

# GUIDE

**CNMV** information guide

What you need to know about

## Fly-by-night operations



This CNMV guide is for investors. It explains the essential terms, helps you to ask the right questions, sets out the information that an investor must request and tells you what to do if you have doubts.

**What you need to know about**

# **Fly-by-night operations**

This is a CNMV document

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Design: Adrian Tyler

Illustrations: Eva Cekuolyte

Type setting: Cromotex

Printed by: Artegraf, S.A.

Legal number: M. 43.815-2002

Second edition: Octubre 2002

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IF YOU RECEIVE AN INVESTMENT OFFER THAT SEEMS too good to be true and if you have not heard of the entity, be careful. Fraud is almost always to do with money and in this case it is your money.

There tends to be an unexpected phone call, an investment proposal with a luxury dossier, but there are also other methods.

It always consists of an offer by someone who, convinced and sure of themselves, proposes an exotic investment with expectations of a high return.

**Be on your guard! Behind such signs fly-by-night operations often hide.**

**And if this is the case, then be aware that if you accept the offer you will lose your money.**

It is very important that you know everything about the entity you have chosen for your investment. Consult the National Securities Market Commission (CNMV) if it is an entity that is registered.

In this short guide we aim to alert you to the risks of fly-by-night operations, a type of entity whose fraudulent and unscrupulous activities can ruin you. The best way to protect yourself is to be on your guard, don't put your trust in "bargains" and be careful about where you place your savings.



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# 1 Fly-by-night operations.

## What are they? Who are they?

They are individuals and companies that offer investment services just within the legal limits or, in most cases, outside them.

They are not registered with the CNMV or with the Bank of Spain. Remember that only companies authorised by supervisory bodies can offer investment services, and that authorisation is only granted when companies meet certain requirements.

As they are not authorised, no one knows if they have sufficient capital, whether their organization or resources are adequate, etc. Moreover, as they are not registered with the CNMV or with the Bank of Spain, they escape the controls to which legal entities are subject, leaving investors totally unprotected.

They use swindles to capture funds and make strange investments which then disappear into thin air. They can hide behind a pleasant voice that repeatedly contacts you by telephone and promises big returns.

In other cases, it can be the friend of a friend who recommends you his services. Or perhaps they put letters in your mailbox that speak of the immense returns you will receive if you place your money in their expert hands.

They are convincing, persuasive and seem reasonable.

They call themselves advisors and experts.

They take advantage of the investment capacity and confidence of their customers through techniques that have no chance of producing a profit for anyone, except themselves.

They promise results they cannot achieve and, **without a doubt they will try to convince you that this document is not about them.**

Many investors have lost their savings and been unable to recover them.

When they cannot justify the losses with cunning legal arguments, they simply disappear and/or change their name. None of them would own up to being a fly-by-night operation, but that is what they are.





# Who might be their victims?

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Paradoxically, their victims tend to be ordinary people who believed that such a thing would never happen to them. For this reason there is no specific type of victim. They know that everyone's money is the same and this circumstance is the only one that really interests them. Sometimes they deliberately target middle class families who are going through a bad patch economically. They tell you that with a small investment they can make you rich if you learn and use the adequate strategies. Naturally, they know these techniques and they will teach you them!

Unfortunately, many victims, regardless of their education level or aversion to risk, hand over their savings built up over many years after little more than 15 minutes conversation over the phone. This is less time than they spend on deciding whether to buy a household appliance!

In any case, although the cases are different **all of them have an element in common: in the face of promises of easy returns savers are prepared to believe what they want to believe and trust their money to someone they do not know.** Their desire for profits outweighs their prudence.



# How can a fly-by-night operation get in touch with you?

Fly-by-night operations tend to use the same methods for finding clients as the entities that are fit to provide investment services.

As a result, the fact that someone contacts you (by phone, mail, etc) does not necessarily mean that it is a fly-by-night operation. Many blue chip entities use very similar methods to attract investment. The methods are, therefore, legal and of confidence. However, the attitude of these fraudsters when they present their services is very different to that of legally authorised entities. We will now give an idea of some of the contact methods used and the tactics of these fly-by-night operations:

## Telephone calls:

The use of the telephone to approach potential victims is the preferred method of contact. Although 100 or 200 calls may have to be made to find someone who falls into their hands, the opportunity to obtain a large amount of money makes their efforts worthwhile.

Imagine that one Monday a fly-by-night operation makes 200 telephone calls. It does not ask for money but presents itself. In 100 of these calls they say a certain share price is going to rise and in another 100 that it will fall. The calls are repeated on other days but only to those people with whom the forecast proved to be correct. Before Friday, with the third round of calls, only a dozen clients are left, but all of them seek to make investments with those whose forecasts were correct three times running.

This telephone technique is clearly primitive. Fly-by-night operations also use more sophisticated and effective methods. They know that anyone with a telephone is a possible client. **It is largely up to you whether you avoid becoming a victim.**

### Mail:

Many sellers of fraudulent investments send a letter after acquiring data bases from which they extract addresses of people who, for example, have subscribed to a particular financial product, receive a certain economic publication or took part in surveys in which they reflected their tastes, interests and household economic situation. If they do not have such a database, a telephone directory can also be useful.

In these letters, meticulous and impeccable from the marketing standpoint and accompanied by luxurious leaflets, the fly-by-night operations present fantastic investments and ask the recipients to get in touch with them, by filling in a form, phoning or through their website.

### Internet. E-mail:

Many of these entities offer their services on the Internet, taking advantage of the international dissemination of this means of communication and the difficulty of being tracked down by supervisors. If you have Internet you may one day receive an e-mail out of the blue from a fly-by-night operation.

### Advertisements:

These entities often advertise in newspapers, magazines and other media (teletext) offering profit opportunities that are much more attractive than those achieved with traditional investments. These opportunities turn out to be false or failed. Once they have launched the bait, all they have to do is wait for their future victims, eager for profits, to bite.

### Verbal references:

One of the most used tricks is to pay profits to the first investors with their own money or that of other investors. By doing this, their effectiveness is communicated from mouth to mouth to the friends of the first investor, and then to the friends of the second investors.

Unfortunately, only the first profits are paid. In subsequent investments, when savers want to recover what they have invested, the money has disappeared.



# What techniques are used in the first contacts to attract investors' money?

The techniques used to capture clients tend to rely on persistence and pressure to take immediate decisions. They are as varied as the ways of establishing contact already described. But there is always a common denominator: their skill at being convincing.

Although this is a feature of any good sales person, fly-by-night operations have the advantage that once the product is sold, they do not have to face complaints because they never had any intention of fulfilling their promises.

## Some of the techniques used:

### **Appearance of a respectable business:**

Those responsible for fly-by-night operations deny that they are so. They know that in order to capture clients it is very important to be regarded as respectable and an expert in the markets. This is why they dress expensively, travel first class and rent luxurious offices, which they open to the public as if they were a prestigious investment company.

On other occasions, it is difficult to obtain an appointment with them, and they even say they are doing people a favour, helping them to earn money easily and without showing their face.

### **Verbosity:**

The common element among those who offer fraudulent investments is their skill in speaking about distant and exotic markets, with a firmness and control of technical detail that makes their verbosity seem credible. They make understanding them deliberately difficult for investors.



**Possibility of achieving big profits:**

The profits spoken of are always higher than those of any conventional investment.

**Scant risk:**

Without totally excluding the risk factor, fly-by-night operations tend to minimize it or, at least, give it no importance. They treat it as something that exists, but which only materialises at certain moments or when the investment is not carried out by expert hands. In any case, they say, the risk is small compared with the profits to be obtained.

**Urgency, insistence on taking a quick decision:**

They always find a reason for making the investment “right now”. Tomorrow is too late. Sometimes they say the investment must be made immediately because it represents a unique opportunity that is only being made to a select and small number of people, other times that a delay will mean losing the big profits that can be made only if the investment is made on the spot.

Urgency is for them an important requirement. This is not just because they want your money as soon as possible and with the minimum of effort, but also because they know perfectly well that if the investor has time to think about the operation or to consult a professional with whom he usually operates, he will probably change his mind.

**Pressure tactics:**

The phone call, or any of the other methods of contact mentioned tend to normally begin in a friendly way, but if the fraudster thinks that you are not going to be an easy victim, he can change his attitude and become tougher. This is in contrast to the approach by people with legitimate offers, most of whom respect your right not to be interested. The pressure tactics take different forms, but generally they are characterized by:

- A tenacious resistance to taking NO for an answer.
- Recourse to insults. Questioning your intelligence or skill in taking decisions.
- Using warnings such as: “you will regret it very much if you don’t” or “you will never be rich if you don’t take risks”.

### **Relation of extreme confidence**

They need to establish a relation of confidence so that investors hand over their money. They know how to do it. **This is why, at times, their message is that they are doing you a favour by offering you the chance to make a juicy profit.** They even suggest that if the investment does not interest you, they have better things to do than lose their time in absurd discussions. If the investor protests, they know they are close to getting your savings.



# How do I know when it is a fly-by-night operation?

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The first line of defence against fly-by-night operations is to be able to identify them. To do this you have to obtain full information on who they are and their activities. How can you identify them?

- Go to the supervisory institutions and ask for information.
- Ask specific questions to the contact person at the fly-by-night operation.
- Recognize their particular way of operating.
- Ask the entity which is proposing a suspicious investment.

## a. Before investing: consult the supervisory institutions:

Always get in touch with the CNMV (Directorate of Investors) and ask if the entity is registered and if it is authorized to provide the investment service it is proposing. You can also do this via the CNMV website ([www.cnmv.es](http://www.cnmv.es)).

**Most fraud victims contact the CNMV after losing money. It is much better to do so beforehand and get the necessary information so that the worst will not happen. Remember: better to prevent than to remedy.**

## b. Ask the person who contacts you from the fly-by-night operation

Investors must clearly know that they not only have the right but also the duty to ask whatever questions they want regarding the investment that is proposed and which could be decisive. Indeed one of the noteworthy differences between authorized and unauthorized entities is that the first facilitate and invite investors to clear up their doubts while the others prefer to be evasive.

**Don't feel intimidated. No question is improper when it concerns how to invest your money.** You are paying to receive financial advice.

These are some of the questions that it always pays to ask:

**How did you get my name and telephone number?**

**Why have you got in touch with me?**

**Is the entity registered with the CNMV or the Bank of Spain?**

**What risks are there in the investment that you are proposing me? How much could I lose?**

**Does the investment meet my objectives? Is it the right one for me?**

**Can you send me a written and detailed explanation of the proposed investment so that I look at it calmly and comment on it with an independent expert?**

**Could you explain the investment to me at a meeting in the presence of my lawyer or a financial expert of my confidence?**

**How do I earn money with this investment? What needs to happen for the value of the investment to rise? (Do interest rates need to increase or fall? Does the stock market have to rise? etc...)**

**Can you give me the names of the executives and their professional background?**

**Can I contact a financial entity for a positive reference on your company?**

**Must I fulfil a formal requirement in order to invest with you? Can you send me copies of the documents and contracts that I need to sign?**

**Regarding the financial product being offered, Is there an Information Prospectus on the issue registered with the CNMV? Can you provide me with the leaflet? Is it traded in an organised market? Can I get in touch with this market and ask for information?**

**As well as the obligations regarding the Mercantile Registry that have to be met, what other public institution supervises your activities?**

**How long has your company been working in this business?**

**What is the route that my money will take? Where will my investment be deposited?**

**What commissions must I pay for your services? How are they calculated? Can you send me a copy of the current commissions?**

**How often will I receive information on my investment? Will I understand the content?**

**How can I settle my investments if I need my money at some point? How much time will it take to recover my investments? Is there an additional cost for doing this?**

**How do I know when I should sell?**

**If there is a dispute regarding my investments, what type of judicial or arbitration procedure should I use to resolve it?**

Remember that it is never enough to just ask questions. The fraudsters are very skilled and have all the answers prepared. **Whenever they offer you investments you must verify them before handing over any money.**

When you ask these questions, take note of the replies. Let the person talking to you know that you are noting down the conversations. They will know you are a serious investor.

### **c. Their special way of operating:**

As well as the tactics we have already analysed, there are other features of their modus operandi that enable you to detect a fly-by-night operation:

- The offer sounds too good to be true. Remember the old saying: an offer that sounds too good to be true probably is not true.
- The operators tend to ask for the money to be handed over by depositing it in a current account, in Spain or abroad, in the name of a non-Spanish company. These companies are often not known by the authorities of third countries.
- They offer investments in foreign markets. Basically they are investments in unknown markets that use complicated financial products, such as options and futures on commodities, foreign currencies and indices.
- **They are particularly reluctant to provide investors with further or up-to-date information.**
- They suggest that the investment should be based on mutual confidence. Remember: although confidence is commendable, it should not be given out indiscriminately, particularly to unknown people who telephone you and ask you to send them your money. It is not good enough to be repeatedly told "trust in me".



# How can I avoid becoming a victim?



1. Verify the existence and legality of the company by calling the CNMV.
2. Don't be pushed into taking hasty decisions.
3. Always demand that written information be sent to you on the investment and on the company offering it.
4. **Do not invest in anything, which you do not fully understand.**
5. In order to evaluate an investment, do not only focus on the high return being offered. This has to be compared with the return offered by the market for similar products and also bear in mind other variables such as risk, solvency of the intermediary, etc.
6. Ask which specific law regulates the activity of the company offering the investment and in which official institution it has to be registered.
7. If it is a complicated investment or operation, before taking a decision seek a second opinion from third parties.
8. Don't trust statements that you cannot verify.
9. Many times, hanging up on a call or not showing any enthusiasm for a publicity leaflet is the best investment.





# What happens if you have already handed over your money?

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Be on your guard, your investment is at risk. We remind you of the following ways to act:

- Ask for full and detailed information. You must not lose track of your money.
- If any of the following things occur – the person who sold you the investment becomes unavailable, information you are waiting for does not arrive, the information is obscure or incomplete, money to be returned to you does not appear and instead of cheques you receive excuses then **alarm bells should ring**. In such cases the best thing to do is to get out of the investment as quickly as possible. Ask for your money to be returned and if necessary threaten to take your case to the authorities.
- They can tell you that you are very close to making a lot of money, that getting out of the investment now would be disastrous. The real risk is them. Insist that your money be returned at once.
- You might achieve it or you might not. It is possible that the fraudster decides to return your money rather than risk the disastrous consequences (closure, fine, penal procedures). If this happens, consider yourself lucky.
- If, despite everything, you do not see anything of your money contact the authorities.
- **Whether your money is returned or not, tell the CNMV what happened and file a complaint with the police or in the corresponding court.** Remember that despite the best efforts of the law and of official institutions, the victims of these fraudulent practices rarely recover their savings, because the fraudsters do the same as everyone else when they earn money: they spend it. However, reporting the case to the CNMV helps to prevent other victims in the future.
- You should be aware that in most cases the money is not recovered, and that you **cannot benefit from the Guarantee Fund of Investments**, as the entity is not registered.



**INFORMATION**



# If I have some doubts where can I get information?



If you are suspicious of investment offers or the companies that make them you can contact the CNMV whose Directorate of Investors can help you.

Also, the CNMV's website ("Warnings to the Public" page) names non-registered entities that provide investment services. There are signs that these companies carry out activities for which they have no prior authorisation, and in general companies against whom the CNMV is taking measures for them to stop their illegal activities.

## **CNMV**

Website: <http://www.cnmv.es>

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