence, he had ordered an initial bank transfer of 10,000 euros with which to begin trading, but only 7,500 reached the broker's accounts, the rest being retained by the agent as a fee for services rendered.

The broker affirmed that the only fees it charges its investment service clients are those figuring in its fee schedule, and it could not be held liable for the existence of any other contractual or non contractual relationship of a remunerated nature between the complainant and the agent. It argued that it had received a single transfer in the complainant's name of 7,500 euros and that the rest should be claimed back from Capital Movimiento, S.L., which by then was no longer acting as its agent.

It was found that the process established for payment of these initial contributions to the broker by clients recruited through Capital Movimiento comprised two stages: a deposit in a current account of which the broker was not the holder, then a second deposit in an account held by the broker for an amount 25% lower than that paid by the client, supposedly ordered by Capital Movimiento, SL.

It is true that the agreement between the broker and the complainant specified the opening of a securities account and that the transactions and services associated to this account would generate a series of fees as listed in the annexe thereto, which made no mention of a fixed entry fee of 25%.

But it is no less true that under the legal framework for the representation of investment firms in Spain, firms granting agency rights are responsible for their agents' compliance with the rules of operation and conduct of the securities markets.

To this end, investment firms should establish a series of controls over the activities of their agents, with particular regard to movements of cash and payment instruments.

On granting agency rights, it was also the broker's duty to establish a system for the handling of customers' funds which ensured they were channelled directly from firm to client and vice versa. When an agency contract envisages the delivery to the agent of cash, cheques or other payment instruments, these should never go through the agent's accounts, not even on a temporary basis.

It was deemed that regardless of the existence or otherwise of a contractual or non contractual relationship between the complainant and Capital Movimiento, S.L., of which no evidence was provided, the fact that the customer's funds were lodged, however briefly, in an account whose holder was not the broker constituted negligence on the latter's part.

R/035/2007 - **Eurodeal, A.V., S.A.** In its role as intermediary in a margin trading agreement with a third entity, the broker failed to comply with the customer's requests for information, contravening the terms of the agreement signed by the three parties.

In addition, the customer furnished two account statements for the same time period containing different account movements; both with the appearance of being genuine.

Use of cash and securities accounts

R/501/2007 - **Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (Ibercaja).** The entity was deemed to have acted incorrectly in allowing the account holder to operate in the securities without the consent of the authorised representative for the said account. The core of the question lay in the use of the term "intervening parties", which in the agreement furnished referred to the holders, the beneficiaries and the authorised representatives.

According to its text, the "joint" use of the account signified that all intervening parties must give their consent to operate in the securities. As such, the account holders could not operate without first seeking this general consent, meaning, in the case that concerns us, the consent of the authorised representative.

Cash transfers to customers

R/567/2006 - **Caja de Ahorros y Monte de Piedad de Navarra**. The entity was considered responsible for an unjustified delay in transferring the amount of a dividend payment to the complainant's account.

R/217/2007 - **Banco Pastor, S.A**. Delays in transferring the cash amount corresponding to the redemption at maturity of a series of warrant issues to the complainant's account were considered to be due in some cases to Societé Générale (the issuing company) and in others to the respondent entity (the complainant's financial intermediary).

R/114/2007 - **Boursorama, Sucursal en España.** The entity was remiss in not informing the complainant correctly about securities in his possession – his position was doubled – or about the securities overdraft resulting from a duplicate sale.

Admitted but uncorrected errors

R/004/2007 - **Banco Santander, S.A.** The customer complained that for more than two years the entity had been making a series of unauthorised charges to his account, related in all cases to the purchase of its shares. On being requested to annul these unauthorised movements, the entity sold the shares and credited to his account an amount lower than he had first paid.

The entity claimed to have corrected its mistake and accepted its liability, but the complainant rejected this admission and insisted that the bank's conduct be the object of further submissions.

From the documents furnished ("acquisition and settlement" statements) and both parties' submissions, it could be confirmed that the entity had reiteratedly bought and sold shares without the holder's signature.

The entity was deemed to have failed to act with due care and diligence in its securities transactions, as evidenced by the reiterated errors made, and in undoing these erroneous transactions only did more damage to the client's interests.

R/268/2007 - **Caja de Ahorros de Galicia**. The entity acted incorrectly in opening a securities account in the complainant's name without her consent. The fault is aggravated in this case because it did not admit its error until a complaint was brought.

Incidents with sales promotions

Criteria Applied and Complaints Favourable to the Complainant
Reports favourable to complainants

R/535/2007 - Boursorama, Sucursal en España. The complaint concerns the entity's failure to apply the discount in securities market trading fees announced in its advertising material. The customer believed he was entitled to this discount, despite the entity's claim that did not comply with the conditions stated.

On reviewing the content of the advertising promotion, it was found to be confusingly worded and potentially misleading. However, it was also put on record that ruling on this matter is not the competence of the CNMV but of the ordinary courts of justice.

4.2. Mutual funds and other CIS

Mutual funds and other CIS: reports favourable to the complainant

TABLE 3

SUBJECTS	ENTITIES	COMPLAINTS
Information provided to the customer	Banco Santander, S.A.	R/693/2006-R/036/2007 R/112/2007-R/288/2007 R/604/2006-R/813/2006 R/496/2007
	Banco Inversis, S.A.	R/278/2007-R/483/2007
	Bankinter, S.A.	R/211/2007-R/655/2006 R/331/2007-R/775/2006 R/420/2006
	Banco Español de Crédito, S.A.	R/625/2006
	ING Direct, N.V. Sucursal en España	R/148/2007
	Popular Banca Privada, S.A.	R/720/2006
	Banco Sabadell, S.A.	R/667/2006
	Banco Guipuzcoano, S.A.	R/628/2006
	Cajamar Caja Rural, Soc. Coop. de Crédito	R/199/2007
Subscriptions and redemptions	Banco Bilbao Vizcaya Argentaria, S.A.	R/247/2007
	Boursorama, Sucursal en España	R/103/2007
	Deutsche Bank, S.A.E.	R/293/2007
	Banco Inversis, S.A.	R/132/2007
	Morgan Stanley, S.V., S.A.	R/271/2007
	Altae Banco, S.A.	R/054/2007
	Banco Santander, S.A.	R/734/2006-R/767/2007
	Banco de Finanzas e Inversiones, S.A.	R/354/2007
Inter-scheme transfers	Banco Sabadell, S.A.	R/121/2007
	Banco Español de Crédito, S.A.	R/005/2007
	Boursorama, Sucursal en España	R/451/2006
	Open Bank Santander Consumer, S.A.	R/038/2007
	Banco Santander, S.A.	R/237/2006-R/065/2007 R/133/2007-R/753/2006
	Cajamar Caja Rural, Soc. Coop. de Crédito /Gescooperativo, S.A., SGIIC	R/414/2007
	Bankinter, S.A.	R/624/2007
	Banco Inversis, S.A.	R/081/2007
	Cortal Consors, Sucursal en España	R/089/2007
	CAyMP de Madrid	R/256/2007
	Cajamar Caja Rural, Soc. Coop. de Crédito	R/258/2007
	Citibank España, S.A.	R/206/2007
	Renta 4, S.V., S.A.	R/051/2007
Fees	Banco Santander, S.A.	R/328/2007 – R/635/2006
	Banco de Finanzas e Inversiones, S.A.	R/001/2007
	Lloyds TSB Bank, PLC, Sucursal en España.	R/113/2007

Source: CNMV

4.2.1. Customer information

Before purchasing CIS units

The information requirements to be met by mutual fund distributors are laid down in the legal provisions governing collective investment schemes. They include the delivery of the fund prospectus and the latest six-monthly report before taking out units or shares plus, at the customer's request, the full prospectus and the latest published annual and quarterly reports.

The prospectus includes all the investor needs to know in order to take a decision. However, the IAO receives numerous complaints that show the complainant to be uninformed about the fund's conditions and characteristics, although in many of the cases analysed the entity can prove that it has provided this document in a timely manner.

Regarding the marketing in Spain of foreign collective investment schemes entered in the corresponding CNMV register, the distributor must provide prospective shareholders or unitholders residents in Spain with the scheme's full and simplified prospectuses, annual and semiannual reports and management regulations or, if applicable, the bylaws of the company free of charge, before they purchase shares or units. These documents will be furnished in the form of a sworn translation into Spanish.

Incorrect advice on the fund's suitability for a particular investor profile

R/693/2006 - Banco Santander, S.A. This complaint was formulated by an investor who had asked the bank to make a risk-free investment "linked in no way to the stock market".

The entity admitted having advised its customer to subscribe to a mutual fund investing in fixed-income securities of developing countries and not in equities, arguing that it had by that means heeded the investor's request and informed him properly.

It was found that the fund's investment policy envisaged possible investments in extremely vulnerable speculative-grade issues, so the arguments put forward by the entity were without foundation. Although the fund did not hold equities, the investment clearly carried market risk and there was a risk of its NAV performing negatively. Not only do fixed-income securities generally trade on secondary markets with the associated interest-rate risk, but the fund prospectus itself specified that the securities making up its assets carried issuer-by-issuer counterparty risk together with country risk, with no limitations imposed vis à vis credit quality or volatility.

The report concluded that it was inappropriate to recommend this kind of fund to an investor who had expressly declared his conservative preferences and total aversion to risk.

Lack of clarity in the information offered on the entity's website

R/278/2007 - Banco Inversis, S.A. The complainant was unhappy about the net asset value applied to his request for redemption of units held in a foreign CIS, entered on 28 February at 8:35. The information available on the Internet stated as follows: "deadline for same-day redemption 14:00", so the complainant understood that he would receive the NAV of the day of his order. However the NAV applied corresponded to 1 March.

The NAV applied to redemptions of shares and/or units in foreign collective investment schemes marketed in Spain is stipulated in the scheme's legal documentation (primarily, the prospectus, management regulations or bylaws, distribution dossier for Spain and the distributor's annexe to the same). In this specific case, in the entity's annexe to the distribution dossier filed with the CNMV and valid on the date of the incident, it was stated that orders received before 13:00 hours would go through at the NAV of the next business day, so the NAV applied was in fact correct.

However, it was clear that the redemption procedures the entity had posted on its website were potentially misleading as to the cut-off time, and even contradicted the information contained in the official documentation filed with the CNMV.

Information on applicable exchange rates

R/211/2007 and R/655/2007 - Bankinter S.A. In both cases, the investor complained about not being informed beforehand about the exchange rates applied to currency transactions arising from the subscription and redemption of shares or units in foreign collective investment schemes denominated in a currency other than that of the orderor's credit and debit account.

As provided in bank sector regulations, entities are free to set the exchange rate applied to currency transactions. However they must inform clients beforehand of the exchange rate applicable or the exact formula used for its calculation.

In both cases, the action of the respondent entities was deemed to be incorrect, as neither could prove having advised the customer previously of the exchange rate applicable or the exact formula used for its calculation.

During and after the investment

After purchasing fund units or shares, the investor is entitled to receive regular information without charge. Annual and semiannual reports will be sent regularly and free of charge to unitholders and shareholders unless they expressly waive this right. Also, CIS must regularly send a quarterly report, likewise free of charge, to unitholders or shareholders who so request. These reports should be sent by electronic means if this is expressly requested by unitholders or shareholders. All these documents will also be available to the public in the places stated in the full and simplified prospectus.

Further, the manager or custodian should send each unitholder a statement of the fund's position at no more than monthly intervals. If there are no subscription or redemption movements in the interim, it may postpone distribution of this statement to the next period, but must invariably send a statement to each unitholder at the end of the year. Fund managers are responsible for keeping unitholder records and issuing certificates of fund positions. By this means, the investor can be appraised of his position, the composition of the fund's portfolio and relevant events or movements taking place in the period.

Entities must also provide their customers with a settlement statement for each securities market operation or service giving details, as appropriate, of the amount of the transaction, the interest rate applied, fees and charges, specifying the payment concept, base and period, withholding taxes and, in general, all the necessary data for the customer to verify the outcome of the settlement and the financial conditions applying to the transaction. Sending unitholders this document is a firm obligation which must be undertaken by either the manager or distributor.

Delays and failures in responding to customers' requests

R/112/2007 - **Banco Santander, S.A.** The entity was shown to have failed to respond to a customer's express request. Specifically, this client had requested copies of the fund prospectus and of the earnings protection option contract concluded with the entity.

R/625/2006 - **Banco Español de Crédito, S.A.** Likewise, the entity failed to respond with due diligence to a customer's enquiry as to whether the amount received in respect of a redemption was net or gross.

R/483/2007 - **Banco Inversis, S.A.** On this occasion, the entity was found not to have acted with due diligence in attending a customer's request for a certificate attesting to a rectification in the amount of the capital gains obtained. However, the report pointed out that it could not be held responsible for incidents or problems arising with the complainant's personal income tax return.

Incorrect information on the unitholder's position and transaction settlements

R/036/2007 - **Banco Santander, S.A.** The entity had issued incorrect statements of the ownership of mutual fund holdings. Also, the corrective measures it adopted, on being apprised of the error by the interested party, were ineffective. One year after reporting the said situation, the complainant received the same inaccurate information at his home address. This led to a misinterpretation regarding the property of the investment which could have had tax implications.

R/148/2007 - **ING Direct, N.V., Sucursal en España.** The complainant ordered the transfer of all his holdings in a given mutual fund. However, due to an IT failure, the transfer did not figure in either the monthly statements sent to him or in the records he accessed through the entity's website.

This error was not corrected even though the entity subsequently issued a transfer order on the units; an order impossible to execute since the investor had previously transferred his entire holding. The entity should have spotted and remedied the problem at that point, but did not do so until a complaint was filed with the Customer Service Department.

R/720/2006 - **Popular Banca Privada, S.A.** In the course of processing this complaint, it was observed that the entity's practice was to include the guarantee expiry dates of the mutual funds in which the complainant held units in the corresponding position statements, in the case of all but one fund. Even so, the unitholder had all necessary information on the fund's characteristics at his disposal through the mandatory reports and other documents in his possession.

It was considered that this higher level of information should have been supplied for all the funds in his portfolio, which was not the case with the fund to which this complaint referred.

R/331/2007 - **Bankinter, S.A.** In this case it was shown that the distributor had sent a settlement statement specifying a cash amount for the redemption higher than the amount paid to the unitholder's account. The difference was due to withholding taxes. The information given to the unitholder was insufficiently precise.

R/775/2006 - **R/420/2006** - **Bankinter, S.A.** In both cases, the customers complained about the NAVs stated by the entity as applying to the redemption of their holdings in a foreign CIS, in one cases though its website and in the other through an operator, on the grounds that it did not correspond to the NAV they finally received.

The point to remember here is that the NAV applicable to a subscription or redemption order cannot be known at the time of making an investment decision, so the clients in this case have no grounds for complaint. However, it is entities' duty to offer their clients clear and accurate information, so they should make plain which date a given valuation refers to. This orientative valuation, and the performance of the securities foreseeably forming part of the scheme's portfolio on the trading day in question, are an investor's main clues to the likely amount of a redemption.

The entity was at fault in not giving information about the real character of the NAVs displayed.

Registration and filing of orders

R/199/2007 - Cajamar Caja Rural, Sociedad Cooperativa de Crédito. The customer complained about the non execution of a transfer order received by the delivering entity, as confirmed by its stamp. On analysing the order, it was clear that it could not have been executed due to an error in identifying the delivering fund.

However the entity claimed that it had not filled the order because it had no knowledge of its existence, when in fact the order and its non execution should have appeared in its records of rejected operations.

R/667/2006 and R/288/2007 - Banco de Sabadell, S.A. and Banco Santander, S.A. The entities were considered to have acted incorrectly in both cases, because they gave no reasoned explanation for their failure to conserve the orders for the transactions giving rise to the complaints over the term established for the safekeeping of orders and other documents.

R/628/2006 - Banco Guipuzcoano, S.A. The entity was found to have acted incorrectly in executing a mutual fund redemption order placed by phone. In particular, it was considered that this order, informally issued outside a contractual telephone banking relationship, should have been set down in written form and signed by the client for subsequent registration and filing.

Mutual fund earnings protection contracts

A number of complaints expressed investors' discontent with earnings protection options taken out for guaranteed investment funds. The most common complaint is that they were not informed correctly about their characteristics, despite having signed the corresponding agreement.

The first point is that earnings protection options are not an insurance policy. They are simply an agreement supplemental to mutual fund purchases whereby the entity undertakes, in return for a premium, to guarantee a determined NAV for that fund's units on a pre-set date under the terms stated.

This protection contract accordingly assures the investor a given NAV at a given point. However, if the fund has a higher NAV on the contract date, the option loses all value since the underwritten amount has been safely attained.

This option may not be cancelled ahead of time unless the fund units are redeemed, in which case the option would automatically expire, with the entity paying the amount prescribed in the terms of the contract.

There follows a list of complaints concluding in a report favourable to the investor.

R/604/2006 - Banco Santander, S.A. The complainant expressed his disagreement with the entity's refusal to cancel an earnings protection contract linked to a given mutual fund (hereafter, the contract). The client requested such cancellation one day after signing, before the contract came into force.

The entity's Client's Ombudsman resolved that the contract could not be cancelled on the request date as there were not contractual grounds on which to do so. However, as the contract had a built-in liquidity coinciding with the liquidity windows of the fund (a possibility presumably envisaged in the contract's general conditions, no copy of which was provided), the complainant could use the occasion to cancel the contract, at the same time redeeming his fund units.

The bank was deemed to have acted incorrectly when executing the contract, as the document delivered to and signed by the complainant did not comply with the legal provisions governing contractual documents. Concretely, it did not include specific clauses regulating its termination or amendment.

As to the entity's conduct in refusing to cancel the contract after signing, no opinion can be given in the absence of written evidence that the complainant has ordered such cancellation prior to its entry to force.

R/813/2006 - Banco Santander, S.A. The complainant disputed the cancellation value of a mutual fund earnings protection option applied by the entity on the occasion of the early redemption of fund units.

The option contract's general conditions stated that it could not be cancelled ahead of time save in the case of the early redemption of fund units, when it would be cancelled automatically.

They also specified that on such cancellation, the banks would pay the holder its cancellation value to be calculated as specified in the contract (Montecarlo method), unless the cancelled option had no value.

The text also stated that if the holder dissented from the cancellation value thus arrived at, the Calculation Agent would procure five quotes of the said value from five leading entities active in the trading of this kind of option, and take as the cancellation value their arithmetic mean excluding the highest and the lowest.

In reply to the complaint filed with the Customer Service Department and the Calculation Agent – Santander Central Hispano Bolsa, Sociedad de Valores, S.A., the entity stood by its version of the value of the option premium, enclosing some calculations to this effect.

However, despite disputing the value of the premium on the cancellation date, a fact it conveyed to the Calculation Agent on the instructions of the Customer Service Department, there is no record of the entity conducting a new valuation using the procedure described in the contract, so its conduct is deemed to be incorrect.

R/496/2007 - **Banco Santander, S.A.** The customer complained about the charge imposed for redemption and payment of interest on a loan taken out for the purchase of an earnings protection option associated to a mutual fund.

The entity, however, furnished signed copies of the earnings protection contract and the loans taken out to pay the option premium, which attested to the validity of the charge. Its fault lay in the information provided about the loan redemption charge. The itemised statement listed a different transaction (credit card) from that giving rise to the charge.

4.2.2. Subscription and redemption of fund units and shares

The subscription and redemption processes for CIS units and shares are defined in the scheme's prospectus, which must be delivered before any purchase is made. In general, a mutual fund subscription is good the moment the cash is received in the fund's account, at which point it is assigned the NAV figuring in the prospectus. In the case of redemption, the custodian will pay the investor the redeemed amount within three working days from the date of the NAV applicable to the order.

The NAV applicable to subscriptions and redemptions will correspond either to the day of the request or the following day (as specified in the prospectus). Investors, however, cannot know this NAV beforehand, which at times causes confusion between entities and their clients, who may think their orders will go through at the NAV they had in mind when taking their decision.

CIS establish cut-off times after which orders received will be deemed to have been received the next day for the purposes of calculating applicable NAV. This information will be stated in the fund prospectus, remembering that each distributor sets its own cut-off points.

Reception and execution of mutual fund subscription and redemption order is accordingly fertile ground for complaints; those that may arise during any securities order plus those deriving from the very nature and operation of collective investment schemes.

R/247/2007 - **Banco Bilbao Vizcaya Argentaria, S.A.** Two orders with the same content and amount were issued the same day and charged against the same current account, though one was not executed till one month later. The result was that the complainant purchased fund units for double the amount that he intended.

The report remarked that if the unitholder had really wanted to purchase units for the resulting amount, he would have done so in one rather than two identical orders. It is also true, however, that as soon as both orders were executed, he began to receive information about his fund position and, despite this, did not complain until six months after the subscription, which may be deemed to signify tacit acceptance. In any case, BBVA offered no explanation for the delay in executing one of the orders, so was considered to be at fault.

R/103/2007 - **Boursorama, Sucursal en España.** A mutual fund redemption order was mishandled by the entity (distributor and order forwarder), causing a delay in the customer's receipt of the money and the application of a NAV other than that properly corresponding.

The complainant issued the redemption order before 15:00, and the fund prospectus stated that redemption orders received before this time would go through at that day's NAV. However, the entity forwarded the order to the fund the next day, meaning the NAV applied was not the same; in this case less than would have corresponded. There was also a delay in transferring the redeemed amount to the unitholder's account.

R/293/2007 - **Deutsche Bank, Sociedad Anónima Española.** In the case of two foreign funds, the cut-off time set in the prospectus and fund management regulations for executing redemption orders at the same-day NAV was earlier than the equivalent cut-off time figuring in the annexe to the distribution dossier.

The complainant ordered the redemption of the units held in these two funds on a working day, earlier than both these cut-off times. However, his order did not go through at the same-day NAV but that of the next valuation day. The entity claimed that it notifies the fund manager of all orders received on business days up to the cut-off time set in its annexe to the distribution dossier, once this time is reached, but because this is later than the manager's cut-off time for executing redemption orders at the same-day NAV, they end up being executed at the NAV of the next valuation day.

Given that this procedure was not envisaged in the annexe to the distribution dossier of the respondent entity at the time of the incident, and that the orders had been issued almost an hour before the limit stated in the funds' legal documentation, the entity was considered to have filled the orders with insufficient speed.

R/132/2007 - **Banco Inversis, S.A.** The complainant tried without success to place an order online, because the respondent entity only accepts this kind of order by phone. From the explanations given by both parties, it appeared that the entity's IT system allowed the user to complete the order process, but then, instead of informing him that the service was not possible through his channel and directing him to the available alternatives, it displayed an error message telling him to try again.

The entity was held to be at fault in not advising him quickly enough that he could not place his order via Internet, indicating the alternative procedure to use. Nor could it prove that it had informed the investor previously of this limitation in its Internet service provision.

R/271/2007 - **Morgan Stanley, Sociedad de Valores, S.A.** The subscription order was considered to be ambiguous in its meaning and its scope and should not have been executed without first seeking new instructions. The order concerned an investment in a foreign collective investment scheme but failed to specify in which compartment. The entity executed the order without seeking fresh instructions from the customer, wrongly, it was considered, given the later discrepancy about the compartment selected.

R/054/2007 - **Altae Banco, S.A.** In this case, a fund subscription document was found to be incorrectly completed in the absence of the investor's signature. It was also established that the entity did not have mutual fund transfers ordered by phone formalised in writing.

An advisory agreement signed by both parties was not kept on record, contravening rules about the conservation of customers' contractual papers.

R/767/2006 - **Banco Santander, S.A.** A problem arose with the charging of a redemption fee which the unitholder claimed he had not been advised of.

No evidence was offered that the prospectus had been delivered to the investor at the time of subscription. However, whether or not this was the case, customers should be given information on fees and expenses in a simple, accessible way – the more so in a medium like Internet, when fee information can easily be included in the online order process.

Best practice is for entities to warn unitholders, when possible, of redemption fees at the exact moment they are going to complete the operation, reflecting the amount of the fee in the order document.

In this case, the complainant held units as a result of a transfer from another fund. The transaction format was improvised in that the instruction was filled out and signed in a document whose clauses were worded for transactions in marketable securities rather than mutual fund units. However, the entity had annexed a "Request Form for Transfers between Collective Investment Schemes" to the order which fulfilled the minimum conditions required for this type of operation – but with the unitholder's signature missing. The format used for reception of the transfer order was considered inappropriate.

R/734/2006 - **Banco Santander, S.A.** The entity offered as proof of the formalisation of a subscription a document accrediting the opening of an account, for internal purposes, to control the customer's position. The entity was considered to be at fault in not having formalised the subscription through an order setting out the details of the client's investment.

R/354/2007 - Banco de Finanzas e Investments, S.A. On examining this complaint, the entity was found to be recording subscriptions to a special scheme investing in foreign CIS compartments using an order form for CIS subscriptions with clauses contravening the legal rules. Specifically, one clause envisaged the waiving of the right to receive periodic fund reports. This is something an investor can indeed request but only through a separate written document, duly signed, following receipt of the first periodic mailing.

4.2.3. Transfer of investments between CIS

The transfer of units between collective investment schemes has become one of the most popular options among the public for channelling their investments in this kind of asset.

The procedure's flexibility and tax neutrality for investor portfolios have generated a large number of transactions, at times with incidents like those described below. In this section, we include complaints specifically related to the transfer process (fees, order execution, disclosures, etc.) which were resolved in the complainant's favour.

The procedure starts with a request to the receiving entity, who has one working day to send the transfer application to the delivering entity. The latter, in turn, has two working days to run the necessary checks and effect the redemption. If the delivering entity rejects the transfer request, it should so inform the receiving entity, which will relay the facts to the investor and, where appropriate, correct the order details. In any event, entities must proceed with care and diligence and advise their clients at the earliest opportunity of any incidents arising in the operations entrusted to them.

Legally, entities have a maximum of eight working days in which to complete transfers between Spanish investment funds run by different managers. In the case of funds run by the same manager, the term is three working days. This is the simplest case, but there are other cases, involving, for instance, special institutions or schemes domiciled abroad, where the terms may be longer. Entities should in any case assign the necessary resources for transfers to go through within deadline and in due form.

For the whole process to run smoothly, the initial application should be accurately completed, specifying at least the identity of the receiving CIS and the compartment, if appropriate; the details of the CIS account to which the transfer should be made; the details of the custodian and, as the case may be, the management company; and the details of the delivering CIS and, if appropriate, the compartment in which the units are held.

Content of orders: unclear instructions in the transfer order

R/121/2007 - **Banco Sabadell, S.A.** The customer complained about the redemption of his mutual fund units, when his order had specified their transfer to another fund on the occasion of the next liquidity window.

The entity admitted to having received written notice from the complainant of his intention to transfer the fund units, but without any indication, either then or at the time of the liquidity window, of which fund they should be transferred to. When the liquidity window arrived, the entity interpreted the customer's unclear instructions as an order to redeem the fund units.

The entity was deemed to have acted incorrectly, because the complainant's first instruction was contingent on a later one (a firm inter-fund transfer order, duly completed), and, on not receiving this second instruction, the entity should have cancelled the earlier one on the grounds that its execution trigger was not activated, and left the units in the investment fund.

Obligation to inform the unitholder before and during order processing and execution

R/005/2007 - **Banco Español de Crédito, S.A.** The customer complained that after entering an online request for units to be transferred between two mutual funds marketed by the entity, which the entity duly accepted, the order was not finally executed. He claimed he was not informed of this circumstance at any point or told why the order had been rejected.

The entity defended its action saying the transfer request had been made out for a specific amount which was higher than the real NAV of the customer's investment in the delivering fund. It also alleged that if the order had specified "all units" or the exact number of units, it would have gone through without difficulties. As to not informing the customer about the order's non execution, the entity said he could have checked this out on its website.

It was confirmed that the amount of the transfer figuring in the order was greater than the total value of the customer's units in the delivering fund, so the entity was right in rejecting his request after detecting the anomaly in an a posteriori check. If the customer had wished to transfer all units in the delivering fund, he should have filled out the transfer order to this effect, without specifying an amount.

However, while accepting that the entity acted correctly in rejecting the order, it failed in its duty to subsequently inform the client. As receiver and forwarder of the transfer order, it should have advised the customer of its failure, explaining the reasons and requesting new instructions, if desired.

R/038/2007 - Open Bank Santander Consumer, S.A. This complaint turns on a specific procedure the entity applies to mutual fund transfers in the case of customers who have taken out a "credit account for investment in securities and mutual funds" to pay for such acquisitions.

The complainant expressed his discontent at the fact that after requesting a series of fund unit transfers on 6 March 2006, the order date the entity assigned to these operations was that of 8 March.

The entity argued in its written response that the credit account was a financing instrument to provide customers with added liquidity for investing in securities and mutual funds, but that it was also subject to certain minimum conditions regarding the value of the investments held, in order to guarantee this financing.

Since the transfer between mutual funds involves redeeming units from the delivering funds and purchasing them in the receiving funds, a gap can arise in which the amount of the investment no longer suffices to guarantee the credit line, triggering the corresponding defeasance clause. To avoid this happening and allow clients to order transfers between collective investment schemes associated to the account, the entity had established an internal procedure, pursuant to the terms of the agreement, involving prior authorisation by its Risks Department, lasting a maximum of three working days.

Considering the fund units in the customer's possession as collateral for the financing obtained implied in practice a restriction on the free movement and transferability of the assets guaranteeing the "advance of funds", such that any change in the composition of the portfolio linked to the credit account was contingent on the entity's verification that the guarantees in place were of a sufficient amount.

So while allowing that the entity's criterion was correct, the information provided to its clients to this effect in the clauses of the agreement was neither clear nor to the point about the real execution times of any transfers they might order. Also, the entity admitted that the fund units linked to the credit account were not eligible for online transfer, though it did not advise of this on its website.

Incidents in the course of transfers between delivering and receiving entities

R/451/2006 - Boursorama, Sucursal en España (delivering entity). The complainant ordered an investment transfer between collective investment schemes under different managers. The receiving entity entered an order in the *Sistema Nacional de Compensación Electrónica de Banco de España* (hereinafter, SNCE) with the code of the delivering distributor – the delivering CIS was a foreign fund. However, the delivering entity did not execute the order, nor did it notify this fact to the receiving entity. In fact, it claimed not to have received the transfer request, saying that the notice should in any case have been sent to another entity. Finally, the receiving entity managed to ascertain that the delivering distributor executed such orders through this other entity, and sent a new transfer order which was finally executed a little over two months after the initial notice was sent.

It was confirmed that the receiving entity sent the mandatory notice through SNCE to the delivering distributor and that the latter was entered in the SNCE transfer sub-system as a represented entity, implying that, regardless of whether an associate entity handles transaction exchange and settlement, the delivering distributor should have received the transfer notice.

The delivering distributor was held to be at fault in not forwarding the order for execution. It also acted incorrectly in rejecting the order without at least having communicated this fact to the receiving entity.

R/237/2006 - Banco Santander, S.A. The receiving entity entered a transfer request in the SNCE, identifying the entity where the fund held its cash account. However, the delivering entity rejected the transfer order alleging that it should have specified another entity within the group where the fund temporarily held its account. It was found that the entity had been correctly identified in the order entered in the SNCE and that it should not have been rejected since, after all, the entity stated was the fund's custodian.

R/414/2007 - Cajamar Caja Rural, Sociedad Cooperativa de Crédito/ Gescooperativo, SGIIC, S.A. This complaint underscored the need for management companies involved in the transfer of fund units to provide accurate information on their age, for tax purposes; information with a bearing on any later transfers.

Managers are responsible for keeping records of the age of holdings in each fund, assigning net asset values, furnishing transaction data to the tax agency and transmitting information on unit acquisition dates in the course of transfer operations.

In this case, the delivering manager gave incorrect information to the manager of the receiving fund, with tax implications for the complainant. The resulting report found against Gescooperativo, SGIIC, S.A. (delivering manager) and, by extension, Cajamar, as it repeated the error in its notifications to the client.

Incidents in the transaction terms of CIS transfers

R/624/2007 - **Bankinter, S.A**. The respondent entity admitted an unjustified delay in executing the transfer and undertook to compensate any economic damages. However, it was criticised in the case report on the grounds that it should have assumed its responsibility and taken corrective action before the complaint was filed. By doing so, it would have allowed the incident to be settled earlier as well as demonstrating a true willingness to collaborate.

R/081/2007 - **Banco Inversis, S.A.; R/089/2007** - **Cortal Consors, Sucursal en España; R/256/2007** - **Caja de Ahorros y Monte de Piedad de Madrid and R/258/2007** - **Cajamar Caja Rural, Sociedad Cooperativa de Crédito.** According to the procedures envisaged in mutual fund regulations for the processing and execution of unit transfer orders, the receiving entity is responsible for sending a correctly completed transfer order to the delivering entity, which then has two working days to run any checks it deems necessary. In all these cases, the receiving and delivering distributor were one and the same, so the three working days for order verification and transfer were not applicable.

For the purposes of redeeming units in the delivering CIS, the redemption order date should be taken to coincide with the date of the transfer order, and the redemption effected as established in the corresponding fund prospectus. The purchase of receiving CIS units can be transacted once the amount of the redemption is received by the distributor and transferred to the fund's account.

Incidents in the application of NAV

R/206/2007 - **Citibank España, S.A.** On 7 September 2006, the complainant ordered a transfer from a foreign to a Spanish fund. He claims that he did this first thing in the morning and the entity informed him that the transaction would be executed at the close of that day's trading. On receiving his position statement, he was able to observe that the NAV applied was that of the 11th not the 8th.

The entity explained that the transfer order was formulated after 12 midday, the cut-off time for transmitting requests to the Luxembourg-based manager of the delivering fund, so the redemption order was sent the next day, i.e., 8 September. As established in the fund prospectus, the execution and NAV date was the first working day after the date of reception of the redemption order, in this case 11 September, i.e., within the legally established time.

The problem in this case is that the redemption order did not display the time when it was issued, so it is impossible to determine whether or not the entity proceeded correctly.

The report pointed out that the applicable regulations say entities must have the means in place to know the exact moment (date and time) an order is received. The entity provided no proof of the exact time the order was received, and the transfer order furnished by the customer did not contain this information, which would have allowed the matter of the right NAV applicable to be settled by reference to the prospectus of the delivering fund. The entity was held to have acted incorrectly.

R/051/2007 - Renta 4, S.V., S.A. The client complained that the NAV applied to a transfer between two mutual funds was incorrect, on the grounds that Renta 4, as receiver of the order and distributor of both funds, had failed to proceed as stated in the distribution dossier of the delivering fund.

The entity claimed to have acted in accordance with a protocol established for all redemption orders by the manager of the foreign fund, which specified different order processing times from those figuring in the distribution dossier. However it neither furnished a copy nor could prove sufficiently that its terms were consistently applied to all customers. So whether or not the procedure applied was nimbler or faster, it is only to the fund's registered public information that we can refer in judging this incident.

On this basis, the procedure binding on all the parties involved in the redemption leg of the transfer would be that specified in the distribution dossier filed with the supervisory agency. The entity was accordingly deemed to have acted incorrectly.

Incidents in transfer orders timed to coincide with "liquidity windows" (period envisaged in the prospectus in which fees are not applied)

A number of complaints referred to the charging of redemption fees on the occasion of transfer orders issued by the unitholders of guaranteed funds in order to take advantage of the liquidity windows figuring in the prospectus, i.e., the dates on which redemptions are free of charge.

Further to intermediaries' duty to execute orders on the best terms for the customer following the transaction practices proper to the investment fund industry, when a delivering fund distributor receives a transfer order and a liquidity window falls within the two days available for its processing, the said order should be executed without applying a redemption fee.

In the framework of such transfers, receiving entities should take an active role, informing the customer of all relevant circumstances affecting his order, especially the costs attached.

R/065/2007 and R/133/2007 - Banco Santander, S.A. In both cases, the delivering fund specified a 5% redemption fee in its prospectus that would not be applicable to redemptions ordered on the 15th of each month. The complainants had proceeding correctly in their instructions to the receiving entity, whose notices reached Banco Santander, S.A. (delivering entity) the day before, the 14th, without errors of content.

The report accordingly concluded that, whatever the applicable NAV, the manager should have refrained from charging the redemption fee as part of its duty to execute orders on the best terms for the customer.

R/753/2006 - Banco Santander, S.A. The customer complained about the fee applied to the redemption of units as part of a fund transfer operation, on the grounds that the request had been entered correctly following the instructions given by the bank. Specifically, they had informed him that the order should arrive three working days before the date of the liquidity window.

The redemption order reached the delivering entity prior to the date of the liquidity window. After summing the various formal terms envisaged – including the notice period of three working days established in the prospectus – it was confirmed that the notice with which the transfer was sought fell within the maximum 8-day term specified for liquidity windows

The entity was accordingly found not to have acted in the customer's best interest in charging a redemption fee.

4.2.4. Fees and expenses

The fees payable by unitholders are specified in the fund prospectus that must be delivered to them before they purchase. This should mean they are adequately apprised of the costs side of their investment. However, there are many complaints in which investors express their discontent with the fees applied, frequently because they are unaware or uninformed.

Although clients should have received all necessary information at the time of subscribing, as contained in the prospectus, it is wise to re-convey this information in a simple, accessible way when they place any subsequent orders. The details can be displayed on order documents or, simpler still, incorporated into online order processes for subscriptions, redemptions or transfers between CIS under the same manager.

Difficulties applying exit rights in the case of fund units acquired *mortis causa*

R/328/2007 - **Banco Santander, S.A.** The entity was considered to be at fault in charging a redemption fee on a mutual fund acquired by the complainant *mortis causa*. The latter indicated his wish to redeem the fund before its guarantee expired, while the transfer of the units' ownership was still going on. On its completion, he issued the redemption order and the entity proceeded to charge him a redemption fee.

The heirs in such cases should issue an order stating their intention to take up exit rights (allowing them to redeem units without fees or expenses). Further to its duty to execute orders on the best terms for the customer following the transaction practices proper to the investment fund industry, the entity must attend this request under the terms indicated, i.e., without charging fees or expenses, regardless of when the change of ownership is formally concluded.

Higher subscription fees due to bad advice

R/001/2007 - **Banco de Finanzas e Investments, S.A.** The customer complained about the high subscription fee he was charged when taking out a number of mutual funds. As fees are lower the larger the amount invested in each plan, a person investing in more plans will pay out relatively more in fees.

The entities providing investment services must conduct their activities in an impartial manner, not placing their own interests before those of the customer but seeking his best benefit while working to ensure the proper functioning of the market. They are expressly advised against persuading clients into a business transaction for the sole purpose of increasing their own profits. In this respect, entities should refrain from conducting transactions solely to earn fees or to multiply them needlessly without benefit to the client.

The percentages of the subscription fees charged were within the limits established in the fund's legal documentation and consistent with the content of the orders signed by the complainant. However, the subscription of several investment schemes with their corresponding charges was not to the customer's advantage, as the same amount, differently distributed, could have been placed in the same products at a lower cost. The entity was accordingly deemed to have acted incorrectly.

Additional fee for the sale of securities in the course of a CIS redemption

R/113/2007 - Lloyds TSB Bank, Plc., Sucursal en España. The customer disputed the charging of a fee for the redemption of shares held in a foreign CIS. While it is true that a corporate CIS may generate additional costs because of its division into shares (e.g., administration and custody fees), the fee on this occasion referred to the sale of shares on foreign stock markets – a service the entity claimed was listed in its maximum fee schedule.

Since the investment comprised shares in a foreign CIS, the applicable fee regime was as set out in the prospectus and stated in the relevant scheme's distribution dossier. In this case, the distribution dossier mentioned "expenses and fees applicable in accordance with the CIS prospectus and the distributor's maximum fee schedule". The CIS prospectus stated that share redemption transactions would be free of charge.

The entity was considered to be at fault in applying a share transaction fee to the operation in question, an implicit redemption as part of an investment transfer between CIS.

Maintenance fees on accounts linked to mutual funds

R/635/2006 - **Banco Santander, S.A.** There is nothing in the law that obliges investors to open an instrumental current account associated to a mutual fund. So if an entity requires such an account to be opened, for its own operational reasons, it should not charge the unitholder any fees or expenses in its regard.

In this case, the entity undertook not to charge the customer any fees in future, but made no mention of reimbursing him for the fees paid to the date of the complaint, so was deemed to have acted incorrectly.

5 The main subjects of enquiries

The kind of enquiries reaching the CNMV tend to reflect the market circumstances of the moment. Corporate and market transactions traditionally motivate the greatest number of enquiries.

This year, takeover bids, new issues aimed at retail investors and the performance of certain securities were matters of particular concern to investors. Incidents with investment service providers, collective investment schemes and non registered entities and, towards the end of the year, the provisions of the MiFID, also attracted abundant enquiries.

There follows a run-through of the main subjects enquired about in 2007:

New securities issues

New issues motivate doubts and queries among the public regarding how they are marketed to retail investors. Investors seek clarification on specific points set out in the registered prospectus or express discrepancies with the conduct of intermediaries over fees, the allocation of shares, delays in their delivery or the information and guidance received at the time of purchase.

We can single out the enquiries received during the public offering of Tremón, S.A. The issuer extended the cancellation period for purchase bids, and during this extra period some investors were unable to exercise this entitlement though their intermediaries and reported their cases to the CNMV. This meant immediate action could be taken to solve the problem in time.

Takeover bids

As in 2006, enquiries about takeover bids were a significant percentage. The Endesa bids undoubtedly caused a new interest among the retail investor collective, such that numerous enquiries dealt with in 2007 made reference to competing bids or the shareholders' meetings called to resolve on offers. Aspects like the legal deadlines for the different administrative formalities and transaction phases or the actions of the different agents intervening prompted many questions among investors.

Corporate governance

One example of good practice bears mention here: the near simultaneous transmission, in Spanish and in summarised form, of the general shareholders' meeting of Jazztel, plc., held in another country. This measure – a consequence of the initiative of a group of retail investors who got in touch with the IAO – enabled shareholders resident in Spain to follow the proceedings. Note that the CNMV confines itself to making recommendation in this respect; the choice lies with each company.

Directive on Markets in Financial Instruments (MiFID)

Enquiries began coming in in November from investors whose had received letters from their financial providers informing them about the MiFID. The most common doubts were about how the new regulations would affect their relationship with their financial entity, while more specific queries tended to touch on the consequences of being classed as a retail investor, the possibility that the new rules might push up costs, the obligation to provide entities with personal details and the exact meaning of "best execution".

To help investors come to grips with the new regulation and its implications, a guide has been published setting out the main changes that will occur in investors' day-to-day dealings with financial entities.

This information will be supplemented by a FAQ section on the practical impact of new investment protection measures (MiFID), which can be consulted in the Investor's Corner section of the CNMV website.

Not registered entities

Enquiries about unregistered entities that might be providing investment services without authorisation are also qualitatively important. The first message in these cases is always that investment services can only be provided by authorised entities entered in the CNMV's official registers. On occasion, the entities enquired about have already been the subject of a public alert from the CNMV or some other supervisor, so it is vital to check the CNMV registers before signing anything.

In 2007, the CNMV issued alerts on the following companies without authorisation to provide investment services, pursuant to article 13 of the Ley del Mercado de Valores which urges is to disseminate all such information as may be necessary to safeguard the interests of investors.

CNMV public alerts on not registered entities

TABLE 4

Date	Company CNMV alerts on unauthorised entities
12/02/2007	Brookfield Partners, S.L. *www.brookfield-partners.com*
12/02/2007	Administraciones Temple Bar, S.L.
05/03/2007	BERKLEY WYATT ASSET LIMITED, S.L. *www.bwasset.com, www.bwasset.es*
05/03/2007	CISA MANAGEMENT, S.L. *www.cisasl.org*
05/03/2007	CISA, S.L., CORPORATE INVESTMENT SERVICES *www.cisasl.org*
05/03/2007	REMINGTON YORK LTD.
02/04/2007	BR CONSULTANCE ALFAZ, S.L.
18/06/2007	ANDERSON McCORMACK GROUP, S.L
18/06/2007	CORNHILL MANAGEMENT, S.L. *www.cornhillmanagementsl.com*
18/06/2007	BROKER S SOCIETY SOCIEDAD DE GESTIÓN Y TRAMITACIÓN FINANCIERO ASEGURADORA, S.L.
03/12/2007	EURO TRUST CAPITAL MANAGEMENT

Source: CNMV

Investors approach the IAO to complain about loss-making investments or because they wish to verify the legality of companies that have contacted them offering higher-than-market returns at a very low risk in comparison to the earnings promised. These are often the same entities masquerading under different names.

The not registered companies most frequently enquired about in 2007 are listed in Annexe 2.

The information obtained in handling these enquiries and, in some cases, the documentation investors produce, on their own initiative or at the suggestion of the IAO, are passed onto the Legal Service, which may opt to start investigations potentially leading to the issue of alerts or even sanction proceedings.

Especially germane here are the changes introduced by Ley 47/2007, writing MiFID provisions into the Ley del Mercado de Valores. Before this regulatory change, any person or entity could advise or give investment guidance without being authorised or registered with the CNMV. Now, however, investment advice, understood as the provision of personalised recommendations on financial instruments on a paid, professional basis, is a service that can only be rendered by people authorised to that effect.

This measure is intended to tighten control over this activity and thereby improve the quality of a service that is in growing demand.

Mutual funds and other CIS

Enquiries about collective investment schemes tend to focus on exchange-traded funds (ETFs) and transfers between mutual funds.

– ETFs are funds with their units admitted to trading on stock exchanges, which accordingly combine the peculiarities of a mutual fund with those of listed securities. Their marketable character means they generate administration and custody fees, as well as transfer fees in the event of switching to another custodian. This fact has brought sufficient enquiries from investors to counsel the re-editing of the CNMV factsheet on exchange-traded funds, to give clearer explanations on the associated fees and charges. The new factsheet also goes into more detail about the fees and expenses the promoters of these funds must include in the prospectus filed with the CNMV.

– Transfers between mutual funds, particularly NAV dates, timing and taxation, continue to generate a steady flow of investor enquiries.

Financial contracts for differences

Financial contracts for differences are a novel product that some financial entities began to offer this year. To address the many doubts surrounding their nature, the CNMV has sent a communication to providers about how they should be marketed to retail investors, and has also prepared a factsheet on the product setting out its characteristics and risks in a plain, easy-to-understand manner.

Delisted companies

Finally, enquiries were received, as in previous years, from the holders of shares in delisted companies eager to know how to stop paying fees for their administration. The solution, in the case of inactive companies, is a voluntary procedure whereby the investor de-registers his shares from the book-entry records. Shareholders should approach their custodians to find out how to initiate this procedure and the costs it will entail.

They also ask about selling their shares in delisted companies, over which the CNMV has no authority. The advice in this case is to find a buyer or else approach the issuer to see if it is interested in acquiring them.

This year, shareholders of Telefónica Publicidad e Información, S.A., currently Yell Publicidad, S.A., who did not take up the delisting offer for the companies shares traded on the Madrid and Barcelona exchanges, enquired about how and where to sell. In these cases, as stated, the IAO recommends either that they look for a buyer or approach the company. When the company learned of this situation, it decided to redeem shares in the possession of minority investors at a price equal to the consideration of the delisting offer.

III Annexes

Annexe 1 – Statistical Tables

Total cases processed by the IAO

TABLE 5

	2006		2007		% change 07/06
	Number	% total	Number	% total	
Enquiries	9,985	92.1	10,945	92.7	9.6
Complaints	823	7.6	809	6.9	-1.7
Other submissions[1]	34	0.3	55	0.5	61.8
Total	10,842	100.0	11,809	100.0	8.9

Source: CNMV

Number of complaints filed and processed in 2007

TABLE 6

	No. of complaints
In progress at the 2006 close	213
Filed during 2007	809
TOTAL	**1,022**
Analyses	788
Resolved	610
Not accepted	178
In progress at the 2007 close	234

Source: CNMV

Distribution by subject of compaints resolved in 2007

TABLE 7

	2006		2007	
	Number	% total	Number	% total
Investment services	**322**	**58.8**	**338**	**55.6**
Order reception, processing and execution	145	26.4	173	28.5
Customer information	106	19.3	96	15.8
Fees and expenses	71	12.9	59	9.7
Others	--	--	10	1.6
Mutual funds and other CIS	**227**	**41.2**	**272**	**44.4**
Customer information	85	15.5	114	18.7
Subscriptions/Redemptions	64	11.7	65	10.4
Transfers	46	8.4	54	8.9
Fees and expenses	32	5.8	39	6.4
Total complaints resolved	**549**	**100.0**	**610**	**100.0**

Source: CNMV

Comparative distribution of complaints by type of resolution

TABLE 8

	2006		2007		% change 07/06
	Number	% total	Number	% total	
Resolved	**549**	**71.7**	**610**	**77.4**	**11.1**
Report favourable to the complainant	171	22.3	176	22.3	2.9
Report unfavourable to the complainant	298	38.9	342	43.4	14.8
Report with no opinion stated	5	0.7	7	0.9	40.0
Accommodation	64	8.4	76	9.6	18.8
Withdrawal	11	1.4	9	1.1	-18.1
Unresolved	**217**	**28.3**	**178**	**22.6**	**-18.0**
Competence of other bodies	28	3.7	39	4.9	39.3
Not accepted	189	24.7	139	17.6	-26.5
Total complaints processed	**766**	**100.0**	**788**	**100.0**	**2.9**
Total filed	**823**	--	**809**	--	**-1.7**

Source: CNMV

Monthly distribution of complaints filed and resolved in 2007

TABLE 9

Month	Complaints filed	Complaints resolved
January	52	56
February	85	48
March	91	42
April	70	49
May	60	53
June	81	48
July	68	46
August	76	63
September	50	40
October	35	51
November	68	63
December	73	51
Total 2007	**809**	**610**

Source: CNMV

Geographical distribution of complaints resolved in 2007

TABLE 10

Origin	No. of complaints	Percentage
ANDALUCÍA	66	10.82%
ARAGÓN	35	5.74%
ISLAS CANARIAS	13	2.13%
CANTABRIA	7	1.15%
CASTILLA LA MANCHA	19	3.11%
CASTILLA Y LEÓN	44	7.21%
CATALUÑA	74	12.13%
CEUTA	0	0.00%
COMUNIDAD DE MADRID	163	26.72%
NAVARRA	12	1.97%
COMUNIDAD VALENCIANA	53	8.69%
EXTREMADURA	8	1.31%
GALICIA	43	7.05%
ISLAS BALEARES	6	0.98%
LA RIOJA	3	0.49%
MELILLA	1	0.16%
PAÍS VASCO	23	3.77%
ASTURIAS	20	3.28%
MURCIA	16	2.62%
EU COUNTRIES	2	0.33%
OTHERS	2	0.33%
TOTAL	**610**	**100%**

Source: CNMV

Distribution of non accepted complaints by motive for rejection

TABLE 11

	Number of complaints
Not previously placed before Customer Service Dept.	110
Resubmission of complaints already settled	18
Others	11
TOTAL	**139**

Source: CNMV

Type of entities complained against and resolution in 2007

TABLE 12

	Favourable to complainant		Unfavourable to complainant		Accom./ Withdrawal		No opinion stated		Total	
	Nº	% change 07/06	Nº	%	Nº	%	Nº	%	Nº	%
Credit institutions	**162**	**26.6**	**321**	**52.6**	**80**	**13.1**	**6**	**0.9**	**569**	**93.3**
Banks	125	20.5	232	38.0	57	9.2	5	0.7	419	68.7
Savings banks	31	5.1	85	13.9	21	3.6	0	0.0	137	22.5
Credit cooperatives	6	0.9	4	0.7	2	0.3	1	0.2	13	2.1
Investment firms	**13**	**2.1**	**15**	**2.5**	**4**	**0.7**	**0**	**0.0**	**32**	**5.4**
CIS managers	**1**	**0.2**	**6**	**0.9**	**0**	**0.0**	**1**	**0.2**	**8**	**1.3**
Others	**0**	**0.0**	**0**	**0.0**	**1**	**0.2**	**0**	**0.0**	**1**	**0.2**
Total	**176**	**28.8**	**342**	**56**	**85**	**14.1**	**7**	**1.1**	**610**	**100**

Source: CNMV

Distribution by entity of complaints against banks

TABLE 13

Banks	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ALTAE BANCO, S.A.		1		3		4
BANCO BANIF, S.A.		3		1		4
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	19	55	1	1	1	77
BANCO CAIXA GERAL, S.A.		1				1
BANCO DE ANDALUCÍA, S.A.		1				1
BANCO DE FINANZAS E INVERSIONES, S.A.		5		2		7
BANCO DE GALICIA, S.A.	1	1				2
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA, S.A.	3					3
BANCO DE MADRID, S.A.		1				1
BANCO DE SABADELL, S.A.	4	10		4		18
BANCO DE VALENCIA, S.A.	1					1
BANCO ESPAÑOL DE CRÉDITO, S.A.	7	7	3	17	1	35
BANCO ESPIRITO SANTO, S.A.				1		1
BANCO GUIPUZCOANO, S.A.				1		1
BANCO INVERSIS, S.A.		5	1	8		14
BANCO PASTOR, S.A.		3		3		6
BANCO POPULAR ESPAÑOL, S.A.		3		3		6
BANCO SANTANDER, S.A.	8	76	1	34	3	122
BANCO URQUIJO, S.A.	1					1
BANKINTER, S.A.	2	25		19		46
BANKOA, S.A.		1				1
BARCLAYS BANK, S.A.		6		1		7
BNP PARIBAS ESPAÑA, S.A.	1	2		1		4
BOURSORAMA, SUCURSAL EN ESPAÑA		1		8		9
CITIBANK ESPAÑA, S.A.	1	1		2		4
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA		10		3	13	
ING BELGIUM, S.A., SUCURSAL EN ESPAÑA		2				2
ING DIRECT, N.V. SUCURSAL EN ESPAÑA		2		2		4
LLOYDS TSB BANK, PLC				1		1
OPEN BANK SANTANDER CONSUMER, S.A.	1	3		7		11
POPULAR BANCA PRIVADA, S.A.	1	3		1		5
SABADELL BANCA PRIVADA, S.A.		1				1
UBS BANK, S.A.		1				1
UNOE BANK, S.A.	1	2		2		5
TOTAL	51	232	6	125	5	419

Source: CNMV

Distribution by entity of complaints against savings banks

TABLE 14

Savings banks	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
BILBAO BIZKAIA KUTXA, AURREZKI KUTXA ETA BAHITETXEA	1					1
CAIXA D´ESTALVIS DE CATALUNYA		4				4
CAIXA D´ESTALVIS DEL PENEDÉS		1		1		2
CAIXA DE AFORROS DE VIGO, OURENSE E PONTEVEDRA (CAIXANOVA)		1				1
CAJA DE AHORROS DE ASTURIAS		2		2		4
CAJA DE AHORROS DE CASTILLA-LA MANCHA		1		1		2
CAJA DE AHORROS DE GALICIA	4	5	1	2		12
CAJA DE AHORROS DE LA INMACULADA DE ARAGÓN				1		1
CAJA DE AHORROS DE SALAMANCA Y SORIA	1	3		1		5
CAJA DE AHORROS DE SANTANDER Y CANTABRIA		1				1
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA		3		2		5
CAJA DE AHORROS DEL MEDITERRÁNEO		4		4		8
CAJA DE AHORROS Y MONTE DE PIEDAD DE CÓRDOBA		3		1		4
CAJA DE AHORROS Y MONTE DE PIEDAD DE EXTREMADURA		1				1
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	10	29	1	7		47
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA		3		1		4
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	1	11		5		17
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CÍRCULO CATÓLICO DE OBREROS DE BURGOS				1		1
CAJA DE AHORROS Y PENSIONES DE BARCELONA	1	7				8
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD		2		1		3
CAJA GENERAL DE AHORROS DE GRANADA	1	2				3
MONTE DE PIEDAD Y CAJA DE AHORROS DE HUELVA Y SEVILLA		1				1
MONTES DE PIEDAD Y CAJA DE AHORROS DE RONDA, CÁDIZ, ALMERÍA, MÁLAGA Y ANTEQUERA		1		1		2
TOTAL	**19**	**85**	**2**	**31**	**0**	**137**

Source: CNMV

Distribution by entity of complaints against credit cooperatives

TABLE 15

Credit cooperatives	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
CAIXA DE CREDIT DELS ENGINYERS- CAJA DE CRÉDITO DE LOS INGENIEROS, S. COOP.				1		1
CAJA LABORAL POPULAR COOP. DE CRÉDITO		1				1
CAJA RURAL ARAGONESA Y DE LOS PIRINEOS, S.OCIEDAD COOPERATIVA DE CRÉDITO				1		1
CAJA RURAL DE ARAGÓN, SOCIEDAD COOPERATIVA DE CRÉDITO		2				2
CAJA RURAL DEL DUERO, SOCIEDAD COOPERATIVA DE CRÉDITO LTDA.				1		1
CAJA RURAL DEL MEDITERRÁNEO, RURALCAJA, S. COOP. DE CRÉDITO					1	1
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2	1		3		6
TOTAL	**2**	**4**	**0**	**6**	**1**	**13**

Source: CNMV

Distribution by entity of complaints against investment firms, CIS managers and others

TABLE 16

Investment firms and CIS managers	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
AHORRO CORPORACIÓN FINANCIERA, S.A. SOCIEDAD DE VALORES		1				1
AHORRO CORPORACIÓN GESTIÓN, S.G.I.I.C., S.A.					1	1
AXA IBERCAPITAL, AGENCIA DE VALORES, S.A.	2					2
BETA CAPITAL, SOCIEDAD DE VALORES, S.A.		1				1
CORTAL CONSORS, SOCIEDAD DE VALORES, S.A.	1	1		1		3
EURODEAL AGENCIA DE VALORES, S.A.				2		2
FORTIS GESBETA, S.G.I.I.C., S.A.				1		1
GAESCO BOLSA, SOCIEDAD DE VALORES, S.A.	1	1				2
GENERAL DE VALORES Y CAMBIOS, SOCIEDAD DE VALORES, S.A.		1		1		2
GESTIÓN DE PATRIMONIOS MOBILIARIOS AGENCIA DE VALORES, S.A.		3		2		5
GOLDEN BROKER -SOCIEDADE CORRETORA S.A				2		2
MAPFRE INVERSIÓN, SOCIEDAD DE VALORES, S.A.		3		2		5
MORGAN STANLEY GESTIÓN, SGIIC, S.A*		1				1
MORGAN STANLEY, SOCIEDAD DE VALORES, S.A.**		2		1		3
POPULAR GESTIÓN, S.A., S.G.I.I.C.		1				1
RENTA 4, SOCIEDAD DE VALORES, S.A.		2		2		4
SANTANDER ASSET MANAGEMENT, S.A., SGIIC		4				4
Otros			1			1
TOTAL	**4**	**21**	**1**	**14**	**1**	**41**

Source: CNMV

** Currently, La Caixa Gestión de Activos, SGIIC, SA*

** Currently, La Caixa Gestión de Patrimonios, S.V., SA*

Distribution of accommodations and withdrawals by subject of complaint

TABLE 17

Subject	Total	%
Mutual funds and other CIS	**30**	**35.30**
Customer information	11	12.95
CIS transfers	8	9.41
Subscriptions and redemptions	6	7.06
Fees	5	5.88
Other incidents	0	0
Securities market transactions	**55**	**64.70**
Order processing, execution and settlement	20	23.53
Fees	12	14.11
Customer information	20	23.53
Other incidents	3	3.53

Source: CNMV

Rectifications following complaints favourable to the complainant

TABLE 18

Entity	Favourable Reports to complainant	Rectified	Unrectified
	Nº	%	%
ALTAE BANCO, S.A.	3	67	33
BANCO BANIF, S.A.	1	0	100
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	1	100	0
BANCO DE FINANZAS E INVERSIONES, S.A.	2	50	50
BANCO DE SABADELL, S.A.	4	100	0
BANCO ESPAÑOL DE CRÉDITO, S.A.	17	47	53
BANCO ESPIRITO SANTO, S.A.	1	0	100
BANCO GUIPUZCOANO, S.A.	1	0	100
BANCO INVERSIS, S.A.	8	50	50
BANCO PASTOR, S.A.	3	100	0
BANCO POPULAR ESPAÑOL, S.A.	3	100	0
BANCO SANTANDER, S.A.	34	85	15
BANKINTER, S.A.	19	84	16
BARCLAYS BANK, S.A.	1	0	100
BNP PARIBAS ESPAÑA, S.A.	1	100	0
BOURSORAMA, SUCURSAL EN ESPAÑA	8	13	88
CAIXA D´ESTALVIS DEL PENEDÉS	1	100	0
CAJA DE AHORROS DE ASTURIAS	2	100	0
CAJA DE AHORROS DE CASTILLA-LA MANCHA	1	100	0
CAJA DE AHORROS DE GALICIA	2	50	50
CAJA DE AHORROS DE LA INMACULADA DE ARAGÓN	1	100	0
CAJA DE AHORROS DE SALAMANCA Y SORIA	1	100	0
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	2	100	0
CAJA DE AHORROS DEL MEDITERRÁNEO	4	0	100
CAJA DE AHORROS Y MONTE DE PIEDAD DE CÓRDOBA	1	0	100
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	7	57	43
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA	1	0	100
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	5	40	60
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CÍRCULO CATÓLICO DE OBREROS DE BURGOS	1	0	100
CAJA DE CRÉDITO DE LOS INGENIEROS, S. COOP.	1	100	0
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	1	100	0
CAJA RURAL ARAGONESA Y DE LOS PIRINEOS, S. COOP. DE CRÉDITO	1	100	0
CAJA RURAL DEL DUERO, SDAD. COOP. CTO. LTDA.	1	100	0
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	3	0	100
CITIBANK ESPAÑA, S.A.	2	50	50
CORTAL CONSORS, SOCIEDAD DE VALORES, S.A.	1	100	0
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	3	33	67
EURODEAL AGENCIA DE VALORES, S.A.	2	0	100
FORTIS GESBETA, S.G.I.I.C., S.A.	1	0	100
GENERAL DE VALORES Y CAMBIOS, SOCIEDAD DE VALORES, S.A.	1	0	100
GESTION DE PATRIMONIOS MOBILIARIOS AGENCIA DE VALORES, S.A.	2	100	0
GOLDEN BROKER -SOCIEDADE CORRETORA S.A	2	0	100
ING DIRECT, N.V. SUCURSAL EN ESPAÑA	2	100	0
LLOYDS TSB BANK, PLC	1	100	0
MAPFRE INVERSIÓN, SOCIEDAD DE VALORES, S.A.	2	0	100
MONTES DE PIEDAD Y CAJAS DE AHORROS DE RONDA, CÁDIZ, ALMERÍA, MÁLAGA Y ANTEQUERA	1	100	0
MORGAN STANLEY, SOCIEDAD DE VALORES, S.A.	1	100	0
OPEN BANK SANTANDER CONSUMER, S.A.	7	57	43
POPULAR BANCA PRIVADA, S.A.	1	100	0
RENTA 4, SOCIEDAD DE VALORES, S.A.	2	100	0
UNOE BANK, S.A.	2	100	0
TOTAL	**176**	**63**	**37**

Source: CNMV

Type of entities complained against and rectification

TABLE 19

	Favourable to complainant	Rectified		Unrectified	
	Nº	Nº	%	Nº	%
Credit institutions	**162**	**105**	**64.8**	**57**	**35.2**
Banks	125	85	68	40	32
Savings banks	31	17	54.8	14	45.2
Credit coops	6	3	50	3	50
Investment firms	**13**	**6**	**46.2**	**7**	**53.8**
CIS managers	**1**	**0**	**0**	**1**	**100**
Total	**176**	**111**	**63.1**	**65**	**36.9**

Source: CNMV

Distribution by reception channel of enquiries handled in 2007

TABLE 20

	2006		2007		% change 07/06
	Number	% total	Number	% total	
Telephone	6,836	68.5	7,414	67.7	8.5
E-mail	2,228	22.3	2,373	21.7	6.5
Letter	239	2.4	312	2.9	30.5
Face-to-face	682	6.8	846	7.7	24.0
Total	**9,985**	**100.0**	**10,945**	**100.0**	**9.6**

Source: CNMV

Annexe 2 - List of entities not registered with the CNMV enquired about in 2007

ABCBOLSA.COM
ADVANCED CURENCY MARKET
AGINAC EUROPNET
AGRUPACIÓN DE CAPITALES
AHEAD CAPITAL
AIM WARRANTS ESPAÑA - ÁUREA NEGOCIOS – EN ALZA CLUB
ALENA
ANDERSON MCCORMACK
ARGENT INTERNATIONAL
ARIES INGENIERIA Y SISTEMAS
ASG CONSULTORES
ASPECTA
BANCA REMIDA
BECKHAM ADVISORS ALLIANCE
BESTCREDIT. DAGARA SIT
BLUE STAR MANAGEMENT, LLC
BOLSAGORA
BOLSAQUEST
BOSQUES NATURALES
BR CONSULTANCE ALFAZ, S.L.
BROKERHOUSE
CAJA DE AHORROS DE EUROPA (WWW.CAJADEEUROPA.COM)
CHARTERHOUSE TRUST CREDIT UNION
CHECK ON ALEXANDER ROTHKO & ASSOCIATES
CISA, S.L.
CISNE ASEGURADORA
CITISOLUCIONES
CITY ALLIED GROUP
COFINGES
COFIVENSA
COMMODITY AND FUTURES CONSULTING
CONSULTORA LOGINTEL
CORPORACIÓN FINANCIERA JOLGA
DAILY REPORT
DDPS FINANCIAL
DEALERS QUALTY CONSULTING
DEVERE & PARTNERS
DIVISAS DIAGONAL
DUKASCOPY
EAGLE STAR/CITY ALLIED GROUP MADRID
ECOBOLSA
ECOMEX
EGOLDAILYPRO
ELITE BUSSINES CONSULTANTS
ELNUEVOPARQUET
EMERGING EQUITY GROUP
ESICAMO
EURODATA PLUS
EUROPEAN INVESTMENT AND CONSULTING TRUST SL.
EVOLUTION MARKET GROUP, INC
F.H. INVERSIONES.
FINANCIAL HOLDING GROUP
FINANWORLD 2000 S.L.
FINANZAS FOREX
FORESIGHT INVESTMENT
FOTRADEX.COM
FOXINVER
FOXINVEREHE CLEVER INVESTMENT
FUTURIBEX Y FUTUROSIBEX
FXCM CLUB
GALERA INVERSIONES PATRIMONIALES
GCI FINANCIAL LIMITED
GESTION FOREX - WALWOOD CONSULTANTS
GIMPO (HANDLE AND CASE)
GORDON GEKKO
GREEN ALLIANCE
GRUPO LH
HAMILTONS FINANCIAL SERVICES, S.L.
HANSARD INTERNATIONAL LTD.
HAT TRICK EQUITIES
HELP NEEDED
INDAX CORPORATION
INPROFIT
INPROLINK S.L.
INVERNET INVEST CONSULTING, S.A.
INVERSIONES FINANCIERAS FORTUNY.
INVESTRADING SOLUCIONES FINANCIERAS
JUPITER CAPITAL RESEARCH
LESTER IBÉRICA
LOS ANDES CAPITAL
MASTERFIELD INVESMENT GROUP
MERCADIA ASESORES
MERCIER
MINDORO HOLDING GROUP- VISION HOLDING GROUP
MONTMAR NAUTICA
NEWBRIDGE INTERNATIONAL
NOBLE INVESTMENT AND SECURITIES, S.L.
NOVATAE DIVERSIFIED

ODJ CONSULTORES
OFFSHORE WORLD S.L.
OIB INTERNATIONAL
OQUENDO CORPORATE
PLATINUM INDEX
PONTESADEA PARTICIPACIONES
PRICE STONE GROUP
PRIMERICA
PROMOTORFOREX
RECOBOLSA
RECOLETOS SERVICIO DE ASESORIA
RIVERDUERO
S G FINANCIAL/ALEXANDER HOLDINGS
SAIMEC, S.L.
SCB, S.L.
SEARCH PROFIT CORPORATION S.L
SEPULVEDA INVESTMENT FUND LIMITED
SOVEREING BANK
SUPERBOLSA Y PROMOTORFOREX
SUPERBOLSA.COM
SUSTAINABLE INVESTMENT Y KURLING
SWISSCASH
TECNOFINANZAS
TECNOFOREX, IFX GLOBAL.
THE TOROS GROUP
THIBAULT
TRENAMAN SCHULTZ CAPITAL
TRENT ADVISERS
VALORA
VERMOGENSBERAT
WALTER O. RIVAS
WAM FINANCIAL
WASKMAN AND MURPHY FINANCIAL
WILLMONT PARTNERS, S.L / COATES ZANTE
WINDSOR
WWW.ABCBOLSA.ES
WWW.MOROSOSWEB.COM
WWW.NEGOCIARENRED.COM.
WWW.SPANISH.FXSTREET.COM

Source: CNMV