CNMV
Comisión Nacional del Mercado de Valores

Attention to the Complaints and Enquires of Investors
Annual Report 2008

Attention to the Complaints and Enquires of Investors. Annual Report 2008

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1 Introduction

This Annual Report sets out information on the action taken by the CNMV in response to the complaints and enquiries made by investors through its Investors Assistance Office (IAO) in 2008.

The IAO is attached to the CNMV's Investors Division and serves as its relational channel with service users. Investors can place complaints through the IAO when they feel their interests have been harmed or their rights undermined through the action of a company providing investment services, notify incidents in their dealings with the intermediaries providing such services, and enquire about securities market products, services and regulations and about the legal rights that correspond to them.

Investors can take their case to the IAO after first having placed the matter before the respondent entity's Customer Service Department and/or Client's Ombudsman, if they dispute their decision or two months have gone by without them receiving a response. Complaints are resolved through a non binding report from the CNMV which states whether the entity has adhered to the good practices required of securities market participants. It will also inform the investor of his rights and the legal channels through which to pursue them.

The IAO also offers an enquiries service on matters within the CNMV's jurisdiction. Investors can make use of this channel to settle doubts about their rights and how to exercise them or to enquire about the contents of the CNMV's official registers.

The questions investors pose through their enquiries and complaints constitute an invaluable source of information for the Commission's supervisory function with regard to securities markets and their agents. They also shed useful light on practices which may not stand outside the law but can be deemed to be less than appropriate for the retail investor. Knowing the difficulties they encounter in their dealings with service providers can also guide the CNMV's efforts to improve the information reaching investors and give them a better understanding of financial products. Information and education are the vehicles of choice for achieving the investor protection goals entrusted to the CNMV under the Securities Market Law.

Similarly, the contents of reports favourable to the complainant can aid financial entities in improving their customer relations. Many providers adopt the measures urged by the CNMV in order to change the practices giving rise to complaints and prevent them recurring in future. Preserving the trust of retail investors not only redounds to the benefit of individual financial providers; it is also vital for the proper functioning of the financial system as a whole.

This report covers the complaints and enquiries received by the IAO during 2008. It offers details on the main causes of complaints and the criteria the CNMV has followed regarding certain practices, which Customer Service Departments and Client's Ombudsmen might like to bear in mind.

It is organised into five chapters, following this introduction. The second gives an account of the Investors Assistance Office's 2008 activity. It accordingly analyses the volume and nature of the enquiries and complaints received, with details of the types of incidents reported, the resolutions issued, the kinds of entities complained against and the follow-up of reports finding in the claimant's favour. It also describes the IAO's activities in connection with FIN-NET, the cooperation network for handling cross-border disputes set up by the European Commission.

The third chapter divides into three main sections. It opens with a discussion of the criteria and recommendations applied in dealing with some of the year's most relevant cases in terms of their frequency or the novelty of their content. This is followed by a brief description of the complaints resolved in favour of the complainant. The last section examines the questions brought up most regularly in investor enquiries during 2008.

Finally, a series of statistical annexes present the information given in the second chapter (Annexe I), along with a list of unauthorised firms that investors have enquired about to the IAO (Annexe II) and a detailed list of complaints concluding in a report favourable to the service user (Annexe III).

2 IOA Activity in 2008

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2.1 Complaints

2.1.1 Volume and nature of complaints

A total of 1,058 complaints were received from investors in 2008, an increase of 30.8% with respect to the previous year. The growing volume of both complaints and enquiries reaching the IOA has lengthened the time needed for their settlement. Specifically, the response time for the 899 complaints processed in 2008 averaged 123 days compared to the 99 days of 2007. Overall, 47.4% of complaints were settled within four months of their presentation to the CNMV.

Total complaints filed and processed TABLE 1

	2007	2008
Filed in the year	809	1,058
In progress at the end of the previous year	213	234
Processed	788	899
Resolved	610	722
Not accepted	178	177
In progress at year end	**234**	**393**

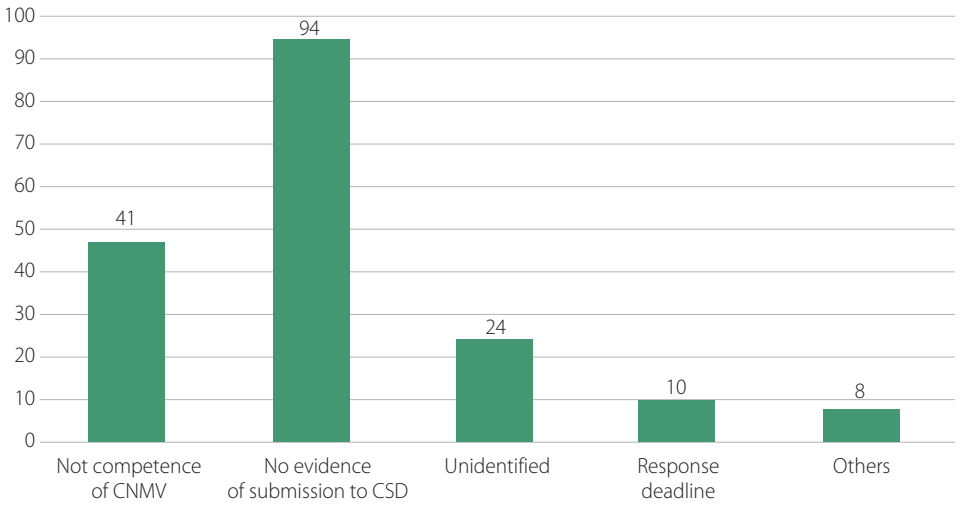
Source: CNMV.

Of the complaints processed in 2008, 80% were resolved with a report from the IAO. Complainants again did better in complying with the formal requirements for filing a complaint, with the result that the percentage of non admissions was down once more with respect to the prior year.

Causes of non acceptance

Most of the 177 cases rejected were because investors offered no proof of having placed the case before the respondent entity's Customer Service Department, while a further 39 were directly outside the competences of the CNMV. Other causes were flaws in the identification of the parties and/or failure to allow the two months stipulated between submitting a complaint to a provider and receiving a response.

Distribution of non accepted complaints by motive FIGURE 1



Source: CNMV.

2.1.2 The subject of complaints

The complaints resolved by the CNMV in 2008 can be classified into two large groups: those arising from incidents to do with the provision of investment services – orders, fees, securities custody – and those concerning incidents with mutual funds – information, NAV applied, inter-fund switches, the exercise of unitholder rights. The first of these groups accounted for 53.7% of the total and the second for 46.3%.

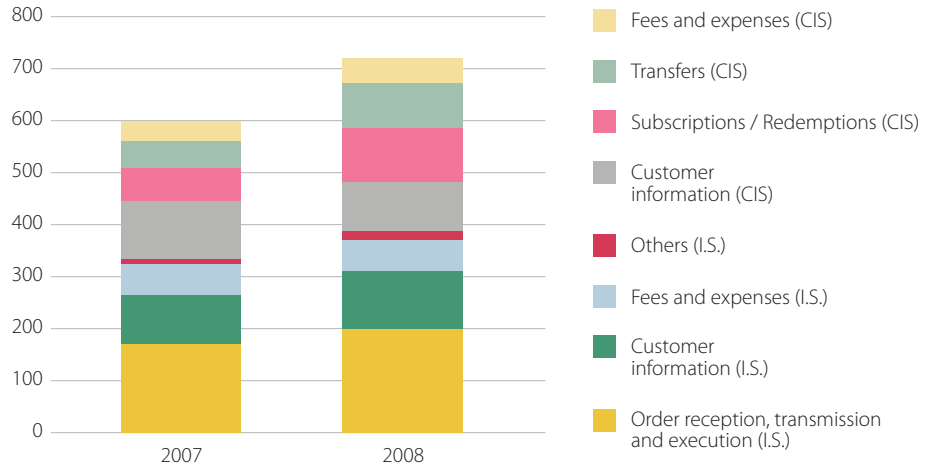
This marks a continuation of last year's experience regarding the subjects of complaints, though 2008 brought an increase in the share falling to collective investment schemes. Table 2 gives a more detailed breakdown of the complaints filed in each of these groups.

Complaints resolved in 2008. Distribution by subject TABLE 2

	2007		2008	
	Number	% total	Número	% total
Investment services	**338**	**55.6**	**388**	**53.7**
Order reception, transmission and execution	173	28.5	200	27.7
Customer information	96	15.8	112	15.5
Fees and expenses	59	9.7	59	8.2
Others	10	1.6	17	2.4
Mutual funds and other CIS	**272**	**44.4**	**334**	**46.3**
Customer information	114	18.7	95	13.2
Subscriptions/Redemptions	65	10.4	103	14.3
Transfers	54	8.9	88	12.2
Fees and expenses	39	6.4	48	6.6
Total complaints resolved	**610**	**100.0**	**722**	**100**

Source: CNMV.

Distribution of complaints resolved by subject FIGURE 2



Source: CNMV.

2.1.3 Type of resolution

Of resolved complaints, over 40% concluded with a report favourable to the provider entity. However, the number concluding with a report favourable to the complainant or an accommodation was significantly higher than in 2008, indicating perhaps that more malpractice incidents are being detected. Table 3 sets out the relative weight and annual variation of each type of resolution.

The number of files passed on to other supervisory bodies like Banco de España or the Directorate-General of Insurance and Pension Funds (Dirección General de Seguros y Fondos de Pensiones) under the one-stop-shop principle or because the subject was deemed to come within their area of competence was also higher in percentage terms, although their relative weight in all settled complaints was lower than in 2007.

Distribution of complaints by type of resolution TABLE 3

	2007		2008		% change
	Number	% total	Number	% total	08/07
Resolved	**610**	**77.4**	**722**	**80.3**	**18.4**
Report favourable to complainant	176	22.3	226	25.1	28.4
Report unfavourable to complainant	342	43.4	365	40.6	6.7
No opinion stated	7	0.9	10	1.1	42.9
Accommodation	76	9.6	112	12.5	47.4
Withdrawal	9	1.1	9	10.0	00.0
Unresolved	**178**	**22.6**	**177**	**19.7**	**–0.6**
Competence of other bodies	39	4.9	41	4.6	5.1
Not accepted	139	17.6	136	15.1	–2.2
Total complaints resolved	**788**	**100.0**	**899**	**1000.0**	**14.1**
Total filed	**809**	**—**	**1,058**		**30.8**

Source: CNMV.

Accommodations and withdrawals

Of the total complaints settled in 2008, 112 concluded with an accommodation by the entity and nine with the complainant dropping the case. Practically all such withdrawals are the result of a previous agreement, with accommodation by the respondent entity, so it makes sense to group them together statistically.

The number of accommodations and withdrawals increased by 42.4% versus the previous year and accounted for 16.8% of the 722 complaints resolved by the CNMV in 2008.

As we can see from A.10 (Annexe 1), most accommodations and withdrawals were related to incidents with mutual funds while 42% had to do with securities market transactions.

2.1.4 Entities complained against

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

Of the 90 entities complained against, 69 were credit institutions, 11 were investment firms and 10 were collective investment scheme management companies. A total of 26 entities were named in 5 or more resolved cases, with 11 of this number attracting over 15 complaints each.

As many as 92.7% of complaints received referred to incidents with credit institutions[1]. Of these complaints, the bulk (70% of the total and 75.5% of complaints against credit institutions) corresponded to banks followed at a significant distance by savings banks (21% of the total and 22.7% of those against credit institutions).

Complaints resolved by type of entity and subject matter

We can see from table 4 that complaints against banks and savings banks tended to turn upon investment services, especially the processing of customer orders.

Second place for the banks is more or less equally shared by defects in customer information regarding investment services and CIS marketing, and problems with CIS subscriptions and redemptions.

[1] Remember complaints against an entity may involve several incidents, which is why incidents with credit institutions account for a larger proportion of total complaints than do credit institutions out of total complainee entities.

Subjects of complaints TABLE 4

	IFs	CIS Mgrs	Banks	S. banks	Coops	TOTAL
Investment services	**18**	**1**	**270**	**94**	**5**	**388**
Order reception, transmission and execution	11	0	146	41	2	200
Customer information	3	0	74	34	1	112
Fees and expenses	2	0	37	18	2	59
Others	2	1	13	1	0	17
Mutual funds and other CIS	**9**	**26**	**231**	**60**	**8**	**334**
Customer information	1	3	71	16	4	95
Subscriptions/Redemptions	3	5	71	22	2	103
Transfers	5	13	54	15	1	88
Fees and expenses	0	5	35	7	1	48
Total complaints resolved	**27**	**27**	**501**	**154**	**13**	**722**

Source: CNMV.

2.1.5 Follow-up of reports favourable to the complainant

The CNMV follows up the action taken by entities when complaint processes have resulted in a report favourable to the complainant. The respondent entity is asked to provide information, with supporting documentation, on any remedial measures taken along the lines urged in the report's conclusions.

A fault is deemed to have been rectified when the provider accredits having dealt with the cause of the complaint, whether by awarding the claimant compensation (whose amount the CNMV report will in no case go into) or accepting the arguments given in the report and taking steps to prevent any future recurrence. When a provider fails to respond before the deadline set, it is deemed not to have rectified the fault for statistical purposes.

In aggregate terms, we can say that in 38.1% of the 226 cases concluding in a report favourable to the complainant, entities had rectified their procedures along the lines indicated, while others chose either not to respond or to challenge the arguments made by the CNMV.

This follow-up provides a check on the efficacy of complaints handling and on how well entities are adhering to the criteria and recommendations that result from complaints analysis. It also has a dissuasory force against abusive practices, while encouraging the adoption of measures to correct faults and prevent their repetition.

Figures for 2008 indicate a decreased percentage of post-complaint rectifications compared to the 55% of the previous year.

Table A.7 (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 in the CNMV report.

We can see that CIS managers are the group that has taken most steps to rectify the faults detected, while investment firms are the most reluctant to do so. Banks and savings banks, finally, perform roughly on a par.

2.2 Enquiries

Among the aims of the CNMV's Investors Assistance Office is to educate investors about the workings of securities markets. To this end, it runs an Enquiries Service for retail investors, where they can get advice and information on the rules governing financial instrument markets and their agents.

The year 2008 saw the start-up of a unified service handling enquiries on all types of financial products and services via a one-stop shop in which the CNMV is partnered by Banco de España and the Directorate-General of Insurance and Pension Funds.

Under this arrangement, citizens can enquire about financial products and services to any one of the three institutions. The receiving institution will pass the enquiry along to the competent authority, which will take care of the reply. Enquiries can be made by e-mail, postal mail, fax or telephone.

A similar one-stop system is currently in operation for the claims and complaints of financial service users, and it is hoped that this enlarged coverage will also speed up the handling of enquiries.

Users can approach the following enquiries services:

Banco de España
Address: C/ Alcalá, 48 – 28014 Madrid
Tel.: 900 54 54 00
Online form: www.bde.es/servicio/reclama/oficina_virtual.htm

Directorate-General of Insurance and Pension Funds
Address: Paseo de la Castellana, 44 – 28046 Madrid
Tel.: 902 197 936
E-mail: reclamaciones.seguros@meh.es

CNMV Investors Assistance Office
Address: Miguel Ángel, 11 – 28010 Madrid
Tel.: 902 149 200
E-mail: inversores@cnmv.es

A favoured route for handling investor enquiries has been the preparation of Q&As covering investors' most frequent questions. A number of such documents were posted on the CNMV website (Investor's Corner) in 2008, setting out the regulator's criteria on issues of topical interest (see table 5).

Investor Q&As 2008

TABLE 5

Q&A on the practical implications of the MiFID for retail investors.
Effects of the Lehman Brothers collapse on Spanish investors
Q&A on automated trading systems (ATS)
Q&A on investor compensation schemes
Q&A on the Madoff fraud and Spanish investors
Information on the preference shares issued by Grupo Santander
Q&A on measures taken by the manager of Santander Banif Inmobiliario FII real estate fund

Source: CNMV.

The IAO was present, as in previous years, at the Borsadiner and Bolsalia stock exchange and financial market fairs held in Madrid and Barcelona, where investors were able to bring their doubts directly to the CNMV.

The IAO dealt with 12,313 enquiries in 2008, an increase of 12.5% with respect to the prior year.

The telephone channel remains the most popular with investors. The enquiries dealt with by call centre operators amounted to 77% of all those received telephonically, and 52.84% of the total number attended in the year. Remaining enquiries (47.16%) were dealt with by the IAO staff team. Most of these came in by e-mail and phone, though 6% were presented face-to-face at the Bolsalia and Borsadiner fairs.

Most enquiries were received in the second half of the year as a result of the chain of events in financial markets: the collapse of Lehman Brothers and the Icelandic banks (Landsbanki and Kaupthing); the Bernard Madoff swindle; restrictions on the short selling of listed shares or the announcement of an extraordinary appraisal affecting the Santander Banif Real Estate Fund.

Distribution by channel of enquiries received in 2008

TABLE 6

	2007		2008		Year-on-year
	Number	%	Number	%	change %
Telephone	7,414	67.74%	8,411	68.31%	13.4%
E-mail	2,373	21.68%	2,903	23.58%	22.3%
Written	312	2.85%	234	1.90%	-25.0%
Face-to-face	846	7.73%	765	6.21%	-9.6%
TOTAL	**10,945**	**100.00%**	**12,313**	**100.00%**	**12.5%**

Source: CNMV.

2.3 IAO involvement in international cooperation vehicles

2.3.1 FIN-NET

The IAO's membership of European network FIN-NET as of 2008 will facilitate the filing of complaints by Spanish investors against financial service providers registered in other countries within the European Economic Area (EEA). It will also help investors resident in other EEA countries to lodge cross-border complaints against providers in Spain. The CNMV's Investors Assistance Office is the second Spanish member of FIN-NET after the Complaints Service of Banco de España.

The IAO attended the two plenary meetings held in 2008, the first in Brussels as invited observer and the second in Madrid last October as a fully fledged member of the organisation. As of January 2009, it has served on the FIN-NET Steering Committee, which assists the European Commission in the preparation of plenary meetings and ensures its coordination with network members. The Steering Committee meets one month before plenaries to discuss and select the items for the meeting agenda and, therefore, for debate among all network members.

FIN-NET (Financial Dispute Resolution Network) was set up 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 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. This is an important condition, since FIN-NET affiliates have significant differences in their structure, nature and powers.

The IAO meets the quality requisites required of FIN-NET members in their complaints handling procedures; namely transparency, adversarial procedure, effectiveness, legality, liberty and representation.

Each new member subscribes to a memorandum which constitutes a declaration of cooperative intent (Memorandum of Understanding on a Cross Border Out-of-Court Complaints Network for Financial Services in the European Economic Area). This document outlines the mechanisms and other conditions according to which members of FIN-NET shall cooperate in order to facilitate out-of-court settlement of cross-border disputes. The memorandum's clauses are not actually binding on members; rather it is a statement of shared principles, conferring neither rights nor obligations on the parties. At end 2008, FIN-NET had a total of 46 members drawn from 21 EEA member countries.

A current priority is to boost the network's representativeness by signing up members in all EEA countries and across the whole gamut of financial services. There are still countries that have no dispute settlement schemes affiliated to the network, and others where out-of-court settlement is not available for certain financial services. In this respect, the European Commission advised in 2007[2] that it would be examining ways to further improve alternative redress mechanisms in financial services, given the gaps detected in their geographical and sector coverage. A starting point will be the feedback obtained from the public consultation launched in 2008 by the

[2] Communication *A single market for 21st century Europe.*

European Commission and FIN-NET[3] on out-of-court dispute resolution in the area of financial services. In this paper, consumers, financial entities and the bodies handling consumer complaints were asked for their views on a range of issues including adherence to FIN-NET, the establishment of alternative dispute resolution schemes, adherence by service providers to this kind of scheme, and how best to inform consumers and publicise the activities of FIN-NET and its members.

Using FIN-NET

A consumer resident in Spain seeking redress from a financial service provider registered in another EEA country contacts the appropriate dispute settlement scheme in his home country, let's assume in this case the IAO. After examining the incident, the IAO can proceed in one of two ways:

(i) Provide the consumer with full information about the relevant settlement scheme in the country of the financial service provider. This will include contact details, the providers and products it covers, the nature of the scheme – private/public, voluntary/compulsory – the languages it can be addressed in and the main characteristics of the cross-border dispute settlement procedure of the responsible authority.

The European Commission has had a website created (http://www.ec.europa.eu/fin-net) open to both FIN-NET members and non members, in order to take this information to the widest possible public.

The complainant may be urged to make a direct approach to the financial provider, assuming his circumstances so allow, and, if so, will be informed of the time available for filing a complaint.

Often FIN-NET affiliate schemes require that the complainant has first put his case to the respondent financial entity. In Spain, this would mean submitting the complaint to its Customer Service Department or, where appropriate, the Client's Ombudsman. Although the IAO imposes no time limits for filing a complaint, other bodies may require the consumer to approach his provider before a determined period has elapsed.

(ii) It is also possible for the consumer to leave his complaint with the local FIN-NET member, which will transfer it to the relevant scheme in the country where the incident occurred or where the service provider has its home-country supervisor.

Once the competent scheme has received the complaint, it will try to resolve the dispute according to its rules and taking into account Commission Recommendation 98/257/EC and the corresponding legislation.

The above procedures represent the standard cooperation format for FIN-NET members. However, alternative cooperation methods may be tried if members judge it appropriate and in the interests of a speedy and effective settlement.

[3] http://ec.europa.eu/internal_market/consultations/2008/alternative_dispute_resolution_en.htm

2.3.2 INFO

INFO (International Network of Financial Services Ombudsman Schemes), set up at end 2007, is an informal network of dispute resolution schemes from all around the world. Its primary goal is to develop the dispute resolution expertise of its members by exchanging technical information and experiences in areas such as: (1) Codes of conduct for dispute resolution schemes, (2) Scheme structure and governance, (3) IT applications, (4) Cross-border referral of complaints, and (5) Continuing education.

Schemes eligible for membership are those operating as out-of-court dispute resolution mechanisms in the financial sector. A separate associate status exists for representatives of regulatory bodies, and ombudsman schemes or offices in consumer sectors other than finance.

At the time of writing, the IAO has not formally applied for network membership, but it is weighing up this possibility in the interests of improved investor protection. In 2008, the IAO attended a series of conferences organised by INFO on the occasion of its annual meeting in New York. Discussion at these events revolved around existing differences in the structure, organisation and governing principles of dispute resolution schemes and the impact of the economic crisis on complaints service activity, along with an exchange of views and experiences on the subject of unsuitable investments.

3 General Criteria and Recommendations Applied in Resolving Complaints

3 General Criteria and Recommendations Applied in Resolving Complaints

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

3.1 Provision of investment services

3.1.1 Reception, transmission and execution of orders

i Content of customer notifications regarding delisting offers

Many of the standard securities custody and administration agreements filed with the CNMV, and governing intermediaries' relations with their clients, stipulate that delisting offers will be taken up failing express instructions from the client.

The CNMV accordingly understands that the content of the notices custodians send their clients on the subject of delisting offers must be fully aligned with their contractual obligations.

ii Correction of erroneous transactions

Incidents in the processing of securities orders are a common feature of market operation. A securities trade that has been wrongly executed and settled is hard to correct without legal recourse, due to the firm nature of the registration and settlement process. In practice, then, the only way to rectify the error and shield the customer from the resulting damages is to execute an order of the same characteristics – number of securities – in the opposite direction, with the provider at fault assuming all the damages that may arise, including tax damages, so the situation is restored as closely as possible to what it was before the mistake was made.

However this corrective trade must previously be made known to and approved by the customer, who will state what he sees as the best remedy for the incident and resulting damages further to his sovereign right to act in defence of his own legitimate interests.

This consent may be tacit or explicit and must extend to all the conditions and characteristics of the remedial act and not just the buy or sell order on the relevant security.

iii Handling of sell orders on fixed-income assets and other securities

Complaints again abounded regarding delays in the execution of orders on securities admitted to trading on the AIAF market. In many cases, the cause of the complaint was the failure of a sell order.

In general, the CNMV considers that the proper course for a provider receiving a sell instruction from a client on bonds or preference shares is to seek a counterparty for the order as specified in its Order Execution Policy, which must lay down specific trading rules for this type of asset.

The Order Execution Policy should establish a series of principles including, among others, the search for the best buy positions (which should never be too narrowly focused, since this might cut down the probability of finding a counterparty) with the backstop of approaching the liquidity provider(s) in the case of issues covered by a liquidity contract (as specified in the issue prospectus registered with the CNMV), which commits them to boost market trading by quoting bid and ask prices.

3.1.2 Customer information

a. Information given during the marketing of structured products

Another frequent complaint in 2008 concerned the information provided to customers purchasing structured financial products.

a 1. Information on the customer

In the case of transactions prior to 19 December 2007, the provider was obliged to procure pre-sale information on the customer's financial situation, investment experience and investment goals whenever pertinent to the proposed service, to ensure that its characteristics matched reasonably well with the buyer's expectations.

The purpose of building up this investor profile was to make sure clients were approached with the right kind of product, though low-risk products could be marketed freely to any member of the public.

Under the rules in force as of 19 December 2007, the complexity of structured products requires that their appropriateness be checked by reference to the client's existing knowledge and experience.

a 2. Information to the customer

Entities providing investment services should explain the characteristics of financial instruments and the associated risks in sufficient detail to enable clients to reach an informed investment decision. This information on product characteristics should be truthful, transparent and sufficient to its purpose.

In the case of individualised, custom made products where the customer has no prospectus to refer to, the distributor must write a clear, succinct description of

the product's main characteristics and risks into the text of the subscription agreement.

a 3. Periodic post-sales information

Custodian entities have the legal and contractual obligation to send customers periodic statements on the performance of their investment portfolios.

This information must also meet the required standards of clarity, accuracy, truthfulness and timeliness, particularly with instruments not traded on secondary markets, whose prices the average investor will find harder to track.

Such statements should clearly identify each financial instrument and its issuer, along with its face and cash value, calculated in the latter case according to the valuation methods stipulated in the contract.

b. Information for Internet trading

Entities which offer investment services should organise and control their resources responsibly, adopting the measures and employing the means necessary to conduct their activities in an efficient manner. They also have a general duty to supply customers with all relevant information at their disposal that can help them reach a well founded investment decision.

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

In the event of system failures that impede normal service, the customer should be promptly informed and offered an efficient alternative that does not impose a higher cost.

Certain incorrect practices came to light in 2008 regarding the key information to be provided to users: misidentification of issues, failure to update the transactional tools available to clients, insufficient information on order status, etc., which even found their way into the printed statements sent to investors and the indications given through telephone banking services.

Whether or not the data posted online are compiled and managed by a third party, the CNMV reminds all intermediaries that it is they who maintain a business relationship with the client and must accordingly answer for the service provided.

In other words, they may not disclaim responsibility for the performance of services that figure in the corresponding provision of service contracts.

c. Conservation of recordings of telephone orders

Royal Decree 217/2008 of 15 February on the legal regime of investment firms and of other investment service entities stipulates that all obligated subjects must conserve the data kept in their records for at last five years, including details of transactions and customer orders on financial instruments.

This supersedes the earlier obligation to keep records of telephone orders for at least three months, and brings them within the general regime of five years' conservation.

d. Margin trading: Liquidation of customer positions due to insufficient margin

This is when entities liquidate the open positions of their margin trading clients (by selling the securities acquired in a margin trade or buying those sold on margin) due to a shortfall in the margin posted. This practice would rely on powers to this effect being conferred on the entity in the agreement subscribed to by the customer.

The providers of investment services must act with due diligence and transparency in the interests of their clients. So while this kind of clause is certainly valid, if the lender entity decides to cancel its credit and the resolutory condition is not automatically executed but is simply optional under the terms of the contract, it should first advise the customer, indicating how he or she can regularise the situation and the time available to do so.

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

e. Information to customers in the event of their intermediary being acquired by a third party

The takeover of an investment service provider may at times entail the wholesale transfer of clients and portfolios and eventually the closure of the original firm, with its clients and assets being taken on directly by the acquiring entity.

Such circumstances must be notified to customers and new contracts signed, except in clear-cut cases of business succession. Otherwise, customers' securities accounts may be left inactive, given that no transactions may be made until their contractual situation is regularised.

Customer migration should therefore be completed as soon as possible, and the acquiring entity must act swiftly and diligently in getting the acquired firm's clients to regularise their situation by signing new contracts and any other relevant papers.

3.1.3 Fees and expenses

Changes in actual fees

Entities will often apply lower fees on a continuous basis than the maximum amounts stated in their fee brochures. In such cases, the actual fees agreed with clients should be written into the service contract.

By law, customers must be given notice of any change in the fees they are actually charged, whether or not this coincides with a change in the corresponding maximum rate, and shall be entitled to terminate their contractual relationship without being liable for the new fees within the time stated in the contract, which may be no less than two months.

Notice must be given in writing in a separate mailing or enclosed with some other communication sent to the customer's home address. It may also be given by any electronic means the entity regularly employs in its relationship with the customer.

A different case is when entities refund fees to their customers for commercial considerations.

In the CNMV's view, being granted occasional fee rebates for commercial purposes does not relieve customers of their payment obligations; nor does the discontinuation of such rebates constitute a change in fees subject to the legal provisions described above.

3.2 Mutual funds and other CIS

a. Transfers between CIS marketed by the same entity

Since enactment of the legal reform authorising tax-free transfers between mutual funds, complaints have abounded about incidents in the switching process. And the year 2008 was no exception.

We look first of all at transfer requests where the delivering and receiving distributor are the selfsame entity. In these cases, transfers should be handled in the same way as between schemes with the same manager, i.e., without being bound by the time limits for transfers and confirmations set out in article 28 of the Spanish CIS Law.

As such, the effective date of the redemption order in the delivering fund should be the day the unitholder presents a signed transfer request, without deferral of any kind.

b. Rejection of transfer requests by the receiving entity

When a transfer is sought between one mutual fund and another, the distributor of the receiving fund processing the order must pass it to the delivering entity within one working day. The manager of the delivering fund runs the necessary checks then transfers the amount specified to the receiving fund, along with the unitholder's tax details. This whole process may take no more than seven days, plus the one day the receiver has to convey all the appropriate documentation.

At this point, if any of the data are incorrect, the manager of the receiving fund will reject the transfer on the grounds of an error attributable to the delivering entity.

The criterion systematically applied in resolving complaints on this subject, and maintained throughout 2008, is that when a rejection occurs due to an error by the delivering entity, the receiver should promptly notify the incident to the unitholder, indicating its causes.

Rejection also means the return of the amount transferred to the account of the delivering fund, implying the automatic re-subscription of delivering fund units in the investor's name.

However, Inverco's current Transfers Protocol states that "in the event of a transfer being returned by the receiving manager, it will not be necessary to restart the transfer with a new order. Instead, the delivering manager, after consulting with the receiving manager, will send a corrected transfer order with the same reference number as the original failed request."

As such, we understand that when an error can be corrected, the delivering entity must immediately contact the receiving entity so they can settle the incident between them, i.e., not re-subscribing for units in the delivering fund or issuing a new transfer order, but simply sending the corrected order with the same reference number as its predecessor.

This procedure should easily be completed within one working day, since it only involves correcting an error previously identified by the receiving entity.

This new criterion is transactionally more expedient as well as respectful of the client's intention to withdraw from the delivering fund.

In the case of non correctable errors, the unitholder should be restored to his start-out holding in the delivering fund, without any alteration of his tax position.

c. Use of stop-loss orders with mutual funds

The use of stop-loss orders to limit losses in mutual fund transactions is a strategy that requires the customer to be fully and accurately informed so he understands its conditions and effects, particularly as this kind of order is an annexed instruction outside the fund's normal operation.

In the cases analysed, what clients had signed was an inter-fund transfer order with an exit trigger consisting of the fund's value falling a determined percentage below its subscription NAV or the subsequent maximums attained.

Considering the legal and financial characteristics of mutual funds, we understand that the client must be expressly informed that the NAV at which the redemption would go through in the event of execution may not coincide with the trigger NAV, but could be higher or lower and, in any case, is not knowable on the activation date.

d. Information to unitholders on unrealised gains

Collective investment scheme management companies are in charge of the unitholder register, and must have all the data needed for its proper upkeep. These companies, or their distributors if they also act as custodians, must likewise send unitholders regular position statements.

Unitholders are entitled to receive complete, truthful and accurate information at any time on the value of their units and their position in the fund. This means that if they approach their distributor to enquire about the capital gains accumulated through their investment, the latter must either provide the information directly, if they have it on their books, or else request it from the manager.

In no event may they leave the client uninformed or otherwise elude their obligation. Note, however, that when the unitholder has ordered subscriptions and redemptions through various distributors, only the manager can know his global position in a given fund.

e. Cancellation of managed mutual fund portfolios

The termination of a management contract for a portfolio of mutual funds must be carried out according to the customer's instructions for the recovery of the invested assets. This means taking all necessary steps to give him possession of the formerly managed portfolio within the contractual deadline and to conclude any transactions still outstanding.

This obligation must be met regardless of whether the customer's instructions comprise a transfer order to other funds or an ordinary redemption order, avoiding any spurious delays.

f. Mutual fund redemption fees and liquidity windows

Some guaranteed mutual funds specify one or several dates as liquidity windows during which investors can cash in units without paying a redemption fee (for instance, the 15th of each month). However many will simultaneously impose cut-off times for such orders to take effect (for instance, 3:00 p.m.). Incidents can arise with investors who wish to take advantage of this liquidity facility but enter their request too late for it to be registered that same day.

In practice, the management company is in its right to group all redemption orders entered after the cut-off time and to consider them as registered the next working day to all relevant effects – net asset value, charging of fees, etc. However this means unitholders can only benefit from liquidity windows if they enter their orders between 3:00 p.m. on the 14th and 3:00 p.m. on the 15th, in the example given above.

Remember the purpose of liquidity windows is to give guaranteed fund unitholders the chance to sell at the market price without paying a redemption fee. And given the short time available and the harm that may result from any misunderstanding, schemes should take careful stock of the information available to unitholders for reaching their investment decisions, which should be clear and precise, without the potential to mislead.

It would be more transparent for the unitholder if the fees section of prospectuses gave a clear indication of the opening and closing times of liquidity windows or, failing this, if the entity warned at the time of receiving the redemption order that a fee would be levied on the same.

g. Change of distributor in a foreign CIS

When two entities agree a change of distributor for one or several sub-funds of a foreign CIS, investors must be informed of this fact in a timely and appropriate manner and offered suitable alternatives.

They may not however challenge the decision, and their only option should they object will be to sell or transfer their fund holdings.

Investment service providers must provide clients with all information at their disposal that may be useful in forming an investment decision. They must ensure that this information is accurate, and fair, without the potential to mislead, taking care not to gloss over important points.

Hence, notice to clients informing them of the change of distributor must be clear about the length and dates of the transition period, which should not involve more transaction down time than is strictly necessary.

A new sub-fund distributor can also mean important changes for the customer. Except in clear cases of business succession, it will mean that new contracts must be signed with new fees and other conditions, the use of new trading platforms, etc., and all this without the investor having any say.

In view of these circumstances, it is vital that the notices sent to clients arrive well in advance, and avoid giving the impression either that nothing will change or that he will not be required to participate actively in the changeover process.

4 Reports Favourable to Complainants

4 Reports Favourable to Complainants

In this section we offer a summary of complaints concluding in a report favourable to complainants, with a breakdown into three large categories: those referring to the provision of investment services, those to do with mutual funds and other CIS, and those relative to testamentary execution.

In the investment services category, reports favourable to investors have touched on (1) order reception, transmission and execution, (2) customer information and (3) fees and expenses, followed by another, miscellaneous group. Section 4.1. discusses the main issues raised under each of these headings, while table 7 lists the companies complained against and, in each case, the number of complaints received.

Reports favourable to complainants in the CIS category touched on (1) customer information, (2) subscriptions and redemptions, (3) transfers and (4) fees charged. The statistics for CIS complaints are provided in table 8 while their main features are summarised in section 4.2.

Likewise section 4.3 and table 9 focus on complaints regarding testamentary execution.

In Annexe 3, finally, we offer a brief description of all the complaints upheld.

4.1 Provision of investment services

4.1.1 Reception, transmission and execution of orders

Securities markets have been the venue for diverse incidents regarding the processing, execution, and settlement of transactions.

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

On other occasions, incidents have to do with the channel used to process the order. The bulk of these incidents concern online trading and, in many cases, trace to technical failures or constraints in the corresponding systems.

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

Reports favourable to the complainant in respect of investment services

TABLE 7

SUBJECTS	ENTITIES	COMPLAINTS
Order reception, transmission and execution	Banco Banif, S.A.	R/567, 713/2007
	Barclays Bank, S.A.	R/613/2007, R/092/2008
	Bankinter, S.A.	R/393, 397, 400, 688, 715, 780/2007-R/102, 274, 326, 366, 727, 820, 834/2008
	Banco Guipuzcoano, S.A.	R/722/2007, R/130, 394/2008,
	Banco Inversis, S.A.	R/680/2007, R/752/2007 - R/47, 163, 391, 392, 508/2008
	Banco Español de Crédito, S.A.	R/009, 047, 050, 143, 166, 173, 183, 221, 286, 396, 478, 586, 718, 729/2008
	Caja de Ahorros del Mediterráneo	R/614, R/752, R/800/2007 - R/643/2008,
	Caja de Ahorros de Valencia, Castellón y Alicante	R/413/2008
	Banco Caixa Geral, S.A.	R/427/2008
	Open Bank Santander Consumer, S.A.	R/784, 785, 786/2007 - R/011, 030, 040, 112, 297, 469/2008
	Caixa Rural La Vall "San Isidro"	R/352/2007
	Banco Pastor, S.A.	R/696/2007
	Deutsche Bank, SAE	R/797/2007, R/032/2008
	C.A. y M.P. de Madrid	R/053, 161, 513/2008
	Banco Popular Español, S.A.	R/198, 551/2008
	M.P. y C.A. San Fernando	R/726/2007
	ING Direct, N.V. Suc. en España	R/590/2007
	C.A. y Pensiones de Barcelona	R/111, 789/2008
	Citibank España, S.A.	R/658/2007
	Banco Bilbao Vizcaya Argentaria, S.A.	R/344/2008
	Banco Santander, S.A.	R/285, 287, 471, 522/2007 - R/190, 696/2008
	Caja de Ahorros de Galicia	R/512/2007 - R/085, 436, 452/2008
	Banco de Galicia	R/051/2008
	Caixa Catalunya	R/793/2007
	Renta 4, SV, S.A.	R/441, 670/2008
	C.A. y M.P. de Córdoba	R/635/2008
Customer information	Banco Banif, S.A.	R/19/2008
	Barclays Bank, S.A.	R/629, 764/2007 - R/335, 395/2008
	Citibank España, S.A.	R/523, 762/2008
	Deutsche Bank, SAE	R/608,/2007
	Ibercaja	R/574/2007
	Banco Español de Crédito, S.A.	R/413,730/2007
	Caja de Ahorros del Mediterráneo	R/776/2007
	Banco Bilbao Vizcaya Argentaria, S.A.	R/109/2008
	C.A. y M.P. de Madrid	R/390/2007, R/469/2007, R/145,
	Banco Santander, S.A.	R/690/2007, R/057, 279/2008
	Banco de Finanzas e Inversiones, S.A.	R/280/2008
	Banco Sabadell, S.A.	R/419/2008
	Open Bank Santander Consumer, S.A.	R/474, 570/2008
	Bankinter, S.A.	R/593/2008
	Lloyds TSB Bank PLC	R/712/2008
	Banco Inversis S.A.	R/637/2007
	Caja España de Inversiones, CAMP	R/017/2008
Fees and expenses	Banco Inversis, S.A.	R/550/2007
	C.A y M.P de Madrid	R/703/2007
	Ibercaja	R/728/2007
	Banco Bilbao Vizcaya Argentaria, S.A.	R/263/2008
	Banco Santander, S.A.	R/036, 182/2008
	Renta 4, SV, S.A.	R/204/2008
	Bankinter	R/320/2008
	Cajamar	R/348/2008
	Banco Banif, S.A.	R/482/2008
	Caja de Ahorros del Mediterráneo	R/15/2008
	Ahorro Corporación Financiera SV	R/20/2008
	Cortal Consors, Sucursal en España	R/59/2008
Other subjects	ING Direct	R/310/2007
	Bankinter	R/494/2007
	Caja España de Inversiones, CAMP	R/544/2007
	Alpha Finanzas, A.V., S.A.	R/267/2008

Source: CNMV.

Incidents relating to the execution of securities orders

Many incidents reveal a lack of due care in order processing, with problems like failure to fill orders, unjustified delays in execution or differences between the customer's stated instructions and the action actually taken. There are even cases of transactions being made without the consent of the holder of the securities administration and custody contract. Processing errors at times betrayed ignorance of market rules or widely available information.

Other complaints reveal that entities are not informing customers properly about why orders have failed to execute, even when there are valid reasons like ambiguous wording or missing data. Special care should be taken in the case of orders placed on foreign markets, where a deficient knowledge of the trading rules can distort clients' earnings expectations.

There are also cases of entities committing the same errors over a prolonged period of time, compounded by their failure to inform the client about the mistakes made and the remedy applied.

Triggering of conditional orders

A number of complaints were directed at 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 common denominator here was that all the complainants had been trading online. They were also using this mechanism as a hedge against price falls in their portfolio instruments; precisely the way they were sold by the respondent entities.

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.

The CNMV's view was that these types of orders require close and active management on the part of the intermediary, given that the SIBE (Spanish Stock Exchange Interlinking System) does not recognise them as standard transactions. Furthermore, entities must provide sufficient information about their nature and characteristics so customers fully understand their uses. In this respect our analysis found big differences in the quantity and quality of the information given.

That said, if it is clear that the instruction existed and was effectively issued by the complainant, the entity cannot be held liable for the non performance of the sale transaction. This is so, in the CNMV's opinion, because it is the intermediary's responsibility to monitor the exit condition and forward the order to the market in accordance with the price parameters set by the customer, but its actual execution depends on a suitable counterparty being found.

Better information would help investors to understand these products and handle them the right way. This would require entities to adopt certain informative precautions along the following lines:

— drop expressions like "insure your investment" when talking about the advantages of stop orders;

— mention the risks associated with this kind of order, for instance: (i) setting the same price for the exit condition and the execution of the order, which may mean the order cannot be filled in certain market circumstances, (ii) the possibility of the client going overdrawn in his cash or securities account, because with conditional orders no balance checks are run until after the order is activated, and (iii) the fact that activation does not mean the order will automatically go through at once;

— give examples of the kind of order to place if what the client wants is to limit losses or lock in profits;

— have a scrolled warning message automatically come down which the user must sign off to continue with the transaction, etc.

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 tend to centre on incidents which reduce this value-added or even 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 entities offering online trading should be able to guarantee their clients that they provide an effective, reliable service complete with accurate, up-to-date information.

Incidents relating to acquisition and sale of preferential subscription rights

Two reasons can be singled out for complaints under this heading: (i) the custodian failing to act, with the result that the rights expired after the trading period; (ii) the custodian selling the rights between the deadline for issuing instructions and the close of the trading period, despite the customer's desire to avail themselves of the same.

It is useful here to refer to the criteria and recommendations given in the IAO's 2007 report, though some may need review and/or qualification in the resolution of future complaints pursuant to the principles and obligations deriving from the MiFID.

Takeover bids

The majority of errors committed in the processing of takeover bid acceptance orders were due to custodians (getting the owners of securities mixed up) or intermediary entities (with errors like the erroneous blocking of securities, misassignment of ownership, shortening deadlines, inattentiveness to bid milestones in breach of contract terms, etc.).

Incidents in derivatives trading

The incidents most commonly reported in derivatives trading have to do with processing errors, such as margin miscalculation or non registering of payments, and the failure to inform investors about the correction of errors or the reasons for the non execution of incomplete orders.

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.

The AIAF market differs greatly from the secondary market in equities in terms of listing conditions and the confirmation, execution and settlement of orders in securities admitted to trading, since it is a decentralised, 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. The result is that orders may fall through due to lack of diligence in the search for a counterparty.

4.1.2 Customer information

At the root of many complaints made against service providers were information shortcomings. In some cases, investors had not been told of either the costs attached to products or basic characteristics such as their valuation method, the market where they trade, their redemption conditions or the possibilities of early redemption. The duty to supply clients with truthful, complete and comprehensible information extends not only to the wording of contracts but to all written and verbal information given out at the point of sale. Entities are responsible for providing this kind of information, and will be no less answerable when the sale initiative is not theirs directly.

The obligation to check that the product being marketed is suitable for the prospective investor is at the heart of the MiFID provisions now in force. In the case of retail investors, sales of financial instruments require a series of prior steps:

— An entity offering a given product must ensure that the client has the prior knowledge and experience to fully understand its nature and its risks. This is known as the appropriateness test.

— In the case of personalised advice or when securities are being acquired under a portfolio management agreement, the provider must check that the product recommended or portfolio being constructed also fits well with the customer's investment goals and financial circumstances. This is known as the suitability test.

Another frequent complaint in 2008 concerned the information supplied to customers contracting structured financial products.

4.1.3 Fees and expenses

Fees for foreign market transactions

In one complaint resolved with a report favourable to the complainant, the provider had applied fees other than those figuring in the brochure filed with the CNMV. It also treated orders differently from securities transactions when these two concepts had not previously been demarcated.

Transaction fees

Complaints about fees included cases of misapplication, giving rise to unjustified charges, changes in preferential conditions without previous notice and insufficient documentation. Others referred to information failings such as lack of due clarity, insufficient itemisation or discrepancies between the details posted on the provider's website and those appearing in the contract signed with the customer.

4.1.4 Other subjects

Payment of dividends into current account

One complaint resolved in favour of the customer involved delays in the receipt of dividend payments. The fact of having subcontracted a service is no defence, since externalisation does not relieve a provider of responsibility for complying with deadlines or other obligations between principal and client.

Portfolio management

The practices detected in complaints under this heading consisted of failure to classify clients and therefore to delimit the transactions in which they could engage, and lack of information regarding the implicit fees charged to collective investment schemes in a managed portfolio.

4.2 Mutual funds and other CIS

Reports favourable to the complainant in respect of mutual funds and other CIS

TABLE 8

SUBJECTS	ENTITIES	COMPLAINTS
Customer information	Bankinter, S.A	R/435/2008
	Banco Bilbao Vizcaya Argentaria, S.A.	R/099/2008
	Banco Inversis, S.A.	R/261/2008
	ING Direct NV, Sucursal en España	R/174/2008
	Banco Santander, S.A.	R/439/2007 - R/579/2008 - R/596/2007 - R/604/2008
	Banco Español de Crédito, S.A.	R/656/2008 - R/386/2008
	Banco Espírito Santo, S.A.	R/688/2008
	Banco Banif, S.A.	R/511/2007 - R/514/2007
	Banco de Finanzas e Inversiones, S.A.	R/001/2008
	Mapfre Inversión Dos, SGIIC, S.A.	R/101/2008
	Caja de Ahorros and Pensiones de Barcelona	R/350/2008
	Caja Laboral Popular, Cooperativa de Crédito	R/695/2008
Subscriptions and redemptions	Banco Bilbao Vizcaya Argentaria, S.A.	R/541/2007
	GVC - Gaesco Gestión, SGIIC, S.A.	R/621/2007
	La Caixa Gestión de Patrimonios, S.V., S.A.	R/791/2007
	La Caixa Gestión de Activos, SGIIC, S.A.	R/052/2008
	Banco Santander, S.A.	R/071, 491/2008 - R/530/2007
	Caja de Ahorros de Salamanca y Soria	R/089/2008
	Banco de Galicia, S.A.	R/393/2008
	Banco Inversis, S.A.	R/620/2008
	Open Bank Santander Consumer, S.A.	R/302/2008
	Caja de Ahorros de Zaragoza, Aragón y Rioja (IberCaja)	R/362/2008
	Banco de Valencia, S.A.	R/626/2008
	Banco de Sabadell, S.A.	R/409/2008
	Banco Español de Crédito, S.A.	R/584/2008
	Deutsche Bank, S.A.E.	R/010/2008
	Banco de Finanzas e Inversiones, S.A.	R/602/2007 - R/107/2008
	Altae Banco, S.A.	R/407/2007
Transfers between CIS	Banco de Andalucía, S.A.	R/652/2008
	Open Bank Santander Consumer, S.A.	R/137, 374, 378, 581, 672/2008
	Banco Banif, S.A.	R/229, 276, 467/2008
	Banco Inversis, S.A.	R/351, 368, 369/2008 - R/322, 285/2008 - R/734/2007 - R/147, 172, 234, 236, 116/2008
	Gesmadrid, SGIIC, S.A.	R/351/2008 - R/368/2008 - R/369/2008
	Popular Banca Privada, S.A.	R/265/2008
	Abante Asesores Gestión, SGIIC, S.A.	R/219/2008
	Bankinter, S.A.	R/199/2008
	GVC - Gaesco Gestión, S.A., SGIIC	R/124/2008
	Caixa Catalunya	R/104/2008
	Banco Sabadell, S.A.	R/721/2007 - R/583/2007
	Axa Ibercapital, A.V., S.A.	R/225/2008
	Caja de Ahorros de Galicia	R/639/2008
	Banco Santander, S.A.	R/418/2007 - R/470/2007 -R/587/2007
	Caja de Ahorros y Monte de Piedad de Madrid	R/406/2008 - R/682/2007 - R/692/2007
	La Caixa Gestión de Patrimonios, S.V.	R/061, 212/2008
	Popular Gestión Privada, S.A., SGIIC	R/200/2008
	Caja de Ahorros del Mediterráneo	R/538/2007
	Banco Español de Crédito, S.A.	R/122/2008 - R/086/2008
	Cajamar, cajarural, Soc. Coop. de Cto.	R/775/2007
	Caja de Ahorros y Monte de Piedad de Navarra	R/016/2008
	Bestinver Gestión, S.A., SGIIC	R/464/2008
	Crédit Suisse Gestión, S.A., SGIIC	R/464/2008
Fees	Caja de Ahorros de Zaragoza, Aragón y Rioja (IberCaja)	R/237/2008
	Bestinver Gestión, S.A., CIS mgrs	R/235/2008

Source: CNMV.

4.2.1 Customer information

Before purchasing CIS units

Current legislation imposes a series of informational requirements on firms offering investment services. First of all, the financial provider must supply the customer with advance information on the company and its services so they can choose the intermediary that suits them best.

Also, customers, including prospective customers, should be given a general description of the nature and risk of the financial products carried, bearing in mind whether they are classified in the retail or professional category. This description should explain the products in sufficient detail to allow the client to take an informed decision.

This information forms part of the registered documentation of collective investment schemes, so before any purchase the intermediary must provide a copy of the simplified prospectus and the latest semiannual statement with details of the fund or company. The full prospectus and latest annual and quarterly statements should also be made available on request.

In the case of foreign CIS marketed in Spain and entered in the corresponding CNMV register, the distributor must provide share or unitholders resident in Spain with a copy of the simplified prospectus and latest report containing financial material, translated into Spanish, before they subscribe to the scheme. Investors should also be given a copy of the marketing memorandum registered with the CNMV, setting out relevant facts about the scheme's distribution in Spain. This memorandum should be attached as an annexe to the simplified prospectus. Copies of the scheme's other official documents should also be furnished on request.

Complaints about the information given to customers suggest that these mandatory documents are at times replaced by other types of verbal or written information (including internal summaries drafted by the entity itself). This is clearly insufficient as well as detrimental to the purpose, which is for clients to understand the risks and conditions of the products they plan to buy.

Information on mutual fund characteristics

The complaints grouped under this head are comparable to those above in that the information given to investors was in all cases incomplete; no prospectuses were delivered and the factsheets replacing them not only had details missing but at times contradicted the contents of the prospectus, leading the client to take misguided investment decisions.

Information on the exchange rates applied to transactions

A series of complaints turned on the customer not being told beforehand about the exchange rates applicable.

Information about investment plan fees and associated risks

In this case, although the CIS prospectus and subscription form both indicated the subscription fee, it was felt more information was needed on the exact amounts chargeable under each plan option.

Also, the marketing material provided was found to be excessively biased in focusing only on the advantages to the exclusion of costs and risks.

During and after the investment

After purchasing CIS units or shares, the investor is entitled to go on receiving information. Annual and semiannual reports should 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 mail if this is the medium preferred by the customer. All these documents must 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 his fund 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 apprised of his position, the composition of the fund's portfolio and relevant events or movements taking place in the period.

Investors should also be provided with information on each transaction, including the associated fees and expenses.

Finally, managers must be scrupulous in complying with their obligation to advise investors of any essential changes affecting the fund's characteristics.

Incorrect information on the unitholder's position and transaction settlements

In one of the cases described, the entity was found to have misrepresented the length of the investor's shareholding, so his returns were wrongly calculated for tax purposes. In another, mistakes had been made in the calculation of capital gains and withholding taxes. In a third, the scheme failed to provide information on its real capital gains, arguing that this was the job of the distributor as the direct point of contact with the investor. In the fourth and last, the information on the customer's investment was found to be incorrect. All these incidents betrayed record-keeping deficiencies as well as lack of due care in protecting the client's interests.

Earnings protection contracts

As in 2007, a number of complaints expressed investors' discontent with earnings protection options on mutual funds.

What they mostly reveal is a poor knowledge of how these products work. They are basically derivative products whereby the entity undertakes, in return for a premium, to pay guaranteed fund investors a higher NAV than they would otherwise obtain on executing the guarantee. At times, payment of this premium is via a loan payable on the fund's guarantee expiry date.

On analysing this type of complaint, the CNMV considers whether information on the derivative product is written into the contract the investor must sign at the moment of subscription.

Failure to inform about mutual fund mergers or changes in their characteristics

CIS regulations lay down a series of transparency requirements with regard to unitholders, so they possess all the information they need to make a reasoned investment decision. Hence any changes in a fund's characteristics must be disclosed beforehand to unitholders, so they have time to analyse their content and reach the decision – to continue or withdraw – that best serves their investment goals. As a rule, such notice is given in a letter sent to each unitholder's postal address.

Investors have the choice of waiving their right to receive periodic information, but must invariably do so in writing.

As regards notice of material changes triggering unitholder exit rights, the CNMV takes the view that these should be automatically notified, whether or not the entity is following instructions from the client not to send out regular mailings. Such notice is essential if the investor is to have the input he needs to decide for or against the proposed new terms.

Information on guarantee renewal under Income Distribution Plans

By law, managers must advise unitholders of material changes affecting fees, investment policy or the guarantees enjoyed before they are registered or come into effect, giving them a minimum of one month in which to redeem their units free of charge further to their voluntary exit rights.

Any investor unhappy about the changes is entitled to exercise this exit right, signing the corresponding redemption order. Investors not exercising their exit rights within the period envisaged will be understood to accept the new characteristics of the fund, which will continue being the same entity from a legal standpoint. In the incident in question, however, investors accepting the new guarantee were required to sign up to an Income Distribution Plan. Since the complainant had not signed (he wished to cash in his units), the respondent entity had no right to assume his acceptance. Also, the new guarantee had certain features that departed from the standard, which should have been specifically brought to investors' attention.

Registration and filing of orders

In the complaints grouped under this head, entities were deemed to have been negligent in not conserving copies of subscription or redemption orders for the legally prescribed period.

4.2.2 Subscription and redemption of 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. This document includes information about how the applicable NAV is to be calculated, and the corresponding cut-off times, as well as specifying the subscription and redemption fees payable by the investor and the dates of charge-free liquidity windows.

In general, a mutual fund subscription is good the moment the cash is received in the fund's account. In the case of redemption, the investor will receive the cash within a maximum of three working days from the date of the NAV applicable to the order.

The most frequent incidents under this head referred to the calculation of applicable NAV, the contents of subscription or redemption forms and the timing of execution.

Order delays and non performance

Various complaints concluding in a report favourable to the complainant concerned unjustified delays in the transmission of orders, the execution of subscriptions and redemptions and payments to associated cash accounts.

Order executions without the unitholder's consent

This heading covers a number of complaints when orders were accepted from a single holder when they required the signature of all parties, or when the entity acted without the holders' consent.

Deficiencies in order content

Some complaints evidenced serious deficiencies, like the misidentification of the fund, the omission of the investor's signature from a subscription order, or cases where the investor was made to sign a standard securities order instead of a fund subscription form or a cash transfer form instead of a redemption form.

Another noteworthy error was the inclusion of the waiver of rights to receive periodic statements within the subscription order, when it should in fact be a separate document.

Determination of NAV

Complaints under this head concluding in a report favourable to the investor referred to errors in the NAV applied. In some cases, different orders were assigned different NAVs despite their content being identical. In others, the manager applied a cut-off time for determining NAV other than that specified in the fund's prospectus on the spurious grounds of the IT demands deriving from its multi-manager structure.

Incidents with foreign CIS subscription and redemption orders

In certain complaints resolved in the complainant's favour it was found that entities had wrongly processed orders issued by the customer. In one case, the provider claimed that the order could not go through because it was given in a currency other than that of the investment, though this possibility was envisaged in the fund prospectus and should accordingly have presented no difficulty. In another, the NAV applied corresponded to a date later than that of the order. On this occasion, the entity argued that the order had not been confirmed, even though the need to do so had never been stated. In neither case was the customer notified of the incident.

4.2.3 Transfer of investments between CIS

Although transfers between CIS are simply a redemption from one scheme and a subscription in another, the popularity earned by their favourable tax treatment means they merit a separate section in this report.

The typical inter-CIS switch, and therefore the kind that attracts the most complaints, is a transfer between securities mutual funds resident in Spain. The most frequently reported incidents are delays in order execution. Legally, entities have a maximum of eight working days in which to complete transfers between funds run by different managers or a maximum of five working days in the case of funds with the same manager. This last deadline also applies when the delivering and receiving fund share a distributor and it was this same distributor that handled the subscription to the delivering fund.

It is important to advise the client of any problem arising during order processing so he can remedy it, if need be, at the earliest opportunity.

Another frequent cause of incidents in guaranteed funds is the charging of redemption fees during what the investor supposes is a "liquidity window". On this last point, the CNMV has issued a communication indicating the steps to follow when processing external CIS transfer orders:

— In transfer orders where the date of the liquidity window coincides with the date of their receipt by the delivering manager, no redemption fees should be charged in keeping with its best execution duty.

— In other cases, where the investor has informed the receiving manager in advance of his/her intention to take up a liquidity window, the latter should take every care to convey this wish to the delivering manager by means of a verifiable communication system, so the order goes through without redemption charges.

— In addition, it will be deemed good practice for the receiving manager to suggest a "bridge transfer" within the delivering manager in cases when the order will not arrive in time to be executed during a liquidity window.

— Redemption orders received by the delivering manager after the date of the liquidity window will be subject to redemption fees as specified in the fund prospectus.

— In the case of funds whose prospectus specifies a cut-off time, if the delivering manager receives the order on the date of a liquidity window, but after this cut-off time, a redemption fee will be applied since the order is not considered good until the next working day.

Incidents in the course of transfers between delivering and receiving entities

A variety of errors were detected in the processing of transfer orders. The bulk of incidents concerned the misidentification of the originator's holdings by the receiving entity, causing the delivering entity to reject the order. The operational defects this implies are joined by informational defects, since managers were neither diligent in investigating the causes of incidents or in notifying customers of what had occurred. In some occasions, orders were rejected due to IT incidents which entities were too long in remedying after detection.

Other transfer failures were owing to order rejections by receiving schemes for errors attributable to the delivering entity. In this case too, shortcomings emerged in the information given to unitholders about the cause and consequences of such rejections.

Remaining incidents reflect what would appear to be longstanding operational deficiencies at certain entities, like the absence of tax information on the client's position or the misidentification of the delivering entity (despite the change having been widely publicised).

In one case, mistakes were made with both the content and timing of a customer's orders frustrating the purpose of his investment and resulting in financial damages.

Incidents with the execution times of CIS transfers

Complaints under this head concern the unreasonably long time taken to process transfer orders – more than 20 days in some cases. There is also evidence that entities specify times for completing transfers that are not justified for operational reasons. When the delivering and receiving manager or distributor are one and the same, it takes relatively little time to check the ownership of units, so the maximum of five working days should be respected, even with different custodian entities.

In the case of transfers to real estate investment funds with a one day per month subscription window, customers could be advised to time their redemption date accordingly. This means they can decide whether to push back the redemption order so it coincides with the subscription date, with the risk that NAV may fluctuate in favour or against.

Incidents in transfers between funds with the same distributor

Incidents were also reported with transfers between CIS marketed by the same distributor, including some involving unjustified delays. The situation here is similar to that of transfers between schemes run by the same managers, i.e., they are not subject to the maximums envisaged in article 28 of the Spanish CIS Law.

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 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 according to the 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. Orders received by the delivering manager later than this liquidity date will be subject to a redemption fee.

Receiving entities should take an active role in fund transfers, informing the customer of all relevant circumstances affecting his order, especially the costs attached.

Thus, when the investor has informed the receiving manager in advance of his intention to take up a liquidity window, the latter should convey this wish to the delivering manager by means of a verifiable communication system, so the order goes through without redemption charges. It is therefore up to the receiving entity to prove that notice has been given following the client's instructions, in this case saving him the expense of a redemption fee.

Another way the receiving entity can help investors wishing to withdraw from a scheme during a scheduled liquidity window is to recommend that they first request a bridge transfer to another fund run by the delivering manager that does not charge redemption fees. This is a way to ensure that the redemption from the fee-charging fund goes through on the date of the liquidity window. The investor can then request the definitive transfer through the medium of the receiving entity. Basically, this saves having to reckon with the days taken to forward and verify the transfer order and having to time things exactly so as to "hit" the liquidity window.

Incidents with the application of NAV

Complaints under this head refer to the application of the wrong NAV in cases of redemption. In one case, the value date given was a day later than the day the order was received by the distributor, which was the value date stated in the prospectus, under the pretext that it took that long for the order to reach the manager. In another, the NAV applied was that of the Monday after an order issued the previous Friday, when the prospectus specified D+1; Saturday in this case.

Incidents with order registration and filing

The complaints examined reveal that some entities are failing to conserve compulsory records over the time legally stipulated.

Incidents with unitholder information

This heading groups complaints from clients who feel they were poorly informed about the possible pitfalls of inter-scheme transfers – the existence of a minimum subscription rule in the receiving scheme, the advance notice needed to avoid paying redemption fees, the correct identification of the receiving entity, etc. A number of deficiencies were also reported in transaction settlement statements.

4.2.4 Fees and expenses

CIS fees and expenses are set out in the prospectuses that must be given to investors before they purchase shares or units. Despite this, complaints often turn on a deficient knowledge of the same.

The complaints concluding with a report favourable to the complainant had to do with fee exemptions based on the length of share or unit ownership.

4.3 Testamentary execution

The handling of testamentary dispositions was the subject of numerous complaints ending in a report favourable to the client. Most reveal a lack of due care in their processing, leading to errors and unjustified delays.

In a number of cases, redemptions had been wrongly processed; in some, the change of ownership of financial products was implemented as a market sale and subsequent purchase in the heir's name (a practice that is entirely wrong); and in one other instance the scheme had effected ownership changes without having access to the corresponding instrument of partition.

Reports favourable to the complainant in respect of testamentary execution TABLE 9

SUBJECTS	ENTITIES	COMPLAINTS
Incorrect information	Banco Inversis, S.A.	R/462/2008
	Citibank España, S.A.	R/486/2008
	Caja de Ahorros y Monte de Piedad de Madrid	R/715/2008
Delays in executing changes of ownership under testamentary instrument	Banco Santander, S.A.	R/80/2008
	Banco Español de Crédito, S.A.	R/381/2008
	Banco de Sabadell, S.A.	R/610/2008
	Caja de Ahorros y Monte de Piedad de Madrid	R/492/2008
Errors in executing changes of ownership under testamentary instrument	Monte de Piedad y Caja de Ahorros de San Fernando de Huelva, Jerez y Sevilla.	R/027/2008
	Open Bank Santander Consumer, S.A.	R/603/2008
Failure to comply with instructions given by heirs	Banco Popular Español, S.A.	R/044/2008
Disposition of assets before the distribution of the estate	Caja de Ahorros de Castilla y La Mancha	R/667/2007
	Banco Santander, S.A. y BNP Paribas España, S.A.	R/031/2008
	Banco Inversis, S.A.	R/041/2008
	Caja de Ahorros y Monte de Piedad de Madrid	R/120/2008
	Banco Santander, S.A.	R/439/2008

Source: CNMV.

4.3.1 Incorrect information

This heading groups complaints where the entity misdirected its client regarding the transfer of inherited securities and one where the entity took almost two years to provide the information needed to execute a testamentary instrument.

4.3.2 Delays in executing changes of ownership under testamentary instrument

Some complaints referred to unjustified delays by financial entities in processing testamentary instructions, taking more than a month over even the simplest cases.

4.3.3 Errors in executing changes of ownership under testamentary instrument

One complaint concluding with a report favourable to the complainant was because the entity had transferred ownership of inherited fund units by means of a sell operation, which is incorrect.

In another case the client was wrongly subjected to a suitability test, when such precautions are not applicable to changes of ownership under a testamentary instrument.

4.3.4 Failure to comply with instructions given by heirs

An entity was found to be at fault in proceeding to redeem all holdings in a mutual fund when the heirs' instructions were to cash in only the amount needed to pay the inheritance tax.

4.3.5 Disposition of assets before distribution of the estate

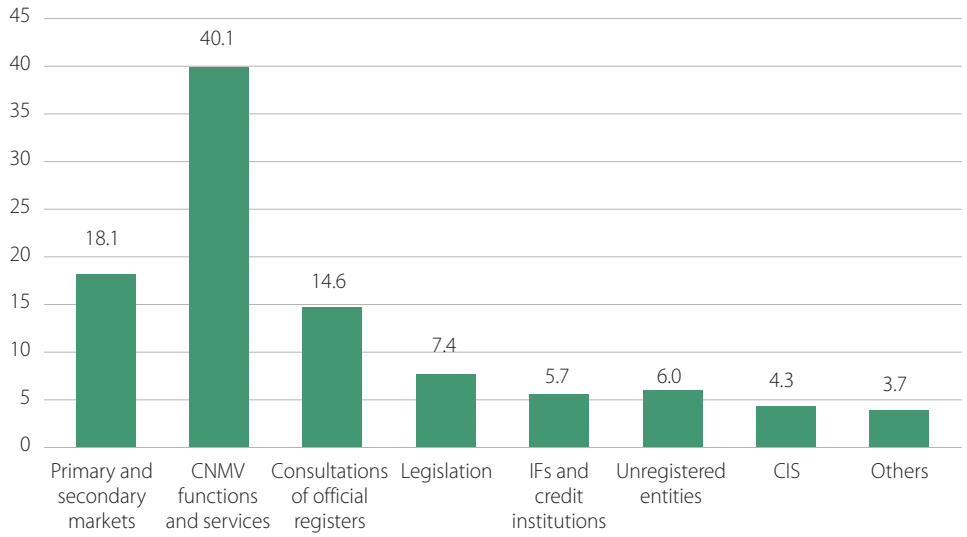
Various complaints revealed that financial entities had acted precipitately in allocating securities and mutual funds without having access to the instrument of partition.

5 The Main Subjects of Enquiries

5 The Main Subjects of Enquiries

Investors approach the CNMV for information about the functions and services within its remit (mailing of investor guides and publications, the status of outstanding complaints, information on how to complain, or queries about the content of the Investor's Corner section of the website), and to enquire about regulations, entities, investment products and services and their legally recognised rights and interests. Although these are the standard subjects motivating enquiries, each year has its own particular pattern as we can see from the graph below.

Distribution of enquiries by subject FIGURE 3



Source: CNMV.

There follows a run-through of the main subjects enquired about in 2008.

5.1 Mandatory sale of shares (squeeze out)

The rules on mandatory sales (also known as squeeze outs) have motivated doubts and queries among the investor public. The procedure had its first outing in Spain on the occasion of Imperial Tobacco's takeover bid for Altadis. Once the bid had been settled, the Altadis shareholders who had not initially accepted the offer were obliged to sell out to Imperial. This was so because the company had got its hands on 95.81% of Altadis' share capital, thereby triggering the legal right for a bidder to acquire 100% of the target company.

The tenor of investor enquiries revealed that some intermediaries were unlawfully charging clients fees in respect of the takeover transaction and its settlement. The CNMV accordingly posted a note in the Investor's Corner section of its website advising that such operations were without charge to the investor, and circularised financial entities referring them to the applicable legislation.

5.2 Directive on Markets in Financial Instruments (MiFID)

With the entry to force of the MiFID, investment advice, understood as the provision the personal recommendations to a client on a professional basis in respect of financial instruments, became a service confined to authorised intermediaries. All those previously dispensing such advice had until February 2009 to seek authorisation from the CNMV. This measure has given rise to numerous enquiries about persons and firms providing advisory services.

The MiFID and its impact on the business relationship between financial providers and their clients was again a popular subject of enquiry. Questions turned on such practical matters as whether a given product should be treated as complex or non complex, how often entities ought to update appropriateness and suitability tests or who should take these tests in the case of multi-holder securities accounts.

A dedicated space has been created in the Investor's Corner section of the CNMV website to answer investors' most frequent questions. It includes:

— The information guide "What you should know about your rights as an investor. Discover how MiFID protects you".

— Q&A on the practical effects of new investor safeguards (MiFID) for the small investor

— The MiFID glossary of terms, clarifying less familiar concepts.

5.3 Measures on short selling

News reports about regulator restrictions on short selling attracted a flood of comments from investors stating their objections to this form of trading or wishing to know more about the measures taken.

On 24 September 2008, in view of the exceptional circumstances prevailing on the markets, the CNMV issued a reminder to all financial agents, including investors, that naked short selling is prohibited in Spain and will be penalised accordingly. The CNMV also took the additional, temporary step, of reinforcing public disclosure of short sales.

5.4 Lehman Brothers, Landsbanki and Kaupthing

The failures of U.S. investment bank Lehman Brothers then Icelandic banks Landsbanki and Kaupthing caused serious concern to Spanish investors. Many of them contacted the CNMV asking about how these situations would affect their investments.

To attend this demand, the CNMV published a note on its website on 24 September responding to the most frequently asked questions among investors caught up in the Lehman Brothers collapse. Specifically, it advised investors about the possibility of coverage by some compensation scheme, the possible liability of the product distributor and the steps to take to get back their money.

Many were unhappy about the way financial entities had sold them the products issued by the aforementioned companies, to the extent that some were entirely unaware who the issuer was or about the risks carried by the investment. In effect a number of complaints reached the CNMV for these same motives.

5.5 Investor compensation schemes (FOGAIN and FGD)

Enquiries about investor compensation schemes (FOGAIN and FGD) were especially abundant in the year's second half. Again a document was prepared to cope with the flood of queries as of September about the protection enjoyed by savings and investments deposited with or made through credit institutions and investment firms.

5.6 The Bernard Madoff fraud

The news of the Bernard Madoff fraud had investors rushing to enquire about the consequences for their investments. Most of their queries turned on the products affected, the actions to take and the proposal made by Banco Santander, S.A. to customers caught up in the swindle.

Concerns were addressed by a FAQ document explaining the fraud's impact on Spanish investors, and a note setting out the main features of the product offered by Banco Santander. The aim in this last case was to help investors evaluate the proposal, focusing on the product's characteristics and risks and its valuation vs. the instruments exchanged.

5.7 Listed companies

Among the topics most enquired about in 2008 were the price performance of certain securities, items appearing in the press about a possible buy-up of Laboratorios Almirall, S.A. or the merger between Europistas Concesionaria Española, S.A. and Itínere Infraestructuras, S.A., and the subsequent announcements of their commitment to enlarge the share's distribution and liquidity or else to withdraw it from stock market trading.

5.8 Mutual funds and other CIS

Many 2008 enquiries about collective investment schemes referred to manager's announcements of valuation changes with a knock-on effect on NAV.

This was the case of the management company of real estate fund Santander Banif Inmobiliario, FII, which announced a new appraisal round intended, in its words, to align the fund's asset value with the realities of the market, and also of the manager of money-market fund Segurfondo Monetario, FI, which announced that it would be changing its valuation yardstick in the light of the liquidity slump in certain markets coinciding with a surge in redemption orders.

5.9 Automated trading systems

Finally, the service has received a steady flow of enquiries in recent years regarding automated trading systems (ATS), which have grown in popularity among retail investors.

Given the choice of such tools available on the market and their differing specifications and trading repertoires, the CNMV has published some general guidelines of interest to users. This document stresses that investors should carefully assess their scope, functioning and characteristics before making a decision. They must also be aware that this form of trading carries certain risks, and that any investment will require close monitoring. For these reasons their use is not recommended for inexperienced investors.

5.10 Unregistered entities

Investors approach the CNMV 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.

Enquiries about unregistered entities offering investment services are a feature every year. Among those most enquired about in 2008 were Finanzas Forex, Tribu Internacional Invest, S.L. and GCI Financial Ltd ; all three the subject of a CNMV alert pursuant to article 13 of the Securities Market Law.

In 2008, the CNMV issued alerts on the following companies without authorisation to provide investment services further to the abovementioned article 13, which urges it to disseminate all information necessary to safeguard the interests of investors.

CNMV public alerts on unregistered entities

TABLE 10

Date	Company
21/01/2008	HIBBER BOTHWELL CAPITAL PARTNERS WWW.HIBBER-BOTHWELL.COM
11/02/2008	GRAN CANARIA CONSULTORES Y ASESORES, S.L.
07/04/2008	EVOLUTION MARKET GROUP INC (FINANZAS FOREX) GERMAN CARDONA SOLER SANTIAGO FUENTES JOVER
07/04/2008	SANTIAGO FUENTES JOVER GERMAN CARDONA SOLER EVOLUTION MARKET GROUP INC (FINANZAS FOREX)
07/04/2008	GERMAN CARDONA SOLER EVOLUTION MARKET GROUP INC (FINANZAS FOREX) SANTIAGO FUENTES JOVER
21/07/2008	TRIBU INTERNATIONAL INVEST, S.L.
28/07/2008	AKEMAN CAPITAL AKEMAN ALLAN CAPITAL WWW.AKEMANCAPITAL.COM
20/10/2008	ATLANTIS FINANCIAL WWW.ATLANTIS-FINANCIAL.COM
20/10/2008	GCI FINANCIAL LTD WWW.GCITRADING.COM CAPITAL RESOURCES SYSTEMS LTD
27/10/2008	CAPITAL MANAGEMENT SCHOTTS, S.L. ROBERT MITCHELL MCMILLAN ALLAN

Source: CNMV.

The unregistered companies most frequently enquired about in 2008 are listed in Annexe 2.

Especially germane here are the changes introduced by Law 47/2008 of 19 December writing MiFID provisions into the Securities Markets Law. 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 persons authorised to that effect. The sole exception is that envisaged in article 62 of the Securities Market Law referring to persons advising on investment matters in the course of another professional activity not governed by the said Law, as long as the provision of such advice is not specifically remunerated. These stricter rules are intended to tighten control over this activity and thereby improve the quality of a service that is in growing demand.

Annexes

Annexe 1 Statistical tables

Monthly distribution of complaints filed and resolved in 2008

TABLE A.1

Month	Complaints filed	Complaints resolved
January	54	38
February	69	50
March	52	33
April	89	41
May	60	40
June	169	38
July	123	66
August	79	95
September	46	27
October	92	124
November	93	109
December	132	61
TOTAL	**1,058**	**722**

Source: CNMV.

Geographical distribution of complaints resolved in 2008

TABLE A.2

Provenance	No. of complaints	Percentage
ANDALUSIA	88	12.2
ARAGÓN	29	4.0
ASTURIAS	15	2.1
BALEARIC ISLANDS	6	0.8
BASQUE COUNTRY	32	4.4
CANARY ISLANDS	29	4.0
CANTABRIA	15	2.1
CASTILLA LA MANCHA	27	3.7
CASTILLA Y LEÓN	63	8.7
CATALONIA	65	9.0
CEUTA	0	0.0
EU COUNTRIES	3	0.4
EXTREMADURA	8	1.1
GALICIA	49	6.8
LA RIOJA	9	1.2
MADRID	189	26.2
MELILLA	1	0.1
MURCIA	11	1.5
NAVARRA	10	1.4
OTHERS	1	0.1
VALENCIA	72	10.0
TOTAL	**722**	**100**

Source: CNMV.

Distribution by entity of complaints against banks

TABLE A.3

Banks	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ALTAE BANCO, S.A.	x	x	x	1	x	1
BANCO BANIF, S.A.	x	3	x	9	x	12
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	18	44	2	5	1	70
BANCO CAIXA GERAL, S.A.	x	1	x	1	x	2
BANCO DE ANDALUCÍA, S.A.	x	x	x	1	x	1
BANCO DE CASTILLA, S.A.	1	3	x	x	x	4
BANCO DE FINANZAS E INVERSIONES, S.A.	x	3	x	4	x	7
BANCO DE GALICIA, S.A.	x	1	x	2	x	3
BANCO DE MADRID, S.A.	x	1	x	x	x	1
BANCO DE SABADELL, S.A.	3	10	x	5	x	18
BANCO DE VALENCIA, S.A.	1	x	x	1	x	2
BANCO DE VASCONIA, S.A.	x	1	x	x	x	1
BANCO ESPAÑOL DE CRÉDITO, S.A.	5	26	x	21	1	53
BANCO ESPIRITO SANTO, S.A.	x	x	2	1	x	3
BANCO GUIPUZCOANO, S.A.	x	4	x	3	1	8
BANCO INVERSIS, S.A.	10	12	x	19	x	41
BANCO PASTOR, S.A.	x	2	x	1	x	3
BANCO POPULAR ESPAÑOL, S.A.	x	6	x	3	1	10
BANCO SANTANDER, S.A.	27	60	x	24	3	114
BANKINTER, S.A.	2	22	x	19	x	43
BARCLAYS BANK, S.A.	2	3	x	6	x	11
BNP PARIBAS ESPAÑA, S.A.	x	3	x	x	x	3
BOURSORAMA, SUCURSAL EN ESPAÑA	1	3	x	x	x	4
CALYON, SUCURSAL EN ESPAÑA	x	1	x	x	x	1
CITIBANK ESPAÑA, S.A.	4	5	x	4	x	13
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	1	13	x	5	x	19
ING BELGIUM, S.A., SUCURSAL EN ESPAÑA	x	1	x	x	x	1
ING DIRECT, N.V. SUCURSAL EN ESPAÑA	2	2	x	3	1	8
LLOYDS TSB BANK, PLC	x	x	x	1	x	1
OPEN BANK SANTANDER CONSUMER, S.A.	7	10	1	18	x	36
POPULAR BANCA PRIVADA, S.A.	x	1	x	1	x	2
SOCIÉTÉ GÉNÉRALE, SUCURSAL EN ESPAÑA	1	1	x	x	x	2
UNOE BANK, S.A.	x	3	x	x	x	3
TOTAL	**85**	**245**	**5**	**158**	**8**	**501**

Source: CNMV.

Distribution by entity of complaints against savings banks

TABLE A.4

Savings banks	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
BILBAO BIZKAIA KUTXA, AURREZKI KUTXA ETA BAHITETXEA	1	x	x	x	x	1
CAIXA D´ESTALVIS DE CATALUNYA	4	1	x	2	x	7
CAIXA D´ESTALVIS DEL PENEDÉS	x	2	x	x	x	2
CAIXA DE AFORROS DE VIGO, OURENSE E PONTEVEDRA (CAIXANOVA)	x	2	x	x	x	2
CAJA DE AHORROS DE ASTURIAS	x	1	x	x	x	1
CAJA DE AHORROS DE CASTILLA-LA MANCHA	x	2	x	1	x	3
CAJA DE AHORROS DE GALICIA	1	18	x	5	x	24
CAJA DE AHORROS DE LA INMACULADA DE ARAGÓN	x	2	x	x	x	2
CAJA DE AHORROS DE LA RIOJA	x	1	x	x	x	1
CAJA DE AHORROS DE MURCIA	x	1	x	x	x	1
CAJA DE AHORROS DE SALAMANCA Y SORIA	x	2	x	1	x	3
CAJA DE AHORROS DE SANTANDER Y CANTABRIA	1	1	x	x	x	2
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	1	1	x	1	x	3
CAJA DE AHORROS DEL MEDITERRÁNEO	x	4	x	7	x	11
CAJA DE AHORROS Y MONTE DE PIEDAD DE ÁVILA	x	1	x	x	x	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE CÓRDOBA	x	1	x	x	x	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE GUIPÚZCOA	x	1	x	x	x	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	5	25	1	13	x	44
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA	x	1	x	1	x	2
CAJA DE AHORROS Y MONTE DE PIEDAD DE SEGOVIA	x	1	x	x	x	1
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	1	6	x	4	1	12
CAJA DE AHORROS Y MONTE DE PIEDAD DEL CÍRCULO CATÓLICO DE OBREROS DE BURGOS	x	1	x	x	x	1
CAJA DE AHORROS Y PENSIONES DE BARCELONA	2	6	1	3	x	12
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	x	3	x	2	x	5
CAJA GENERAL DE AHORROS DE CANARIAS	1	x	x	x	x	1
CAJA GENERAL DE AHORROS DE GRANADA	x	1	x	x	x	1
CAJA INSULAR DE AHORROS DE CANARIAS	x	2	x	x	x	2
MONTE DE PIEDAD Y CAJA DE AHORROS DE HUELVA Y SEVILLA	1	1	x	2	x	4
MONTES DE PIEDAD Y CAJA DE AHORROS DE RONDA, CÁDIZ, ALMERÍA, MÁLAGA Y ANTEQUERA	x	3	x	x	x	3
TOTAL	**18**	**91**	**2**	**42**	**1**	**154**

Source: CNMV.

Distribution by entity of complaints against credit cooperatives

TABLE A.5

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	x	x	x	x	1
CAJA LABORAL POPULAR COOP. DE CRÉDITO	1	2	x	1	x	4
CAJA RURAL DE SAN ISIDRO "LA VALL" SDAD. COOP. CTO. LTDA.	x	x	x	1	x	1
CAJA RURAL DEL MEDITERRÁNEO, RURALCAJA, S. COOP. DE CRÉDITO	x	1	x	x	1	2
CAJA RURAL DEL SUR, SDAD. COOP. CTO.	1	1	x	x	x	2
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	x	x	x	2	x	2
IPAR KUTXA	x	1	x	x	x	1
TOTAL	**3**	**5**	**x**	**4**	**1**	**13**

Source: CNMV.

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

TABLE A.6

IFs and CSI managers	Accommodation	Unfavourable to complainant	Withdrawal	Favourable to complainant	No opinion stated	Total
ABANTE ASESORES, SGIIC, S.A.	x	x	x	1	x	1
AHORRO CORPORACIÓN FINANCIERA, S.A. SOCIEDAD DE VALORES	1	x	x	1	x	2
ALPHA ASESORES, A.V, S.A.	x	x	x	1	x	1
AXA IBERCAPITAL, AGENCIA DE VALORES, S.A.	2	x	x	1	x	3
BANKINTER GESTIÓN DE ACTIVOS, SGIIC, S.A.	x	1	x	x	x	1
BBVA ASSET MANAGEMENT, SGIIC, S.A	1	3	x	x	x	4
BESTINVER GESTIÓN, SGIIC, S.A.	1	4	x	2	x	7
CORTAL CONSORS, SOCIEDAD DE VALORES, S.A.	x	1	x	1	x	2
DELFORCA 2008, SOCIEDAD DE VALORES, S.A.	x	x	1	1	x	2
EURODEAL AGENCIA DE VALORES, S.A.	x	3	x	x	x	3
GAESCO GESTIÓN, SGIIC, S.A.	x	x	x	2	x	2
GESMADRID, SGIIC, S.A.	1	3	x	3	x	7
GESTIÓN DE PATRIMONIOS MOBILIARIOS AGENCIA DE VALORES, S.A.	x	1	x	x	x	1
MAPFRE INVERSIÓN DOS, SGIIC, S.A.	x	x	x	1	x	1
MAPFRE INVERSIÓN, SOCIEDAD DE VALORES, S.A.	x	1	x	x	x	1
MERCADOS Y GESTIÓN DE VALORES, A.V, S.A.	x	1	x	x	x	1
LA CAIXA GESTIÓN DE ACTIVOS, SGIIC, S.A.*	x	3	1	3	x	7
LA CAIXA GESTIÓN DE ACTIVOS, SGIIC, S.A.**	x	x	x	1	x	1
POPULAR GESTIÓN, S.A., S.G.I.I.C.	x	x	x	1	x	1
RENTA 4, SOCIEDAD DE VALORES, S.A.	x	1	x	3	x	4
SANTANDER ASSET MANAGEMENT, S.A., CIS mgrs	x	2	x	x	x	2
TOTAL	**6**	**24**	**2**	**22**	**0**	**54**

Source: CNMV.

Rectifications following complaints favourable to the complainant

TABLE A.7

Entity	Report favourable to complainant	Rectified	Unrectified
ABANTE ASESORES, SGIIC, S.A.	1	1	0
AHORRO CORPORACIÓN FINANCIERA, S.A. SOCIEDAD DE VALORES	1	1	0
ALPHA FINANZAS, A.V, S.A.	1	0	1
ALTAE BANCO, S.A.	1	1	0
AXA IBERCAPITAL, AGENCIA DE VALORES, S.A.	1	0	1
BANCO BANIF, S.A.	9	0	9
BANCO BILBAO VIZCAYA ARGENTARIA, S.A.	5	5	0
BANCO CAIXA GERAL, S.A.	1	0	1
BANCO DE ANDALUCÍA, S.A.	1	0	1
BANCO DE FINANZAS E INVERSIONES, S.A.	4	1	3
BANCO DE GALICIA, S.A.	2	2	0
BANCO DE SABADELL, S.A.	5	5	0
BANCO DE VALENCIA, S.A.	1	0	1
BANCO ESPAÑOL DE CRÉDITO, S.A.	21	12	9
BANCO ESPIRITO SANTO, S.A.	1	0	1
BANCO GUIPUZCOANO, S.A.	3	1	2
BANCO INVERSIS, S.A.	19	4	15
BANCO PASTOR, S.A.	1	1	0
BANCO POPULAR ESPAÑOL, S.A.	3	2	1
BANCO SANTANDER, S.A.	24	17	7
BANKINTER, S.A.	19	3	16
BARCLAYS BANK, S.A.	6	0	6
BESTINVER GESTIÓN, SGIIC, S.A.	2	2	0
CAIXA D´ESTALVIS DE CATALUNYA	2	2	0
CAJA DE AHORROS DE CASTILLA-LA MANCHA	1	1	0
CAJA DE AHORROS DE GALICIA	5	2	3
CAJA DE AHORROS DE SALAMANCA Y SORIA	1	0	1
CAJA DE AHORROS DE VALENCIA, CASTELLÓN Y ALICANTE, BANCAJA	1	0	1
CAJA DE AHORROS DEL MEDITERRÁNEO	7	3	4
CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID	13	3	10
CAJA DE AHORROS Y MONTE DE PIEDAD DE NAVARRA	1	1	0
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA, ARAGÓN Y RIOJA (IBERCAJA)	4	2	2
CAJA DE AHORROS Y PENSIONES DE BARCELONA	3	1	2
CAJA ESPAÑA DE INVERSIONES, CAJA DE AHORROS Y MONTE DE PIEDAD	2	0	2
CAJA LABORAL POPULAR COOP. DE CRÉDITO	1	0	1
CAJA RURAL DE SAN ISIDRO "LA VALL" SDAD. COOP. CTO. LTDA.	1	0	1
CAJAMAR CAJA RURAL, SOCIEDAD COOPERATIVA DE CRÉDITO	2	0	2
CITIBANK ESPAÑA, S.A.	4	1	3
CORTAL CONSORS, SOCIEDAD DE VALORES, S.A.	1	1	0
DELFORCA 2008, SOCIEDAD DE VALORES, S.A.	1	0	1
DEUTSCHE BANK, SOCIEDAD ANÓNIMA ESPAÑOLA	5	0	5
GVC GAESCO GESTIÓN, SGIIC, S.A.	2	1	1

Rectifications following complaints favourable to the complainant (cont.)

TABLE A.7

Entity	Report favourable to complainant	Rectified	Unrectified
GESMADRID, SGIIC, S.A.	3	2	1
ING DIRECT, N.V. SUCURSAL EN ESPAÑA	3	3	0
LA CAIXA GESTIÓN DE ACTIVOS, S.V., S.A.*	3	0	1
LA CAIXA GESTIÓN DE PATRIMONIOS, SGIIC S.A.**	1	0	3
LLOYDS TSB BANK, PLC	1	0	1
MAPFRE INVERSIÓN DOS, SGIIC, S.A.	1	0	1
MONTE DE PIEDAD Y CAJA DE AHORROS DE HUELVA Y SEVILLA	2	1	1
OPEN BANK SANTANDER CONSUMER, S.A.	18	3	15
POPULAR BANCA PRIVADA, S.A.	1	0	1
POPULAR GESTIÓN, S.A., S.G.I.I.C.	1	0	1
RENTA 4, SOCIEDAD DE VALORES, S.A.	3	1	2
TOTAL	**226**	**86**	**140**

Source: CNMV.

* Today, Caja de Ahorros y Pensiones de Barcelona.

** Today, Invercaixa Gestión, SGIIC, S.A.

Type of entities complained against and rectification

TABLE A.8

	Favourable to complainant	Rectified	%	Unrectified	%
Credit institutions	**204**	**77**	**37.7**	**127**	**62.3**
Banks	158	61	38.6	97	61.4
Savings banks	42	16	38.1	26	61.9
Credit coops	4	0	0	4	100
Investment firms	**11**	**3**	**27.3**	**8**	**72.7**
CIS managers	**11**	**6**	**54.5**	**5**	**45.5**
Total	**226**	**86**	**38.1**	**140**	**61.9**

Source: CNMV.

Distribution of non accepted complaints by motive for rejection

TABLE A.9

	No. of complaints
Not competence of CNMV	41
No evidence of submission to CSD	94
Unidentified	24
Within deadline for response	10
Others	8
TOTAL	**177**

Source: CNMV.

Distribution of accommodations and withdrawals by subject of complaint

TABLE A.10

Subject	Total	%
Mutual funds and other CIS	**65**	**58**
Information requirements	15	13.4
Transfers between CIS	19	17
Unit subscriptions and redemptions	18	16.1
Fees	13	11.6
Other incidents	0	0
Securities market transactions	**57**	**42**
Order transmission, execution and settlement	32	28.6
Fees	11	9.8
Information requirements	13	11.6
Other incidents	1	0.9

Source: CNMV.

Annexe 2 List of companies not registered with the CNMV enquired about in 2008

ABU DHABI DUBAI INVESTMENTS
ACM ADVANCED CURRENCY MARKETS S.A.
ACM MARKETS
ADAH 247, S.L.
AIM BIENES TANGIBLES
AIM WARRANTS
ALBATROS INVERSIONES
ALKEN EUROPEAN OPPORTUNITIES
ALLAN GRAYDON
ANALISIS, GESTIÓN Y SEGUIMIENTO
ANALISIS Y MERCADO BIENES TANGIBLES
ANDERSON MCCORMACK GROUP, S.L.
ARCIS INTERNATIONAL TRUST, S.A.
ASG CONSULTORES
ASPECTA
ATLAS GESTIÓN DINÁMICA
AUREA NEGOCIOS
AVAFX TRADING
BANCO MEDITERRÁNEO
BANEUROPA/EHL
BERKELY WYATT ASSETT LTD
BIENES TANGIBLES. CENTRAL IBÉRICA
DE VALORES S.A
BLEVINS FRANKS
BOLSACASH
BOLSARENTABLE
BOSQUES NATURALES S.A.
BR. CONSULTANCE ALFAZ
BRECON GLOBAL
BROKER FINANCES
BROKERS ESPECIALIZADOS
CAJA DE VALORES PROVINCIAL
CAJESA
CALYTON INVESTMENTS
CAPITAL MARKET SERVICES, LLC
CAPITAL RESOURCE SYSTEMS LTD. GCI TRADING
CARLTON BIRTAL FINANCIAL ADVISORY
CATALUÑA INVESTMENT MANAGERS
CITISOLUCIONES
CLAYMORE ASSET MANAGEMENT
CNR INVESTMENT
COLDWELL BANKER
COMPANY ENQUIRY KENTON SOLUTIONS
CONSULTORÍA DE GESTIÓN Y ADMINISTRACIÓN
DE PATRIMONIOS
CONTSA CORPORACIÓN EMPRESARIAL
CRESCENDO FINANCIAL SERVICES
DARUMA S.L.
DDPS FINANCIAL.
DEALERS QUALITY CONSULTING, SL
DECAINVERSIÓN
DUKASCOPY
ECOMEX
EHF (BANEUROPA)
ELITE FINANZAS, S.L.
ENALZA CORPORACIÓN
EQUITY CONSULTANTS
EQUITY INTERNATIONAL
ESICAMO
ETORO
EUROPEAN MARKETING TEAM, S.L.
EVOLUTION MARKET GROUP
EXMERUBS
FINANCE COMPANY IN SPAIN
FINANCE CONSULTING
FINANCIAL HOLDING
FINANCIERA GV
FINANTIAL INNOVATIONS
FINANZAS FOREX
FIRST PRIME GROUP
FOJESIGHT
FOREX MACRO
FOREXYARD
FORTUNEO
FOXINVER, THE CLEVER INVESTMENT
FOXINVER.COM
FXCM CLUB
GCI FINANCIAL
GESTIONCAPITALPRIVADO
GLOBAL BONDS S.A.
GLOBAL EURO MARKETING
GLOBAL VALORES ESPAÑA
GROSS PLAN Y YELLOWSTAR
GRUPO ADAH 247
GRUPO ESDINERO
GRUPO ORION
GRUPO YAKEY
GUARDIAN INTERNATIONAL TRUST BANK
H.S.F. IBZ, S.L.
HAMILTONS ASSET GROUP
HAMILTONS FINANCIAL SERVICES S.L.
HAMILTONS PROPERTY SERVICES
HANSEATIC BROKERHOUSE
HERMANOS MORO ASEORES FINANCIEROS
HOY FINANZAS
IFOREX
IFX MARKETS INC
IMPROLINKS ASESORES

IMPROVINK
INFORMACIÓN CUALIFICADA BOLSA, S.L.
INGESA, SA
INPROFIT INFORMATION SERVICES S.L.
INPROLINKS ASESORES S.L.
INVERSORES DEL DUERO
INVESTMENT SYNERGY GROUP GMBH
INVESTRADING SOLUCIONES FINANCIERAS
ISG INVESTMENT SYNERGY GROUP GMBH
JUÁREZ & ASOCIADOS TRUST MANAGEMENT
KENTON ADVISORS
KUDOS FINANCIAL INVESTMENTS
LAW-FIRM MARTÍNEZ Y BENEFICIO
LOGINTEL FORTHWORKS
MADERAS NOBLES DE LA SIERRA DE SEGURA
MARKET AND BUSINESS
MARKETING READING
MCLAREN ASSET MANAGEMENT
MERCADIA ASESORES
MERCADOS Y VALORES HUGO CONDE
MERIDIAN CAPITAL ENTERPRISE
MINERVA MANAGEMENT
MONYSTAR
MORTON GROUP
MURGATROYD, MCPARTLAND & ASSOCIATES
NEW WORLD FINANCIAL,INC
OFFSHORE INVESTMENT BROKERS
ORODIRECT
OVB ALLFINANZ ESPAÑA S.L.
PEGASUS FINANCIAL SERVICES LTD
PER DIAGONAL DIVISAS S.A.
PÉREZ,CARRERA & ASSOCIATES
PERMIR TRADING Y IFX MARKET, FOREX
PITTSBURG S.L.
PROYECTOS Y PLANES DE INVERSIÓN
QUALITY DEALERS CONSULTING
RANKIA, S.L. E INTERACTIVE BROKERS
RAVERTIS
RECOBOLSA, S.A.
RECOLETOS SERVICIO DE ASESORÍA
RIVERDUERO CENTRO DE ASESORAMIENTO E INVERSIONES
ROVAMASAG S.L.
SCB S.L.
SCOPE SYSTEM, S.L.
SEARCH PROFIT CORPORATION
SELECT STRATEGIES
SERSAM SISTEMAS ALPHA
SERVICIOS JURÍDICOS FINANCIEROS SUDESA, S.L.
SIEMPRE COMISIONES BAJAS (S.C.B.)
SISTEMAS DE GESTIÓN RETRIC, S.L.
SL MORTGAGE FUNDING N.º 1 LIMITED
SP CORPORACIÓN
SP GOMINA
SPECTRUM IFA GROUP
STRATEGIC INVESTMENT GROUP
SWIFTRADE
UNIÓN FINANCIERA ASTURIANA
WAM FINANCIAL, S.L.
WASKMAN AND MURPHY FINANCIAL
WAVE59 TECHNOLOGIES INTL
WEST CAPITAL OFFSHORE
WWW.AC-MARKETS.COM
WWW.DEVEREANDPARTNERS.COM
WWW.ELMUNDOBURSATIL.ES
WWW.ENAUTO.ES
WWW.ESDINERO.ES
WWW.EUROSYA.COM
WWW.FOXINVER.COM
WWW.FXCM.COM
WWW.GRUPOCONTSA.COM
WWW.INVERSIONESPLUS.COM
WWW.JARILLABOLSA.ES
WWW.MOROSOSWEB.COM
WWW.MYDEXTRA.COM
WWW.OFFSHOREWORLDSL.COM
WWW.SISTEMAS.ELNUEVOPARQUET.COM
X TRADE BROKER

Source: CNMV.

Annexe 3 Summary of complaints with report favourable to complainant

A3.1 Provision of investment services

A3.1.1 Order reception, transmission and execution

Incidents relating to the execution of securities orders

R/471/2007 – Banco Santander, S.A. Where securities exist in book-entry form – which is the case for the shares of listed companies – it is assumed that the owner is the holder of the securities account in which they are deposited.

As a result, in transfer orders there must be no discrepancy between the details stated in the records and contract at the delivering and receiving entities, otherwise the transfer would represent a change in ownership of the shares without the necessary formal and tax requirements having been met.

Any such discrepancy would justify the non execution of a transfer instruction.

This occurred in the present case but was not the reason cited at the time by Banco Santander for failing to execute the transfer, even though the bank subsequently used it as an argument in response to the complaint.

In our view, ten months after the first transfer order was submitted by the complainant without being executed, Banco Santander, in accordance with its generic obligation to provide customers with information that is clear, correct, accurate, sufficient and timely, without any tendency to mislead (...) so the customer can act on it with confidence, should have explained in detail in its communications all the reasons that prevented the execution of the order, which should have been the same then as they claim now.

R/567/2007. Banco Banif, S.A. In this case, the CNMV found Banif to be at fault because of its failure to transfer securities even though the order was signed by both the joint holders of the account concerned.

R/614/2007 – Caja de Ahorros del Mediterráneo. In this case, the customer ordered securities to be transferred to another entity, but this was not done. Since the order failed to execute, the customer then re-ordered the transfer of the securities step by step, being careful to comply with the requirements and responding to the problems repeatedly raised to ensure the order was correctly filled out. The trade was finally executed 3 months after the original order.

The problem occurred because the deficiencies indicated were not the real reasons for the failed trade. Rather, the securities account number that the delivering entity,

the object of the complaint, provided to the customer did not match the account number being used by the entity that held the shares as sub-custodian. And the only entity that was aware of the mistake – the delivering entity – failed to report it either to the customer or the other parties so the order could be filled.

The savings bank was found to be at fault, since it had failed to take an active attitude to the incident with its customer and inform him of the error so the order could be completed.

R/637/2007 – Banco Inversis, S.A. The bank was found to have acted wrongly in failing to provide a copy of a transfer order submitted by the complainant or documenting the reasons for its subsequent cancellation.

The entity was also found to be at fault for failing to contact the complainant and seek his instructions regarding a delisting offer for the shares of Yell Publicidad, S.A. in the early months of 2007.

R/713/2007 – Banco Banif, S.A. The entity was found to have acted improperly in accepting and processing a securities order signed by the owner's spouse, who did not appear on the securities administration agreement. The complaint was upheld, even though a considerable time has passed without the owner registering any dissent, which might have been taken to indicate their consent to the investment.

R/715/2007 – Bankinter, S.A. A customer trading online input a conditional sell order on shares traded on the NASDAQ at a minimum price. Several minutes later the same customer input an order cancelling the original instruction along with a new sell limit order specifying a higher price than in the original.

Despite the time sequence, the original order was not cancelled and was partly executed. Bankinter sought to deny any responsibility, instead blaming the broker charged with executing the instructions.

In our view, Bankinter's responsibility for completion of the instruction did not end with its transmission of the order to the foreign market member but, as the entity with which the customer signed a brokerage agreement, also included an indirect responsibility for its execution. In this case, the instructions ought to have been executed in accordance with the trading rules of the NASDAQ exchange which, as a non-Spanish secondary market, is outside the regulatory scope of the CNMV.

However, Bankinter failed to provide satisfactory information to justify the incident. The argument that it "turned out to be impossible to cancel it" because the order had already been sent to the market member for execution was, in our view, insufficient.

R/722/2007 – Banco Guipuzcoano, S.A. The customer placed a conditional order to buy 6,110 shares in Banco Guipuzcoano at a maximum price of 36.25 euros. The order was partly filled and the customer then tried to amend the maximum purchase price for the unfilled part of the order.

However, the entity did not give him this option, erroneously in our view, as it should have been possible to do so while informing the client that it would mean losing his place in the order queue.

If for technical or risk management reasons the entity had decided not to allow such changes, it should at least have allowed the cancellation of the unexecuted part of the order and the submission of a new order, but this too it failed to do.

Regarding this complaint, Stock Exchange Operating Instruction 17/99 states that "Regarding possible share consolidations, (...), the Trading and Oversight Committee of this Stock Exchange has decided, in these cases, that all offers that remain live in the system at the end of the session preceding the effective date of the consolidation, shall be cancelled whatever their validity date".

Since at the end of the day when the customer's order had been partly executed, there was a split in the shares of Banco Guipuzcoano, with the resulting automatic adjustment to purchase prices and number of shares and change in the ISIN code, the unfilled part of the buy order should have been automatically cancelled.

R/797/2007 – Deutsche Bank, S.A.E. The complainant ordered Deutsche Bank to sell two certificates linked to the performance of stock indices that they had deposited with the entity. The entity receiving the order failed to fulfil the customer's orders, arguing in response to his complaints that these were private issues that could only be liquidated through the issuer.

In the documents submitted by the parties concerning the terms and conditions of these certificates, it was stated that one was listed for trading on the Luxembourg market and that the other was not quoted on any secondary market. Also, the holder could apply to redeem both certificates at three-monthly intervals.

It was concluded that, after receiving the orders from the customer, Deutsche Bank should have notified him in due time that there was no secondary market for the unlisted certificates, informed him of his option to request redemption at the next scheduled date and obtained his instructions on the matter.

Also, regarding the certificates traded on the Luxembourg market, the entity should have executed the order on this market or, if it failed to find a counterparty, reported this with due diligence and sought new instructions, mainly as to whether or not to request redemption of the certificates.

From the entity's submissions to the CNMV, which offered no justification for its actions despite the return of certain fees charged to the complainant, there is no evidence that it had taken any of the steps indicated above.

R/092/2008 - Barclays Bank, S.A. The complainant stated that the entity had executed an order to sell shares without his consent. The entity could not provide evidence that the sell order existed and was therefore found to be in breach of its general obligation to keep records of orders and supporting documentation for all its trades.

R/130/2008. Banco Guipuzcoano, S.A. The CNMV upheld a complaint against the bank on the grounds that it had failed to keep a subscription order for preference shares for the legally required period.

R/166/2008-Banco Español de Crédito, S.A. The complainant owned 415 shares in Eletrobras, listed on Latibex and deposited in an account at Banesto. The customer tried to sell them placing at best orders on 4 and 8 October 2007.

However, these orders failed to execute. The explanation offered by Banesto was that there were fewer than 500 shares, which was the set minimum for each share lot in this company. It also accepted that on the date when the customer placed the order its IT system had not been synchronised to handle the grouping into lots applicable to these shares.

In our view, this was not a one-off problem but had probably persisted for several months, and it seems that it was not until the complainant lodged an official complaint that Banesto took steps to rectify the issue.

This was because the consolidation in the proportion of 1 Eletrobras share for every 500 held was reported to the whole market as a significant event on 16 August with effect from 20 August. It should also be noted that on 14 August 2007, Iberclear sent a memo to all its member entities notifying them about the share consolidation and setting out a number of measures to avoid incidents. Furthermore, on 17 August 2007 Latibex sent all market members an Operating Instruction addressing the same issue.

The form in which Banesto received all this information and the way in which it incorporated it into its operating systems was insufficiently diligent, in light of the incident that occurred and the arguments put forward by the entity.

The complaint also brought to light the existence of another problem in Banesto's IT systems deriving from the fact that three of the stocks in the customer's portfolio were listed on Latibex. This problem could not be corrected and required the use of a special system that involved considerable delays in executing a transfer order.

In our view, while acknowledging that occasional IT problems and incidents can occur in any activity, we consider that the 27 days it took to resolve the situation and execute the customer's instructions, the failure to inform him of the situation in the meantime, coupled with the need to apply a special transfer system and the failure to warn the customer of the delay this would involve, constitute inadequate service by Banesto.

R/032/2008 – Deutsche Bank, S.A.E. In this case the customer submitted a written order to buy preference shares in Deutsche Bank Capital Finance Trust I, setting a limit price of 100% without specifying whether this was with or ex coupon.

It was received and executed by the bank but at a price above the client's limit.

As was clear from the documentation provided by the entity itself, the shares were bought at 101.3%. The entity was accordingly deemed to have acted incorrectly.

R/286/2008 – Banco Español de Crédito, S.A. The bank executed an order to sell securities held in an account whose sole holder was the complainant, even though the sell instruction had been sent by her spouse with no express or tacit authorisation from her that would empower Banesto to execute the sale.

R/394/2008 – Banco Guipuzcoano, S.A. The client complained about his subscription for a sale contract on a Put Down & In Option on Banco Santander, S.A. shares.

The prospectus for this product filed with the CNMV stated that the subscription period would start at 8:30 on the working day following its publication and end at 13:00 on 20 October 2007, it being possible to revoke the contract during the

intervening period. Also, until the start date of the contract, payments made by subscribers during subscription periods would receive 2.5% interest.

Furthermore, annexed to the prospectus was the standard contract to be signed by customers subscribing for the product, setting out in detail its conditions and risks.

In light of the above, Banco Guipuzcoano's contracting procedure was found wanting, in that the transaction was not formalised using the standard contract designed to ensure the customer had the correct information and understood the product's characteristics, but through a document headed "sale reservation".

We also consider that signing a "sale reservation" for the product was not enough to constitute its firm acquisition, so unless the reservation was supported by the signature of the required document, Banco Guipuzcoano should not have gone ahead with acquiring the product.

R/396/2008. Banco Español de Crédito, S.A. In this case, the CNMV ruled that the bank had acted wrongly in failing to adequately inform the complainant of an error made in subscribing for a number of mutual funds under a portfolio management agreement, and in remedying the fault with a notable lack of transparency.

R/441/2008 – Renta 4 Sociedad de Valores, S.A. It was found that the entity was wrong to sell certain shares unilaterally.

The entity sold some shares whose purchase had left the complainant's account overdrawn. While this decision to sell unilaterally was covered by a clause in the contract between the parties, it seems illogical that the overdraft had been allowed to run for no less than 7 years. In effect, there was no evidence that the entity had demanded any payment during this period, nor was the customer informed beforehand of the share sale on the market.

R/513/2008 – Caja de Ahorros y M.P. de Madrid. In this case, it was accepted that four orders to subscribe for Caja Madrid 2007-1 bonds were submitted, each stipulating as originators both a remainderman and a usufruct holder of the corresponding securities accounts, but only signed by the usufruct-holder.

Based on testimony and the signature on these documents it was clear that the investment was initiated at the sole instigation of the usufruct owner and that Caja Madrid decided to process these instructions based on its own interpretation of the prudence principle.

It should be remembered that the existence of usufruct rights generally implies that the usufruct-holder has the right to enjoy life ownership of the goods concerned, with an obligation to conserve them, receiving all their proceeds or rents, but without being able to fully dispose of them, that is, to alienate - sell or give away - or encumber them.

Irrespective of any subjective interpretation or condition that might have led the bank to act as it did, without the express authorisation of the remaindermen or legal authorisation, Caja Madrid should not have processed or executed any securities instruction that involved the availment of these goods or cash.

R/551/2008 - Banco Popular Español, S.A. The complainant requested, via a third entity, the transfer of a securities portfolio deposited with Banco Popular. This

request was rejected as the securities concerned were pledged and the customer was informed accordingly.

Having cancelled the loan against which the securities were pledged as collateral, the complainant again requested their transfer. Once again, Banco Popular rejected the transfer.

The pledge or posting of securities as collateral against a commercial loan is a very common procedure. Book-entry securities against which a pledge certificate has been issued are frozen and the custodian cannot execute transfers until the certificates have been revoked, unless ordered to do so by legal or administrative rulings.

Accordingly, any action to dispose of the pledged securities, such as their transfer, would first require the release of the pledge as provided for in the loan agreement or the extinguishing of the reason for the pledge, i.e., repayment of the underlying loan.

Given that at the date of the first transfer request the pledge had not been released, Banco Popular was right not to execute it.

However, the securities pledge policy agreed by the complainant included a clause stating that "this collateral is established for an indefinite period, lasting until all the obligations deriving from the transactions guaranteed by the policy are cancelled, at which time the bank shall ask the entity maintaining the register of the securities to release the pledge or shall give its consent if the pledgor so requests."

In our view, what this clause implies is that the moment the loan policy was cancelled, Banco Popular should have itself taken the necessary steps to get Iberclear to release the pledge.

As a result, when the customer again requested the transfer of his securities, Banco Popular not only should have had the Iberclear certificate freezing the securities localised and available, it should also have arranged to release the pledge several months previously.

In the light of the above, the CNMV concluded that Banco Popular's handling of the affair was unsatisfactory and that the transfer of the securities was delayed without good reason.

R/643/2008 – Caja de Ahorros del Mediterráneo. The complaint concerns the execution of an order to buy shares in Ercros, taken in a telephone call to the branch. The complainant contends that he wanted to buy the shares at 0.24 euros per share. However, the entity claims that he gave no price instructions during the phone call. The order was finally executed at 0.25 euros per share.

The report found the entity to be at fault on the following grounds: The buy order did not qualify as part of a telephone banking service (it was not recorded) but was rather a verbal order. Such orders are understood to have been confirmed by the customer when, having been executed by the entity and shown to the customer in any written format, the customer does not express their disagreement within 15 days. However, on this occasion, the customer registered his disagreement with the price at which the order had been filled, and had put this in writing on the signed order form.

R/670/2008 – Renta 4, Sociedad de Valores, S.A. The conclusion in this case was that the entity had been at fault in allowing orders to be placed by e-mail.

Prevailing rules on security orders does not specifically recognise the validity of e-mail as a medium for transmitting customers' instructions because, unlike the telephone or Internet, it does not require the use of passwords or means of identification as a security measure.

Triggering of conditional orders

R/726/2007 – M.P y Caja de Ahorros de San Fernando, Huelva, Jerez y Sevilla. The complainant had placed a stop-loss sell order for 1,000 Colonial shares with a limit price of 4.28 euros and a trigger price at or below 4.29 euros.

Cajasol accepted the order existed, but claimed that it failed as some of its parameters were incorrect or that the "application would not accept it". Nonetheless, Cajasol neglected adequately to inform the customer that the order had failed. We find that Cajasol offered no conclusive explanation to either the customer or the CNMV about the error that caused this failure or about the changes to be made to its parameters so the order could be executed normally.

The right course of action in notifying an error in, for instance, the price of the transaction, would have been to also specify which field was causing the problem so that the client could put it right.

The entity also failed to provide specific information through channels other than the online service on the existence of any kind of condition or minimum required spread between order trigger and limit prices, nor was any restriction mentioned as to the setting of the validity dates.

In light of the above, if the incident was related with these factors, and these were the only parameters filled in by the complainant, there was no prior information that would have allowed the customer to work out the existence of any such conditions beforehand.

R/161/2008 – Caja de Ahorros y M.P. de Madrid. In our view, the meaning and scope of the orders submitted by the complainant and forming the basis of the complaint were neither ambiguous nor in need of clarification. Accordingly, the orders should have been interpreted as meaning that, once the Ibex-35 had reached a level equal to or below 13,448 points in some cases and 13,450 in others, Caja Madrid was obliged to enter the orders to sell at market price.

As such, we consider that the orders in question were properly handled by the entity.

However, we found that the information given about the features of conditional/stop-loss orders on Caja Madrid's website failed to give customers a sufficiently clear and true impression of how the instructions worked, especially as regards possible conditional orders on the Ibex 35.

At no point does the information explain the risks that this type of order might represent for the customer; among them, that when the trigger and the execution price for the order are the same, it is possible that it will fail to execute in certain

market circumstances or that the triggering of an order does not necessarily mean it will be immediately executed, as might be inferred from the information analysed.

Nor was there any express statement that setting a trigger condition was equivalent to the customer submitting a firm instruction to trigger their order if the share price or Ibex 35 was at or below this level.

As a result, the statement that "In conditional orders on the Ibex 35 index, you may indicate as trigger prices values higher or lower than the current price shown for the index at the time" is incorrect and could easily be misinterpreted by clients.

R/590/2007 – ING Direct, N.V, Sucursal en España. In this case, as in the one above, it was found that the information about conditional orders posted on ING's website failed to give customers a sufficiently clear and accurate impression of how the instructions worked.

An example should be given of what type of order to place if the customer's aim is to limit losses or lock in profits, or the site could automatically display information screens that the customers must read and sign off before continuing with the transaction.

R/834/2008 - Bankinter, S.A. The customer placed a conditional order and after the order had been triggered it took 16 minutes before it was sent to the market.

The provision of investment services requires that a reasonable time should be allotted to execute the different phases of each operation, even though Bankinter states on its own website that "the moment the condition is met, a sell limit order will be automatically placed on the market".

However, we consider that taking 16 minutes from the time the trigger condition was met until the sell order was placed on the market cannot be considered diligent service, particularly as one of the selling points of this type of transaction is its supposed rapidity, allowing customers to tailor their strategy to movements in market prices.

It also came to light in the course of this complaint that the trigger conditions for this type of order only apply in general trading hours and not during opening and closing auctions.

Incidents related to online trading

R/393, 397, 400, 688/2007 - Bankinter, S.A.
R/784, 785, 786/2007 – Open Bank Santander Consumer, S.A.
R/789/2008 – Caja de Ahorros y Pensiones de Barcelona.

These complaints concerned the obligation of entities which offer investment services to organise and control their resources responsibly, deploying appropriate measures and resources to conduct their activities efficiently. They also have a general obligation to provide customers with all clear, accurate and comprehensive information that they have at their disposal which may be necessary for their investment decisions.

Accordingly, entities that offer online trading should be able to guarantee their clients that they provide an efficient, reliable service and that the information given on products and services is accurate and timely, even when provided by a third party.

Also, when faults in the system disrupt the normal provision of the service, customers must be informed quickly and alternative efficient systems provided at no extra expense.

R/658/2007 - **Citibank España, S.A**. In this case, it was found that the information on the status of securities orders being processed which Citibank provided through its online trading service must be considered binding on the entity in respect of its customers, irrespective of whether it required the intervention of third parties. In other words, any deficiency in its content would constitute valid grounds for a complaint against the broker; the party with whom customers have signed a contract and to whom they have paid the corresponding fees.

It was established that for a certain time the complainant was unable to confirm via computer that a buy order had been executed and, at least until that moment, might have thought, as was the case, that the order could be cancelled. All the more so as the IT system allowed him to input the cancellation order perfectly normally, without even a warning at the time the instruction was submitted that it would be conditional on the order not having previously been filled.

As such, the information the customer received from the Internet was misleading.

R/011/2008 – **Open Bank Santander Consumer, S.A.** In this case, the entity's web service wrongly informed that Santander Bancorp shares were listed on the Spanish continuous market, when in fact it was a Puerto Rican company trading on Latibex.

Had this information been available to the complainant, he would probably not have made the mistake of thinking the shares in question were those of the parent company.

R/040/2008 – **Open Bank Santander Consumer, S.A.** In this case, repeated mistakes inputting Internet passwords entitled the bank to suspend the customer's online trading facilities on suspicion of attempted fraud.

Without going into the reasons for this incorrect use of passwords, which should have been known to Open Bank (on the basis of information held on the date of the attempted logins, the incorrect coordinates, the terminal used, etc.), it was considered that the bank had failed in its obligation to inform the customer when notified of the incident, and indeed had provided incorrect information on the reasons for the operating restrictions imposed.

In effect, the bank acted correctly in blocking the customer's access on security grounds, but was at fault in repeatedly misinforming him, by telephone and in writing, about the real reasons for the incident, alleging instead that it was a short-term problem arising in the process of an IT upgrade. The result was that the customer was denied information for several weeks of potential relevance for his investment decisions.

R/163/2008 – **Banco Inversis, S.A.** This complaint concerned information provided through the entity's website on gross and net prices, under the heading "transaction details". Not only did these not correspond to the reality of the market, but the customer was offered no explanation of a price difference that would have a decisive impact on the value of his portfolio.

R/297/2008 – Open Bank Santander Consumer, S.A. This case concerned a persistent fault in the entity's systems which lasted several months and prevented the complainant getting a true picture of the composition of his investment fund portfolio. The system showed that the customer still owned some holdings that had in fact been redeemed via a previously executed transfer order.

The incident was not addressed on detection but persisted for some time, and in fact was not confirmed as being resolved until the date of the entity's submissions in response to the complaint.

Open Bank traced the origin of the incident to the process of adapting its proprietary IT systems, so responsibility cannot be laid at the door of any third party or act of god.

R/391/2008 – Banco Inversis, S.A. The grounds for this complaint was that the bank had failed to live up to its marketing claims. The information provided by Inversis through its website about the category of fund bought by the complainant was deficient. Until at least October 2006, the fund was listed among non money market or cash funds, when its investment policy indicated otherwise. This could have directly influenced the customer's investment decisions.

The information was of particular relevance because the marketing promotion included an incentive for new customers who subscribed least 3,000 euros to investment funds that were not classed as money market or cash funds and also maintained their investment for at least 12 months and a day.

For this reason, the bank was found to be at fault for providing deficient information. The issue of entities' compliance with their marketing claims falls outside the jurisdiction of the CNMV and is a matter for the courts.

R/506/2008 – Banco Inversis, S.A. As in the previous case, the entity was found to be providing deficient information on the progress of a sell order on futures contracts which the customer was tracking on the Internet.

R/570/2008 – Open Bank Santander Consumer, S.A. The entity was found to have acted incorrectly in failing to notify IT incidents that might have affected the complainant's decisions about his securities portfolio.

The question here was who should bear the consequences of an IT error that led to buy orders submitted by the complainant appearing as having been filled, leaving him with a fictitious portfolio.

The complainant then sold this portfolio resulting in a large balance in his current account. At this point, the entity decided to buy the securities the complainant had sold, occasioning him a financial loss.

Although the complainant sold the fictitious portfolio before finding out about the incidents, the source of the problem lay in the erroneous and inaccurate information that the entity had provided. In fact, the sale of the portfolio should never have been executed as the customer did not own the securities in question.

R/727, 820/2008 - Bankinter, S.A. In these cases, some of the warrant issues offered for trade through Bankinter's website were incorrectly identified. Confusion between a call warrant and a put warrant would have a fundamental impact on the taking of

investment decisions in this type of asset and could completely derail an investor's strategy.

Even though the information was prepared and managed by a third party, it was the broker that maintained a business relationship with the customer and was responsible for its good conduct.

As a result, we dismissed the bank's claim that it was not responsible for the identification of warrants appearing on its website. It is especially vital that such channels uphold the principles of transparency, clarity, accuracy and sufficiency in the case of volatile derivative products like these, which require constant monitoring by the investor.

It was also found that Bankinter had failed to detect several such incidents until they were brought to its attention by the complainants.

Incidents relating to acquisition and sale of preferential subscription rights

R/752/2007 – **Caja de Ahorros del Mediterráneo**. The CNMV considers that one of the obligations securities custodians have to their customers is to provide information on how to submit instructions during corporate actions taken by companies whose shares they hold, such as a capital increase with preferential subscription rights.

In this case it was found that CAM had initially provided wrong information to its customer on the existence of a capital increase by Avanzit and the imminent start of trading in subscription rights, when the customer e-mailed specifically asking for information on this point.

R/780/2007 – **Bankinter, S.A.** In this case, the complainant acquired preferential subscription rights on shares on the last day of the trading period, but could not then submit any specific instruction on what to do with these rights. As a result the rights lapsed leaving the customer with a loss.

We consider that as this was the last working day on which the rights could be traded, the customer should ideally have been sent some sort of warning message about the need to exercise or sell them before the close of trading.

Although Bankinter argued that the notice to customers on its website fulfilled this condition, we considered that this notice was useful to customers who acquired their rights as a result of previously holding shares, but could be confusing for customers that bought their rights on the secondary market. This is because it gave a deadline for instructions that did not match the procedures for those buying rights in the last two trading days, and said that Bankinter would take default actions that in fact would not apply in the circumstances described above. In our view, since the rights were acquired on the last day of trading, it was absolutely impossible for the customer to receive any type of mailed notice in time. It would be more effective if a notice appeared on customers' screens on completion of the buy transaction warning them of the points made above.

R/009/2008 – **Banco Español de Crédito, S.A.** The customer acquired preferential subscription rights in Ercros, S.A. for 4,000 euros through Banesto's online broker service. Despite the customer having gone in person to the Banesto branch to state

their intention of subscribing for the Ercros shares to which they held rights, the bank unilaterally decided to sell the rights, charging a commission of 4,000 euros, which the customer considers disproportionate, and preventing him from subscribing for the shares.

The obligations of securities custody and administration include a duty to take the necessary steps to ensure securities deposited conserve their value and rights in accordance with the law. Entities have been interpreting this duty during rights issues as meaning that when a customer receives rights by virtue of being an existing shareholder in the company, unless instructed otherwise, the custodian will unilaterally sell them via a market order before the close of the rights trading period. This obligation has been applied to most securities custody and administration agreements and is set out in Banesto's standard contract as filed with the CNMV.

The reason is that rights generally become worthless once the trading period has closed, with no financial, legal or corporate value. Selling is therefore the best option for the customer in the circumstances, as it preserves the value of the securities held on deposit.

However, investors acquiring their rights not as existing shareholders but through a buy order on the secondary market have to give their intermediaries specific instructions on what they want to do, irrespective of when they submitted the buy order. In the absence of such instructions, the custodian should take no action in the matter, even if the rights lapse with the consequent financial loss to the investor. This was the case with the subscription rights acquired by the complainant through the online purchase order.

As a result, the custodian should have treated the subscription rights bought on the secondary market differently from those allocated to shareholders in the issuing company, including in the way it provided information to customers.

Banesto was at fault in using the same communications format and disseminating the same information about the action it would take in the absence of customer instructions in the case of subscription rights bought in the secondary market. Based on the above, we consider that no commission should have been charged for the default sale of the subscription rights, as Banesto should not have taken this unilateral action.

R/800/2007 – Caja de Ahorros del Mediterráneo. Similar to the previous case.

R/326/2008 – Bankinter, S.A. The complainant received preferential subscription rights as a shareholder of the issuing company and also bought an additional number of rights during the trading period without, subsequently, giving any specific instruction on what to do with these rights. As a result the rights lapsed with the consequent loss to the customer.

Bankinter should have treated the two groups of rights differently, selling the subscription rights not acquired on the market at market price.

R/366/2008 – Bankinter, S.A. The customer received a number of preferential subscription rights for shares as a shareholder of the issuing company and, within the deadline for preferential subscriptions and that set by the entity for receiving instructions from customers, submitted an order to subscribe for new shares.

Bankinter failed to execute this order in the requisite time and, instead, sold the rights at market price.

Bankinter admitted its mistake, but we consider that, on detecting its failure to subscribe for the new shares in accordance with the customer's instruction sent the previous day, it should have made every effort to comply with the instructions; in this case buying back the rights and exercising them.

Bankinter argued that even buying back the rights it would have been unable to exercise them as the term for the capital increase would by then have closed. In our view, however, it had time to do so during the last day of the preferential subscription period.

In any case, throughout this sequence of events the bank should have kept the customer regularly updated.

R/413/2008 – Caja de Ahorros de Valencia, Castellón y Alicante. The customer acquired preferential subscription rights for shares during the trading period and immediately submitted a conditional sell order.

Bancaja's responsibility was to receive the sell instruction and forward it diligently for execution to the corresponding market member.

In this case, since the customer had given instructions to sell the subscription rights on certain minimum price conditions, Bancaja should have maintained the order in the market for the whole of the period set by the customer, and was wrong to unilaterally cancel it then submit a new sell order on the last day of trading.

In our view, the appropriate course would have been to contact the customer, warn him that it was the final trading day for rights and ask for new instructions, since the sell order had not been executed and he ran the risk of losing the whole investment.

Takeover bids

R/352/2007 – Caixa Rural La Vall "San Isidro". The customer in this case habitually traded online and was a shareholder of Metrovacesa, S.A., a listed company which had received two competing offers with an acceptance deadline of 20 September 2006.

The complainant submitted an instruction to accept one of the offers but, after this order had been placed, found that the shares still appeared on his securities account statement, without the entity's IT system having issued any warning or exception message. This left him with the impression that he could freely dispose of the shares, which in fact was not the case.

When the results of the bids were published on 22 September 2006, the respondent unilaterally proceeded to buy the shares necessary to execute its customers' sell orders, leaving this customer with a loss.

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.

It was found that the entity had acted wrongly by not informing the customer thoroughly at the time of accepting the bid, although it was also felt that the customer bore some responsibility for having sold the same block of shares twice.

R/512/2007 – Caja de Ahorros de Galicia. The complainant claimed that the entity appointed by the bidder in the takeover to act as intermediary and settle the share acquisitions arising from the bid had misreported the ownership of his shares to the tax authorities.

However, in the course of processing the complaint it became apparent that this entity had accurately passed on the ownership data it received from the custodian. It had also settled the sell trades in accordance with the instructions received and reconfirmed by the CECA. The error lay in the information provided by the custodian, which had reported the shares as belonging to a person who was merely the legal representative.

The entities were urged to take measures to make good the incident detected.

R/613/2007 – Barclays Bank, S.A. In the course of the merger between Telefónica, S.A. and Telefónica Móviles, S.A., Barclays received and processed an order submitted by the complainant instructing it literally to "accept the takeover bid with the Telefónica Móviles shares" in his possession. As a result, the shares were sold in the secondary market.

This order to enter the share exchange was unnecessary as this was outside the power of Telefónica Móviles, S.A. shareholders, deriving instead from resolutions taken by the two participating companies which were binding on all share custodians and required no specific order or instruction from the customer.

That said, precisely because the instruction was redundant and ambiguous, we consider that Barclays should not have accepted it for processing. Given that it did in fact proceed with the order, it should have contacted the client to advise him of the situation and clarify his intentions.

In the CNMV's view, Barclays' interpretation of the order's wording was excessively risky and should have been checked with the customer.

R/696/2007 – Banco Pastor, S.A. The complainant claimed not to have received the required notification about a delisting offer. It transpired that the entity had misinformed the customer at the start of the procedure for voluntary removal of the shares from the book-entry register and had been slow in fulfilling its promise to repay custody and administration fees.

R/793/2007 – Caixa D'Estalvis de Catalunya.
R/392/2008 – Banco Inversis, S.A.

In both these cases, the entities claimed that the communications sent to customers specified the last day for subscribing to the takeover bid, and that it was impossible for them to fulfil their respective instructions since these were received after the cut-off time.

The CNMV has repeatedly said that the unilateral shortening of the term set in bid conditions for shareholders to accept the offer, with no good reason other than the self-interest of the custodians, is an infringement of customers' rights. The term for accepting the offer is stated in the bid prospectus. It is entities' responsibility to put in place procedures that allow orders to reach the entity charged with their execution in the shortest time possible.

R/047/2008 – Banco Inversis S.A. The complainant in this case was the owner of 7,419 shares in Amadeus IT Group, S.A., an unlisted company, which were sold by the entity without his authorisation or consent.

Inversis notified the customer about a takeover bid for these shares. Although the customer did not complete the instruction slip as he disagreed with the offer price, Inversis nonetheless sold the shares.

Investigation of the complaint showed that the communication informing the complainant of the terms of the bid for Amadeus IT Group S.A. shares set an end-date for the receipt of instructions and specified that "if your instructions are not received before the end-date shown we shall proceed to: not subscribe to the takeover bid".

Also, Inversis's standard contract for securities custody and administration as filed with the CNMV states that "If no instructions are received from the customer, Inversis Banco can take whatever decisions best safeguard the customer's interests (...). Specifically, among other cases, Inversis Banco may (...) subscribe for takeover bids for shares with a view to their delisting".

Since testimony confirmed that no instruction was given to Inversis in relation to the shares owned by the customer, its unilateral action was incorrect.

R/030/2008 and R/112/2008 – Open Bank Santander Consumer, S.A. The customers complained of the failure of their orders to accept Enel's bid for Endesa. Open Bank argued that the deadline for accepting the offer had been set at 18:00 on the closing day to make sure there was time for orders to reach the market. However, this explanation was inconsistent as bid acceptance instructions do not require an order to be sent to the market, i.e., market trading hours are irrelevant with this type of order.

Since the bid prospectus mentioned no cut-off time, the logic was for custodians to receive and transmit bid acceptance orders on clients' behalf throughout the time normally allowed, depending on the trading channel, for the processing of customer instructions. Open Bank, for instance, would only be obliged to accept orders in person during its branch opening hours. Regarding its internet channel, the entity has said that it does not accept bid acceptance instructions online. And for customers signed up to its telebanking service, it would have to process orders during the normal operating hours.

R/274/2008 – Bankinter, S.A. The complainant was a shareholder in Tafisa, the target of a delisting bid. Bankinter argued that it was unaware the customer had submitted an instruction to accept the bid and therefore did not put forward his shares, which were left in the portfolio.

Bankinter's standard contract for securities administration filed with the CNMV, which serves as the benchmark for its customer relations, states that "the Bank shall proceed in all cases (...) according to the orders given by the customer. (...) If no specific instructions are received from the customer, the Bank (...) shall subscribe for delisting bids (...)".

It is thus contractually stated that the only circumstance in which Bankinter will act unilaterally without instructions from the customer is in the case of a delisting bid, which was the case with Tafisa.

R/344/2008 – Banco Bilbao Vizcaya Argentaria, S.A. The complainant placed a conditional order through BBVA to buy Tafisa shares at a set maximum price.

The order was executed during the last day of the acceptance period for a delisting bid on the company, and at the end of the day the shares remained in the customer's portfolio without having been submitted for the bid.

In our view, the existence of a bid, whether with a view to delisting or otherwise, imposes no restrictions on trading in a listed company's shares during the acceptance period. Accordingly, orders on these shares can be placed and executed as normal.

However, BBVA's standard contract for securities custody and administration on file with the CNMV and in force at the time of the buyout stated that "(...) the bank, with no need for the relevant instructions, undertakes to administer the securities so as to (...) submit them for delisting bids (...)".

As a result, since the customer had effectively become a shareholder in Tafisa before the end of the acceptance period for its delisting bid, in the absence of specific instructions on the offer, we consider that BBVA should have unilaterally submitted instructions to accept and sold the shares at a unit price of 1.54 euros.

R/427/2008 – Banco Caixa Geral, S.A. The complainants were shareholders in Endesa, the target of a takeover bid. Testimony and documents submitted by both parties showed that the complainants had handed in signed communications on the bid for Endesa at a Banco Caixa Geral branch during the acceptance period, although they failed to include any specific instruction to accept the bid.

In our view, the lack of a concrete instruction meant that an essential part of the order was missing and, therefore, Banco Caixa Geral should have taken it upon itself to contact

the customers and clarify their intentions. There were still 18 days to go until the end of the acceptance period, so the entity was not acting under the pressure of a deadline.

Our opinion on this point differs from the bank's. Specifically, we understand that responsibility for making good the failed orders was entirely its own and cannot be passed onto the customers.

Incidents in derivatives trading

R/102/2008 – Bankinter, S.A. Under the agreement between the customer and the entity to trade in derivatives, and contrary to what Bankinter argued in its submission, any sums claimed from the customer in respect of margins posted for futures trading should be shown as a debit entry in the associated current account. So any calculation of margin that would have required a call on funds should have been reflected in the customer's current account, whether or not there was an error in the calculation. In this case, the amount in question should have been credited as soon as the error was identified and both movements should have appeared in the current account, without this posing any technical problem to the entity.

If, conversely, this sum had resulted from an overcalculation of the margin appearing in the account, Bankinter should have expressly stated this in the explanations offered to the customer or in its submissions to the CNMV, something that it failed to do in either case.

For whatever reason, we consider that the information Bankinter provided to its customer was neither clear nor specific enough to elucidate the incident, even though the customer had contacted the entity on several occasions to enquire about the incident.

R/469/2008 – Open Bank Santander Consumer, S.A. The complaint concerned a customer's position in derivatives traded on MEFF RV which was closed on the grounds of insufficient margin at a time different to that agreed in the contract.

The contract between the parties contained this clause: "When, on checking the balance available in the customer's current account half an hour before the start of trading on the first market of those offered by Open Bank, the amount in the futures account is less than the margin required (that called by the market plus the additional 20% required by Open Bank) plus net losses and fees, all positions shall be automatically cancelled".

On May 17, 2006, after a sharp fall in the Ibex 35, the balance available in the complainant's futures account was insufficient to cover the margin call. As a result, she thought that on failing to post the margin required, Open Bank would close the positions at the start of the next day's trading (9:00). However, the customer's financial derivative positions were not closed on the opening of the next day's session but at 9:36 a.m.

Open Bank said that the clause quoted did not specify the exact time the positions would be closed, as this happens when the IT system has finished checking each of the open positions for all its customers registered in the futures market and comparing them with the balances in their respective current accounts.

In the CNMV's view, in accordance with the disputed clause, Open Bank should have checked the balance available in its customer's derivatives account half an hour

before the opening of the first derivatives market of those it offered, with orders to close positions being generated as from that time and submitted to their respective markets (in this case MEFF RV) automatically when they opened.

The key point is that the clause does not say the checks should start half an hour before the opening of the first derivatives market offered, but that they would be done at this time, implying that Open Bank will conclude all the necessary checks before the opening of the respective markets. In principle, it might also be assumed that if Open Bank sets half-an-hour before the opening of the first offered market as the time for its checks, it is because it considers this gives it sufficient margin.

Also, in this particular case, the futures markets offered by Open Bank include the Eurex Market which opens an hour before MEFF RV, giving Open Bank an additional hour to carry out its checks.

R/635/2008 – Caja de Ahorros y Monte de Piedad de Córdoba. The entity failed to process a warrant sell order that had missing information.

The entity claimed that market orders are only accepted if they show a currency and limit date. The complainant had omitted both fields, for which reason the order was not executed. However, the entity was at fault in accepting an order without notifying the customer that it was incomplete and, therefore, could not be processed.

It should be noted that the entity had admitted its fault before the CNMV's report and offered the complainant the possibility of closing the unexecuted sell trade at the average price of the warrants on the day the order was placed.

AIAF fixed-income market

R/053/2008 – Caja de Ahorros y M.P de Madrid and R/085/2008 – Caja de Ahorros de Galicia. Non-execution of orders to sell securities on the AIAF market.

Analysis of cross trades on the market showed that the entities had been matching and seeking counterparties for other orders similar to those placed by the complainants. This need not be incompatible with a lack of counterparties for these orders, since they could have been trades agreed bilaterally between clients of the entity. The reported concluded that there was room to improve due diligence when managing the search for counterparties for customers' sell instructions.

R/436, 452/2008 – Caja de Ahorros de Galicia. Caixa Galicia failed to warn the complainants about the practical difficulties in selling their securities at par. Also, it should have informed them that a minor adjustment to the minimum sell price would have exponentially increased their chances of completing the trade.

Also, it was not demonstrated that Caixa Galicia had called on the market maker to try and fulfil its obligation to seek a counterparty for the complainant's sell orders, suggesting that the instructions were poorly managed.

R/696/2008 – Banco Santander, S.A. In this case, there was clearly an undue delay or tardiness in selling preference shares issued by Unión Fenosa Financial Services USA on the AIAF fixed-income market.

In general, under their respective order execution policies, investment service providers must act with care and due diligence in their transactions, carrying them out strictly in accordance with their customers' instructions and taking all reasonable steps to obtain best execution for the customer in light of the price, costs, speed and likelihood of the order's execution and settlement, volume, the nature of the transaction and any other relevant factor.

The prospectus for the issue stated that, under the liquidity contract between the issuer and Banco Santander, Banco Pastor, Caixanova, Caixa Galicia and Caja San Fernando, these entities undertook to make a market for holders of the preference shares by submitting buy and sell orders on the AIAF fixed-income market.

However, market makers would no longer be obliged to offer liquidity if the total balance of the preference shares they held was equal to or more than a given percentage of the nominal value of the issue placed by them: 4.8% in the case of Banco Santander.

On the day that the complainant ordered the sale of the shares, Banco Santander was not obliged to make a market since the shares it held already exceeded the threshold, but this was not the case for the remaining market makers. We consider that Banco Santander should have sought to find a counterparty for the order through all reasonable means at its disposal including: seeking buy positions in its branch network and, failing this, calling on the other market makers for the issue.

Also, it was shown that it brokered numerous transactions in Unión Fenosa Financial Services USA preference shares between customers. It therefore seems reasonable to think it could have carried out similar matching and counterparty seeking activities for other orders such as the customer's.

Finally, based on the entity's own submissions, we conclude that Banco Santander did not call on the other market makers to fulfil their obligations to seek a counterparty for the customer's sell order.

All of which leads to the conclusion that, although trading in preference shares is not covered by the provisions of Banco Santander's order execution policy, the handling of the complainant's sell order was nonetheless deficient.

A3.1.2 Customer information

R/390/2007 – Caja de Ahorros y Monte de Piedad de Madrid and R/413/2007 – Banco Español de Crédito, S.A. The complainants disagreed with the exchange rates applied to currency purchases made as a result of the processing and execution of securities trades in non-euro currencies.

In view of the evidence submitted, it seems that the complainants were not appropriately informed of the exchange rates that would be applied to the transactions they ordered in the clear, transparent and diligent manner required of investment services companies, and the entities were therefore found to be at fault.

R/629, 764/2007 – Barclays Bank, S.A. On examining these complaints, it was established that the orders signed by the complainants lacked some of the minimum details required for a securities instruction to be clearly understood. One, for instance,

gave a generic name for the product that was potentially misleading, as at the time Barclays was selling other bonds under the same name, "Snowblade", although these were issued by different companies.

In the CNMV's opinion, the name of the issuer should have been explicitly stated so the customers would have known who they were really financing with their purchase.

R/608/2007 – Deutsche Bank, S.A.E and R/776/2007 – Caja de Ahorros del Mediterráneo. The complaint in these cases was that the entity had failed to inform buyers of an asset about the secondary market in which it would be listed or traded; a point that was essential for them to understand the terms and conditions of the asset in question.

In Deutsche Bank's case, the customer was also given written information on the terms and conditions governing the product which could have been misleading as to the redemption dates of the investment.

R/469/2007 – Caja de Ahorros y Monte de Piedad de Madrid (Caja Madrid). Caja Madrid was found to have acted incorrectly in failing to keep the complainant adequately informed about Iberdrola's bid to acquire the entire ordinary share capital of Scottish Power.

Specifically, the information provided by the entity described the offer as a public takeover bid when in fact it was a bid under Article 425 of the UK Companies Act. This meant that it required, among other things, the approval of the shareholders of Scottish Power, Iberdrola and the consent of the Edinburgh Court of Session and that, if approved, it would be binding on all Scottish Power shareholders, although they had a number of options as to how they would be remunerated for their shares.

Also, notice sent to the complainant failed to set out the conditions that must be met for the bid to go ahead and described only some of the possible remuneration options. It also failed to explain how the bid would be handled if no option was selected.

R/637/2007 – Banco Inversis, S.A. The bank was found to have acted wrongly in failing to provide a copy of a transfer order submitted by the complainant. Nor did it provide a copy of its subsequent alleged cancellation which Banco Inversis claimed in response to the customer's complaint. In neither case did it offer any reason for the omission.

The entity was also found to be at fault for failing to contact the complainant and seek their instructions regarding the delisting offer for the shares of Yell Publicidad, S.A. in the early months of 2007.

R/690/2007 – Banco Santander, S.A. The complainant invested in several tranches of a reverse convertible bond linked to Banco Santander, S.A. shares.

This was a high-risk product in which, while Banco Santander undertook to pay the agreed coupon, it was even possible to lose the whole of the invested capital, should the share price of the Banco Santander shares deliverable at redemption have fallen to zero.

The entity was found to have acted incorrectly by including in the heading of the pages of the contract signed by the complainant the term "Financial deposit opening

agreement", as this was at odds with the nature of the product described in the body of the agreement and with the standard contract filed with the CNMV when the product was registered for sale in Spain.

The entity was also found to have acted wrongly by formally completing the complainant's investment in the third tranche of the bond before the start of its subscription period.

R/574/2007 – IberCaja, R/145/2008 – C.A y M.P de Madrid, R/280/2008 – Banco de Finanzas e Inversiones, S.A. These complaints were upheld on the grounds that the entities had acted incorrectly in respect of securities trading orders submitted by the complainants which might have been considered ambiguous or incomplete.

R/730/2007 - Banco Español de Crédito, S.A
R/109/2008 Banco Bilbao Vizcaya Argentaria, S.A.
R/279/2008 - Banco Santander, S.A
R/283/2008 - Gaesco Bolsa, S.V, S.A

The entities were found to have acted incorrectly in failing to keep an agreement signed with the complainants for the statutory five years required for contractual documents.

In one case where securities were still on deposit, the entity should have kept the agreement on file in accordance with its obligation to conserve contractual documents signed by a customer for at least five years counting from the date of their cancellation.

R/017/2008 – Caja España de Inversiones, Caja de Ahorros y Monte de Piedad. The complaint was upheld as the entity responded inadequately to a request to appoint a proxy for a shareholders' meeting of Endesa, S.A. convened on first call at 11:00 on 25 September 2007.

Specifically, Caja España gave 20 September 2007 as the deadline for receiving the completed attendance cards from its customers, claiming that this was because it had to send them to the Spanish Savings Banks Confederation and this meant it needed to have them two working days before the start of the meeting.

The complainant said that they contacted Caja España to appoint a proxy on 21 September 2007. Caja España said they were not contacted until after the stated deadline.

It was found that since this was still within the period (Endesa's deadline for receipt of proxy votes was 24 hours before the date and time scheduled for the first-call shareholders' meeting), Caja España should have processed the appointment of the proxy or, at the very least, informed the complainant of the alternative methods for remote voting or appointing a proxy.

R/019/2008 – Banco Banif, S.A. Banco Banif was found to have acted wrongly by sending an e-mail to the complainant regarding a public offering of shares in Meinl International Power Limited on the occasion of its flotation in Austria, which claimed that the stock market launch would be very successful and would deliver returns of between 12% and 25%; a claim that was neither justified nor adequately explained. It also assured that the investment was low-risk, in contrast to what was stated in

its own reports, subsequently sent to the complainant, which said that this was an investment in underdeveloped markets and offered a higher risk/return trade-off.

The entity was also found to have acted wrongly in making the investment without first collecting from its customer the subscription form and securities account opening agreement.

R/057/2008 – Banco Santander, S.A. The entity was deemed to be at fault since it failed to inform its customers clearly, accurately and sufficiently about a Bankinter share split which took place in July 2007.

Specifically, according to the statements of the parties, it appears that the only documentation the banks sent its customers was a settlement statement for the fee which it collected for the execution of the split, treated as a change in nominal value.

However, this document gave no information on the proportions of the split, the number of new shares that were delivered in exchange for the old shares or a the new nominal value of each new share.

R/111/2008 – La Caixa. In this case, the customer had taken out a contract for exchange risk insurance and on its cancellation La Caixa incorrectly processed the customer's instructions, liquidating the agreement without complying with the terms of the contract requiring it to seek further instructions from the customer as to the most appropriate form of liquidation.

It also failed to inform the customer of the costs associated with this cancellation, something that was also not stated in the body of the agreement.

R/190/2008 – Banco Santander, S.A. This case concerned the trading contracts in euro/US dollar exchange rate options successively taken out by the complainant. Banco Santander was found to be at fault as the contract contained inadequate information on the terms, conditions and charges applying in the event of early cancellation.

R/335/2008 and R395/2008 – Barclays Bank, S.A. The entity failed to show that the customers had signed any type of specific order authorising the purchase of shares issued by Barclays Bank plc. The entity was unable to provide evidence that such documents existed and was therefore found to have acted incorrectly either in buying the shares or in its filing process for securities orders, since Barclays is obliged to keep the documents that formalise trades for at least five years.

Regarding information on the performance of such investments, once contracted, entities should avoid sending customers regular information on the composition of their portfolio that might mislead them as to the real value of their assets. For statements to show a constant value of 100% of the nominal is wrong, since the amount stated should be the real market value allowing customers to know where they stand at any time.

In the case of Barclays, based on the statements examined in response to the complaints, it was found that the bank had been systematically sending customers information on tax and the composition of their portfolio that could be misleading as to the real value of the structured bonds they held, as they repeatedly quoted a unit

value of 100% of the nominal, when in reality these were securities listed on foreign markets whose value had fallen.

R/419/2008 – Banco de Sabadell, S.A. The complainant was dissatisfied with the information provided by the entity when buying some foreign securities and the outcome of the investment.

The product, sold as Evergreen Banco Urquijo, consisted of securities with a 50,000 euros nominal value issued by KBC Internationale Financieringsmaatschappij NV. (ISIN 0254637068) on 16 May 2006, maturing 2014, and including certain liquidity conditions. The product was remunerated by annual coupons linked to European inflation excluding tobacco and a final coupon determined by an investment strategy called CPPI applied to the basket of funds listed in the prospectus.

It should be noted that the securities acquired were issued and traded outside Spain, in Luxembourg, and that their listing did not require the filing of a specific prospectus with the CNMV. That should not have prevented the entity providing accurate, transparent and sufficient information on the features of the product on offer. Accordingly, it should have made any published information it had on the issue (e.g. final terms and conditions of the issue which were registered with the home country supervisor), available to its customer.

The document that the entity provided summarised the main aspects of the issue, such as the issuer, nominal value, redemption value, the way the annual coupon was calculated, and the composition of the underlying asset, made up of mutual funds. These should have been the same as those stated in the final terms and conditions of the issue.

The document also stated that the product offered daily liquidity but with certain penalties. However, there was no indication of how to access this liquidity or what the price would be. It did not even specify whether the securities would have to be sold on a secondary market or if there was an entity offering this liquidity based on a price-fixing method. It merely said that there was a penalty if the investment was not kept for at least three years.

The entity also gave its opinion on the likelihood of obtaining a particular yield on the investment based on the past returns achieved by the underlying funds. It was noted that the historical data used for this covered a three-year period while the investment period was eight years. In our view, the historical data series was too short to provide an adequate assessment of the investment's likely return.

Therefore, the CNMV took the view that Banco de Sabadell was at fault for providing inadequate information on an investment product.

R/474/2008 – Open Bank Santander Consumer, S.A. The complainant had repeatedly asked for the settlement statement for two securities purchase transactions. After the complaint was made, the entity provided a brief extract on the two transactions summarising the main terms of the securities purchases made. However, several pieces of information were missing. There was no breakdown of the fees occasioned by the investment, nor did it state the market where the trade was executed, the ISIN or the order number. Nor was there any stamp from the entity or letterhead that would confirm the statement in the eyes of third parties.

R/523/2008 – Citibank España, S.A. It was found that the entity offered its online customers a summary information on the terms and conditions of Caixa Terrassa preference shares which, though brief, was essential as it included such crucial points as the yield and maturity date and could therefore have played a decisive role in investment decisions.

Citibank accepted that the information provided on coupons and the maturity date of the preference shares was not a true reflection of the conditions in the issue prospectus – perpetual issue, variable coupon after a set date, possibility of early redemption, etc. – but sought to justify this by claiming that the information was too complex to be summarised in small fields. It also referred to a clause disclaiming responsibility for "market information" distributed on the web, since it had been provided by third parties.

In our view, the disclaimer cited by the entity providing the brokerage service only applies to market trading data – prices and benchmarks – and should never be taken as applying to non-market data that are actually an inherent feature of an issue, such as key dates or coupon information, which are available from the date of the issue and not subject to change. For this reason, the information provided to the customer was found to be wanting.

R/50, 143, 173, 183, 221, 478, 586, 718, 729/2008 - Banco Español de Crédito, S.A.
R/285, 287 and 522/2007 - Banco Santander, S.A.
R/051/2008 - Banco de Galicia, S.A.
R/198/2008 - Banco Popular, S.A.

A number of complaints were filed against these entities claiming inadequate information relating to swap contracts.

In Banesto's case, a number of shortcomings were identified in the process for contracting this type of product. Customers had 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 omitted some of the most important 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 their understanding of the product terms.

The final report on these complaints made no attempt to assess how well the customer really understood the product's characteristics, but in some cases it did find that there were problems with the contracting procedure and with some aspects of the information provided to customers in the agreements, such as how to initiate their voluntary early cancellation, as well as the possible costs of cancellation.

R/593/2008 – Bankinter, S.A. The bank had misinformed the complainant about a key aspect of an issue of preference shares.

The complainant had acquired preference shares maturing in three and a half years, or at least that was the information that had been sent by the entity. In fact,

preference shares are always perpetual products even though the issuer may, if they wish, redeem them early.

The entity recognised in its submission that it had committed an error of information but stated that this did not change the characteristics of the product.

R/712/2008 – Lloyds TSB Bank PLC, Sucursal en España, S.A. The complainant objected to the information provided with a securities purchase order, claiming that the inclusion of the early redemption option (call option) on some perpetual securities had confused him about the product.

Some fixed-maturity securities may offer either the issuer or the holder an early redemption option. Market circumstances, particularly interest rates, will affect the decision to exercise this right.

An option for the issuer to redeem the securities early is known as a call option. The option may be exercisable at one or several different dates during the life of the security. If the issuer decides not to call the issue, the product remains in existence until maturity or the next call date.

In our view, the entity should have stated, in the field detailing the product's maturity, that this was a perpetual product and that it came with a call option (early redemption option) exercisable at a particular date. Merely stating the date of the call option with no reference to perpetuity could have misled investors as to the real nature of the securities.

However, the CNMV was unable to determine whether this had a decisive effect on the complainant's decision to invest.

R/762/2008 – Citibank España, S.A. In our view, the formal process for investing in a Snowball bond issued by UBS AG Zurich and Basel through their Jersey branch was deficient in several respects: (i) the initial buy order was signed two months before the start of the subscription period for Snowball bonds set by Citibank itself, as the placement agent, when these had not yet been formally issued. (ii) none of the documents signed would enlighten the customer or any outside observer as to the real identity and characteristics of the product being bought.

A3.1.3 Fees and expenses

Fees for foreign market transactions

R/550/2007 – Banco Inversis, S.A. The maximum fee brochure filed with the CNMV was found to contain major differences with respect to the data Inversis presented in its defence under the name of "commercial fees".

One of these differences, fundamental for the resolution, was that the brochure filed with the CNMV did not clearly specify what was meant by a transaction for the purposes of fees. IN particular, it failed to mention the possibility of levying repeat fees for orders filled in a fragmented manner.

The CNMV understands that the fee brochure leaves this question open, in that it draws no distinction, conceptual or otherwise, between a securities order and a securities transaction.

In our view, the accrual and calculation bases of fees stated in the maximum fee brochure registered with the CNMV should coincide fully with those in the commercial brochure, even if the latter are of a lower amount.

Since the bank cannot charge for items other than those appearing in the registered brochure, we understand that they should apply the fee most favourable to the client and that, in this case, Inversis was wrong to charge repeat fees for orders executed in stages on international markets.

The entity was accordingly found to have acted wrongly.

Transaction fees

R/703/2007 – Caja de Ahorros y Monte de Piedad de Madrid.
R/320/2008 - Bankinter, S.A.

Customers complained about the unilateral modification of special conditions agreed with the entity, since they had enjoyed certain fee exemptions and reductions that were suddenly discontinued without notice.

From an analysis of the complaints it was deduced that the entities had applied the new conditions without first advising their clients. They were accordingly at fault in charging the modified fees on the grounds that the customer had not been duly informed.

In the case of Caja Madrid there was no documentary evidence on the duration of the commercial discount or any subsequent communication advising the customer of its imminent end. As such, the savings bank was found to have acted incorrectly in not notifying the change. Providers would be advised to write lasting discounts into some kind of formal document so investors can be sure at each moment of the real cost of their transactions.

The case also revealed a series of shortcomings in customer communication. In particular, Bankinter's notification to the client that he would come under the standard tariff did not meet the minimum standards for this type of communication.

Flaws detected included a failure to state the minimum time at the customer's disposal to accept or reject the proposed modification or to specify a date for its entry to force. It also failed to indicate the cost entailed or to attach a copy of the new fee schedule.

R/728/2007. Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja. The entity was deemed to have acted incorrectly in charging a fee for the transfer of shares which did not come into force until after the date on which the transfer was ordered.

R/036/2008. Banco Santander, S.A. The complainant enjoyed preferential financial conditions under which she was excused payment of certain fees. However, starting in 2004 the entity had begun to apply diverse charges for securities custody and administration and securities transfers to other entities.

The CNMV took the view that these special conditions were neither unique nor exclusive, so any services provided by the respondent entity other than those covered by these preferential conditions would come under the fee schedules set out in the

current fee brochure. However the entity was at fault for supplying the complainant with inaccurate information regarding the transfer operation. Specifically, the corresponding statement sent to the client failed to specify either the grounds for the fee, its calculation basis or the taxes applicable.

R/182/2008. Banco Santander, S.A. In this case, the entity was found to be at fault for providing insufficient details of the fees charged. Specifically, it charged the complainant a redemption settlement fee and another fee without stating the grounds for payment from among those listed in the corresponding fee brochure.

R/204/2008 – Renta 4, Sociedad de Valores, S.A.. The entity was deemed to have acted incorrectly in applying portfolio management fees different from those posted on its website.

The entity argued that the fees applied to this customer were as stipulated in the contract signed by the two parties. However, this was not sufficient to release the entity from its responsibility to users regarding the reliability of the information published in a key channel like the Internet. Indeed the fees appearing on its website were substantially lower than those stated in the contract.

R/263/2008 - Banco Bilbao Vizcaya Argentaria, S.A. BBVA admitted that it had not given the client detailed information about the costs of executing his sell order on preference shares prior to it going through, and that it also indicated a sum for the proceeds of the sale without warning him of its purely estimative nature.

The report concluded that the entity had given out information that could lead the customer to make a wrong decision, but noted that it had stated its willingness to make amends.

R/348/2008 – Cajamar Caja Rural Sociedad Cooperativa de Crédito. The entity acted improperly in not informing the complainant of the costs associated with the voluntary relinquishment of book-entry shares name in Papelera Española, S.A. recorded in her name.

R/482/2008 – Banco Banif, S.A. The customer complained about being charged a securities transfer fee plus another, management fee. The report concluded that though there had been no irregularity in charging for the transfer of securities to another entity, a fee figuring in the registered brochure and charged on the actual transfer date, the entity was at fault in applying a management fee, since it did so after the time limit stipulated in the contract between the parties.

R/15/2008 – Caja de Ahorros del Mediterráneo. The respondent entity was considered to have committed the following faults:

1 Applying a minimum per transaction higher than the amount stated in its maximum fee brochure for the administration of securities traded on Spanish markets. In the brochure that CAM filed with the CNMV on 11 May 2006, the ceiling for the administration of book-entry securities traded on Spanish markets was set at an annual 8/1000 of nominal value with a minimum of 3 euros per transaction, to be settled and charged on a quarterly basis.

   It therefore follows that the maximum fee CAM can charge each quarter is 2/1000 of nominal value with a minimum of 0.75 euros (3 euros/4) for each

class of security, given that the calculation basis is stated in annual terms so, unless stated otherwise, so too is the minimum amount per transaction. But the respondent entity was charging a quarterly minimum of 2 euros.

2 Failing to notify the complainant far enough in advance of changes in his fees. The entity claimed to have sent an informative note on 16 August 2006 stating that the new fees would be applied as of 1 October 2006.

According to the legislation then in force, customers should be given at least two months' notice to modify or cancel their contractual relationship, during which time the previous rates would continue to be applied. This legal obligation was not complied with, because two months had not elapsed from the receipt of the notification on 16 August to the date the new fees became effective.

3 The content of the informative notes presumably sent by the entity to inform the complainant about these modifications did not meet the required standards of clarity and precision. Although the law says that customer notifications regarding fee changes can be enclosed with the periodic statements entities must provide, this information should be offered in a clear, correct, precise and sufficient manner so the client has a full grasp of its effects.

In this particular case, the note of 16 August 2006 that the entity attached as proof of having notified the changes, did not present them separately but mixed in with other information, concretely publicity about an information service for investing in equity securities.

In order to encourage take-up of this new service, the entity emphasised its competitive charges, whereon an asterisk directed readers to a list of some of the new fees applicable as of 1 October, which appeared in small print in the bottom right-hand corner of the document.

It should be pointed out here that notifying changes in fees is a mandatory requirement. As such, the details should figure prominently in the central part of the message. Small print may be useful to include secondary or supplementary information but not to comply with a legal disclosure requirement. Also, it is not good practice to notify a change in fees without express mention of an increase, since this could be misleading for the customer.

It bears mention, finally, that the note of 16 August 2006 failed to specify a calculation basis for the fees referred to in the complaint.

4 Charging new fees before they have become effective. Although the entry date for the fee increase was 1 October 2006, it was also applied to fees accrued in the third quarter of the year.

R/20/2008 – Ahorro Corporación Financiera, S.A., Sociedad de Valores (ACF). According to the complainant, in the first half of 2007 Ahorro Corporación charged him a series of fees for the custody of non existent securities – he attached the relevant settlement statements in some of which the number of securities on which the service had been rendered appears as zero - and that in the case of a bonus issue launched by Zardoya Otis, S.A. in June 2007, he had been charged separate administration fees for old and newly issued shares, although they were traded together as of the first day (since the new shares carried identical rights and obligations to those already outstanding).

In the fee brochure on file with the CNMV at the time of these incidents, the maximum fee chargeable for the administration of book-entry equity securities traded on Spanish markets was set at 0.75% of the face value with a minimum per transaction of 5 euros.

This fee was applicable to each class of share (set of an issuer's shares with the same rights and characteristics) and settled by calendar quarter or fraction of an annual calculation based on the average balance of the securities on deposit.

In this case, ACF cited clause nine of the contract signed by the complainant and its brochure of maximum fees, arguing that the customer had cognizance of both. However it could not sufficiently demonstrate either the legality of the charges complained about, the fact that they referred to an actual service rendered (the complainant challenged some charges on the grounds that he had no such securities deposited) or that two charges had not been made for the same class of shares over the same period of time.

ACF also admitted that it had acted incorrectly in placing some of the customer's securities at the disposition of Iberclear's centralised securities lending facility. It offered to sit down with him to discuss possible damages and finally reached a settlement (subsequently notified).

R/59/2008 – **Cortal Consors, Sucursal en España (Cortal Consors).** The entity was deemed to have acted incorrectly in failing to provide the complainant beforehand with documentation setting out the precise amounts of the fees and/or expenses applicable to a credit line granted by RBC Dexia Investor Services España, S.A. for cash trading in equity securities, for which Cortal Consors acted as intermediary.

The complainant explained that he had cancelled the contract without any drawdown on being apprised of the fees, and had also suspended applications for two further contracts.

A3.1.4 Other subjects

Payment of dividends into current account

R/310/2007 - **ING Direct, N.V. Sucursal en España.** It was concluded that ING had been unjustifiably tardy in paying in the dividends of a listed company. ING argued that the time taken to make the definitive payment was by no means excessive, since it was not a market member and therefore had to subcontract the service.

But however many parties are involved in the payment process, it must still be expeditiously completed so the customer has access to the funds in the shortest time possible. As the client's contracted provider, ING is ultimately responsible for the process being completed in a timely and proper manner.

Portfolio management

R/494/2007 - **Bankinter, S.A.** The complaint brought to light various incidents with the way the bank was informing its customers about discretionary portfolio management.

Specifically, a client complained about a lack of information on the implicit fees paid by Bankinter and passed on to his account.

In effect, discretionary management in this case involved a portfolio of CIS units with a series of fees payable to the scheme that were subsequently charged on to the final investor. CIS management and custody fees are charged against the assets of the scheme by the management company and custodian respectively. These charges are then passed on to the unitholder/shareholder as a decrement in the NAV of each unit/share held in the fund or investment company. These fees are detailed in the prospectuses issued by all collective investment schemes. The nature and characteristics of the financial instruments making up a portfolio, in this case CIS, determine the fees payable by the investor.

However, the periodic portfolio statements entities send their customers must specify all fees, expenses or other quantities paid directly or indirectly to their account or the account of other financial entities in respect of fees or expenses met by the client in the frame of a portfolio management contract, and which accrue from agreements reached by the portfolio manager with intermediaries and other financial entities. This disclosure requirement, furthermore, was written into the standard portfolio management contract in force at the outset of the contractual relationship.

Whatever the information on management and custody fees contained in each CIS prospectus, Bankinter must apprise clients clearly of all fees charged by the bank, directly or indirectly, from the start of the contractual relationship, as provided by law and the disclosure clauses of the contract.

It was also felt that the new graph on portfolio performance included in periodic statements was potentially confusing, in that it did not allow investors to evaluate the portfolio's performance against the chosen benchmark, as was supposedly intended.

Finally, the customer complained that Bankinter had been investing in money-market funds under the Bankinter management company with higher fees than those of other funds run by the same manager. On this point, the complainant was referred to a significant event notice published by Bankinter on 16 March 2007 advising that the CNMV had detected this practice in the course of an ordinary supervision visit. The entity explained that it had discontinued this practice in July 2006 and on 16 March 2007 had proceeded to compensate its clients with notice to the funds concerned. However, a delay had manifestly arisen in compensating this particular customer.

R/544/2007 – Caja España de Inversiones, CAMP. In reply to this complaint, Caja España stated that the normal practice with this customer was for him to give unrecorded phone orders direct to the staff member assigned and later to sign a paper confirming the details of the order given.

Although the securities market laws in force at the time allowed orders to be placed verbally, it also required entities willing to accept phone orders to have the means in place to identify the caller and to make a tape recording of the conversation. In this case, as the whole process of receiving and transmitting orders was through the telephone channel without written support, the entity should have introduced formal requirements for the taking of phone orders with all the precautions prescribed by law, in order to ensure great legal certainty in the client-provider relationship.

R/267/2008 – **Alpha Finanzas, Agencia de Valores, S.A.**. The portfolio management contract subscribed by the entity and the customer assigned an overall moderate risk profile, but the section on permissible transactions was left blank. As a result, the literal tenor of the clause implied that the customer was only authorising investment in fixed-income securities traded on euro area markets.

In practice, however, fixed-income assets accounted for only 15.3% of his portfolio, meaning that, tacitly at least, he should have given his consent to a departure from the investment criteria contractually determined.

But even admitting that this portfolio composition was implicitly accepted, the entity acted incorrectly in failing to complete the corresponding section of the contract.

A3.2 Mutual funds and other CIS

A3.2.1 Customer information

Before the investment

Information on mutual fund characteristics

R/579/2008 - **Banco Santander, S.A.** The entity failed to provide proof that it had delivered all the mandatory documentation (particularly the prospectus) prior to an acquisition of mutual fund units. Instead it provided the client with a summarised factsheet that left out important information.

Specifically, the investor purchased units in a mutual fund with three possible early redemption dates contingent on the performance of three shares on the Spanish electronic market. But the way the price of these shares was to be calculated (the average of three days' average prices) was not reflected in the document given to the complainant.

This omission caused him to misinterpret the nature of the fund's protection and to issue a redemption order one year later assuming wrongly that he was covered by the guarantee.

R/101/2008 - **Mapfre Inversión Dos, SGIIC, S.A.** In the course of this complaint it was found that the company had sent out a factsheet with its main characteristics as a supplement to the official documentation on the fund. But some discrepancies existed between the information given in the factsheet and in the fund prospectus. While a fee was of blanket application in the prospectus, the factsheet enumerated cases where it would not be applied.

The entity was deemed to be at fault, since commercial material must faithfully reflect the conditions set in the fund prospectus registered with the CNMV.

R/656/2008 - **Banco Español de Crédito, S.A.** The complainant did not keep his money in a mutual fund for the minimum period stated in a promotional campaign which he had signed up for before purchasing fund units. When he went to withdraw his money, he received the redeemable amount minus both the standard redemption fee and a penalty charge for not complying with the terms of the promotion. The promotion consisted of the gift of a television set.

On examining the evidence, it transpired that the client subscribed to the fund one day after signing up for the promotional campaign. He accordingly did not have prior access to information on the fund's characteristics so could not have an clear grasp of what it was about, with the consequent risk of error.

R/604/2008 – Banco de Santander, S.A. The complainant was unhappy about the information received on a mutual fund. He sustained that he had not been aware of the risk carried by the investment, particularly its equity investment policy and the possible loss of the capital invested.

In effect, the fund in question had a maximum loss at maturity of 5%, so incorporated no guarantee that the holder would recover the full amount of his initial investment.

The signed subscription order was found to bear a reference to "Fund with a one and a half year guarantee", so the complainant clearly had been given some information on the nature of his investment. However, this information did not meet the standards of clarity and precision required under provider rules of conduct: the fund did not protect 100% of the capital invested but only limited the losses the holder could incur.

The entity was found to have acted wrongly in that the reference in the subscription order could lead the investor to form a mistaken judgement about the real risk of his investment

R/695/2008 – Caja Laboral Popular, Cooperativa de Crédito. The entity was unable to prove that it had furnished its customer with the mandatory documentation when formalising a transfer.

Information on the exchange rates applied to transactions

R/511/2007 and R/514/2007 - Banco Banif, S.A. A regular cause of complaint was the exchange rates applied in cross-border transactions.

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

However the complaint documents offer no indication that the customer was properly informed beforehand of the exchange rate applicable to his transactions, and the entity had accordingly failed to uphold the standards of clarity, transparency and diligence required of investment service providers.

Information about investment plan fees and associated risks

R/001/2008 - Banco de Finanzas e Investments, S.A. In this complaint, the investor alleged that he had been insufficiently informed regarding subscription fees for an investment plan in foreign CIS. In accordance with the product specifications, this fee was charged upfront for the total amount of the plan (a long-term investment comprising an initial contribution plus periodic payments). The subscription order contained an explicit warning that this fee would not be refunded if the plan was cancelled ahead of time.

Checks confirmed that the subscription fee was within the limits specified in the CIS prospectus, the fund's registration document and the signed subscription form. However, the CNMV concluded that the fee would have been better understood if the subscription form had stated the exact amount payable under the various investment plan options (total amount of purchase and type of sub-fund).

Also, among the documents furnished by the complainant was a personalised "Investment proposal" prepared by an advisor of the entity prior to the investment. This proposal was more like a commercial offer than a personalised investment proposal, which should have borne in mind the complainant's financial circumstances as well as his investment experience and objectives.

Specifically, it mentioned the advantages of purchasing CIS units on an instalment basis and even provided an arithmetical example showing the impact of periodic payments. However it said nothing whatsoever about the cost of investing in this kind of product or about the possibility of losing the fee if the plan was cancelled ahead of time.

The documents provided were judged to be excessively biased, with no information on the costs and risks of making a CIS investment through this kind of plan.

During and after the investment

Incorrect information on the unitholder's position and transaction settlements

R/261/2008 - Banco Inversis, S.A. The complainant alleged that Banco Inversis Banco, S.A. had misrecorded the length of a shareholding, with possible repercussions in determining the capital income from his investment transactions.

Specifically, he was the owner of two packages of shares in a SICAV bought at two different times and with different ages for tax purposes; a fact the bank had neglected to put on record. On applying for redemption, the tax income stated was therefore incorrect.

R/174/2008 - ING Direct NV, Sucursal en España.. The entity admitted in its written submissions that the information it gave the customer could be seen as incorrect in the sense of incomplete, since it made no mention of the real capital gain he had accumulated on his mutual fund holdings.

But it also argued that as distributor it could not be responsible for keeping him fully up to date with all aspects of his investment. This is not the case, since the investor's direct point of contact is the entity marketing the product and not its management company.

In the CNMV's opinion, ING was responsible for providing all the necessary information, and the fact that the complainant's fund units were the result of one or several transfers between funds in its distributor portfolio was not an obstacle to knowing the tax age of his investment and, therefore, being able to calculate the cumulative gain, since this information is provided along with each transfer operation.

In the absence of such details, the entity should have indicated this at the time of the enquiry and offered to get the information from the fund's management company (responsible for keeping the register of fund unitholders with details on the units

owned, their acquisition date and value and the tax gains/losses accumulated to date) and convey it promptly to the interested party.

R/435/2008 - **Bankinter, S.A.** The customer complained about the statement received regarding the settlement of redemption orders. Specifically the figure for withholding tax reflected capital gains that did not correspond to the reality of his investment. This meant the net total paid to his current account was less than the amount actually due.

Our analysis confirmed that the customer had been assigned an erroneous figure for capital income, which could only be due to deficient record-keeping control over the various CIS packages acquired by the client during the four-year term of the portfolio management contract.

R/688/2008 - **Banco Espirito Santo, S.A.** The entity was deemed to be at fault for informing the customer erroneously over the whole span of his investment. On this occasion, a misunderstanding had arisen about the mutual fund contracted. The customer was convinced that he was invested in a scheme called "World Energy Fund", since this was the name figuring in all the periodic statements sent to his home address. However, the entity alleged that the investee fund was in fact "New Energy Fund" and, while admitting its informational error, considered that it could not be held liable because the subscription had gone through a brokerage house that had since ceased trading.

It was, however, unable to provide the material proof of this assertion – the fund subscription order – although the time over which it was obliged to conserve the order (6 years) had by that time elapsed.

Earnings protection contracts

R/596/2007 - **Banco Santander, S.A.** In this case, the complainant was invested in a guaranteed fund and had taken out an earnings protection option whereby the entity undertakes, in return for a premium, to guarantee a determined NAV for that fund's units on a pre-set date. If the fund has a higher NAV on the contract date, the option loses all value since the underwritten amount has been safely attained. In this case, the customer had arranged a loan to meet the payment of the premium.

Eventually, the investor redeemed his units before the option expired while the loan remained outstanding. On its final repayment date, the investor was sent a debit statement referring to a credit card transaction, when the loan agreement had made no mention of the loan being on his credit card.

Further, the investor had gone to his branch to enquire about this charge and, instead of clarifying the reasons, that staff had given him an inaccurate explanation of why the protection option had not been executed.

The entity was deemed to have been negligent in its treatment of the loan cancellation and in the information given to the client.

Failure to inform about mutual fund mergers or changes in their characteristics

R/350/2008 - **Caja de Ahorros and Pensiones de Barcelona.** The customer felt he had been insufficiently informed about the merger of the mutual fund in which he

was invested, claiming that he had received no word of the transaction until the first fund had been absorbed. As a result, he found himself holding units in a scheme with a different investment policy from the one contracted. The entity argued that it had only been following the customer's instructions in not advising him by postal mail.

However, material changes entailing unitholder exit rights should always be notified, whether or not a customer has waived his right to be sent standard mailings. In this case, moreover, La Caixa was unable to furnish any instruction or order from the complainant affirming his rejection of any kind of correspondence.

Information on guarantee renewal under Income Distribution Plans

R/386/2008 - **Banco Español de Crédito, S.A.** The customer complained about new changes being introduced in mutual fund conditions on renewal of the guarantee.

The guarantee in question was structured as a schedule of mandatory redemptions for which the client must subscribe to an Income Distribution Plan. To this end, the entity had appended an annexe to its notification which unitholders should sign and return if they wished to join the Plan. In this case, the investor did not sign as what he wanted was to withdraw from the fund without taking up the new guarantee.

The entity promptly penalised him by charging a redemption fee. Remember that with this kind of structure, the purpose of redemption fees is to dissuade investors from withdrawing, as this requires the unwinding of positions in the fund's portfolio whose duration is aligned with the term to maturity of the guarantee and periodic payments.

As the customer in this case had not authorised a subscription to the Income Distribution Plan, Banesto should have thought twice before applying this fee. The best course would have been to contact the customer again warning him about his disadvantaged situation, and allowing him to take the decision most in his interest – either to redeem without charge or sign up to the Plan.

Registration and filing of orders

R/099/2008 - **Banco Bilbao Vizcaya Argentaria, S.A.** It was concluded that BBVA has acted incorrectly by not conserving a copy of the fund subscription order, meaning the conditions of the transaction could not be properly determined.

R/439/2007 - **Banco Santander, S.A.** The CNMV concluded that the bank had executed mutual fund redemption orders without the customer's knowledge, as it was unable to furnish copies of the orders despite being within the legal time limit for their conservation.

A3.2.2 Subscription and redemption of fund units and shares

Order delays and non performance

R/621/2007 - **Gaesco Gestión, SGIIC, S.A.** Grupo Cahispa, acting as agent for Gaesco Bolsa, Sociedad de Valores, S.A., forwarded a redemption order to Gaesco Gestión, SGIIC which eventually filled it after a considerable delay. The agent was deemed to

have been insufficiently attentive to the principles of diligence and speed incumbent on those responsible for transmitting third-party orders.

R/052/2008 – La Caixa Gestión de Activos, SGIIC, S.A. A number of incorrect practices were identified in the execution of orders placed by the complainant. For example, the ordinary subscription of units in MS Euro Selección, FI was executed on 26 July 2007, despite having been received before 2:00 p.m. on the 25th of the same month, contrary to the specifications made in the fund prospectus. The redemption order was also executed after the deadline stated.

Regarding the execution of two outgoing transfer orders, the entity was at fault in assigning two different value dates when the requests had been made at the same time. In effect, two identical operations were processed differently without any grounds for doing so either in law or in the corresponding fund prospectuses.

R/362/2008 - Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (Ibercaja). The complainant reported an unjustified delay in executing a mutual fund subscription order. The entity argued that the money was not available on the date of the subscription order, as it was to be drawn from the annual income of a pension plan – a process that required two days.

On ascertaining that both the bank account associated to the pension plan and the account associated to the mutual fund belonged to the same entity, the CNMV concluded that the entity was at fault, since banking rules and practices dictate that transfers between accounts within the same entity should be credited the same day the debit goes through. Further, the documentation of the pension plan specified that interest income would be paid on the first working day of each month; a provision that was not respected in this case.

R/584/2008 - Banco Español de Crédito, S.A. The entity had not executed a redemption order placed by fax, on the grounds that it could not be accepted without a specific agreement authorising this course of action.

The fund prospectus stated that units could be purchased and sold through the telephone, e-mail or online services of distributors offering this facility, subject to the signing of the corresponding contract. But there was no mention of any such requirement for written orders placed by fax. Nor could the entity furnish more detailed information on the type of agreement the parties should arrive at to authorise the execution of faxed orders.

Given the ample notice with which the customer placed the order (12 calendar days), even assuming that he had been informed in advanced about the need for a prior agreement, Banesto should have warned him in time that his instructions would not be followed, indicating the alternative channels he could use or when and how such an agreement could be signed.

R/530/2007 – Banco Santander, S.A. The entity was deemed to have acted incorrectly in executing orders on mutual fund units without abiding by the formal requirements.

R/620/2008 – Banco Inversis, S.A. The change of distributor of a foreign CIS should be completed with the minimum inconvenience to investors, taking care to avoid any prolonged transaction down time. This was manifestly not the case with this complainant.

Order executions without the unitholder's consent

R/089/2008. Caja de Ahorros de Salamanca y Soria. The complainant held a number of mutual funds that could only be drawn upon by joint signature. Despite this, the respondent entity allowed the other co-holder to redeem units without his consent. The entity was considered in the wrong, since the nature of a joint mutual fund holding determines that no movements can be made without an order signed by all owners.

R/491/2008 - Banco Santander, S.A. The entity acted incorrectly in redeeming a customer's mutual fund units then proceeding to open a time deposit in his name without first procuring his consent.

While admitting that it had acted without the holder's consent, the entity declared that its only purpose had been to save its customer further losses in view of the individualised nature of the relationship. In amends, it offered to revert to the start-out situation, with the money reinvested in the mutual fund, but was not prepared to pay the customer any damages.

R/541/2007 - Banco Bilbao Vizcaya Argentaria, S.A. The entity was deemed to be at fault for processing a redemption order issued by one only of the co-holders, without knowing for sure whether the fund was under a joint ownership regime.

Deficiencies in order content

R/393/2008 - Banco de Galicia, S.A.. The CNMV considered the entity to be at fault because the complainant's mutual fund subscription order did not bear his signature.

R/071/2008 - Banco Santander, S.A. The bank had committed several formal errors with a mutual fund subscription order. Not only did the form used correspond to a standard securities order but it was missing a date and the name of the security was abbreviated and incomplete.

R/626/2008 - Banco de Valencia, S.A. The complainant alleged that some money was missing from the amount deposited in his account in respect of a mutual fund redemption. Although the entity had been in the right in subtracting this sum, which corresponded to the redemption fee, the incident also brought to light a series of shortcomings in the subscription process, specifically the failure to complete a formal subscription order.

R/791/2007 - La Caixa Gestión de Patrimonios, S.V., S.A. The contents of one redemption order were found to be incomplete. Specifically the full name of the fund was replaced by the expression "D+", which could hardly be considered an acronym or abbreviation of Euro Fondo 1 FI.

Regarding the NAV applied to units redeemed from the fund MS Multigestión Activo Variable, FI, the prospectus states that "for the purpose of subscription and redemption requests, the net asset value applicable shall be that of the request date. Therefore, if a subscription or redemption order is placed before 14:00 on day D, the NAV applied shall be that of day D."

Since the respondent entity did not argue otherwise and the order made no reference to time, we must presume it was placed by the customer and received by

Morgan Stanley before 14:00 on 27 November 2006. As such, the value applied to the redeemed units should have been the NAV of that date instead of that of the following day.

R/010/2008 - Deutsche Bank, Sociedad Anónima Española. The documents accompanying this complaint included a cash transfer form in lieu of a redemption order with its "other customer instructions" box reading "Total cancellation of DWS Japón Garantizado FI".

The CNMV understands that while the said form contained instructions to cancel or redeem the units held in the said fund, an inter-account cash transfer form can never be an adequate vehicle for a mutual fund redemption.

R/602/2007 - Banco de Finanzas e Investments, S.A. This incident came to light when the customer was presented with a CIS subscription order containing a clause contrary to regulations, envisaging the possible waiver by the investor of his right to receive periodic statements.

The law states that an investor can express his wish not to be sent periodic statements with information on the scheme contracted, provided this request is made in a separate written document, duly signed, following receipt of the first statement. The entity was accordingly wrong to include this possibility in the CIS subscription form.

Determination of NAV

R/302/2008 – Open Bank Santander Consumer, S.A. The customer complained about the NAV applied to his redemption order. Open Bank attempted to justify its action on the grounds of a cut-off time which was not that figuring in the fund prospectus. Specifically, it explained that the 15:00 cut-off stated in the Open Bank IBEX 35, FI prospectus was not applicable to schemes marketed by Open Bank. As a "multi-manager" distributor, Open Bank did not work with a single management company, so did not pick up orders directly from the manager's IT system, as would occur with other entities.

The report pointed out in this respect that the law allows each distributor to set its own cut-off time for processing orders, providing this time is stated in the fund's simplified prospectus.

It was also clear that the information given out by the entity's staff in a telephone conversation with the customer was not only misleading regarding the determination of the exact cut-off time but also about the implications for his order.

Open Bank was accordingly deemed to have been at fault in its determination of the NAV corresponding to a redemption order, specifically in the cut-off time applied, and in the verbal information given to the client.

R/409/2008 - Banco de Sabadell, S.A. An examination of the mandatory documents of the foreign CIS (prospectus and marketing memorandum) revealed that the NAV applied to a redemption order corresponded to a date earlier than the date resulting from the memorandum on the entity's website, which specified that orders placed from Monday to Friday would be paid at the NAV of the following Tuesday. In the

complainant's case, an order placed on Monday had been met at the next day's NAV rather than that of the Tuesday of the following week.

Even though the application of an earlier NAV might benefit the investor, the entity should have stuck to the procedure stated in its marketing memorandum.

R/116/2008 – Banco Inversis, S.A. The respondent entity was deemed to have acted incorrectly in applying different NAVs to a series of inter-scheme transfer orders even though they were manifestly identical in content and timing.

Incidents with foreign CIS subscription and redemption orders

R/407/2007 - Altae Banco, S.A. The entity acted incorrectly in executing a subscription order for shares in a foreign CIS under terms other than those instructed and in failing to substantiate that it had advised the customer beforehand of the exchange rate applicable to his transaction.

Specifically, the investment in question was denominated in United States dollars (USD) and the order was for the amount of 363,500 euros. However, the settled amount turned out to be 367,280.78 euros, pushing the complainant into overdraft.

The entity contended that it was impossible to execute the order under the terms stipulated because the instruments were denominated in USD, meaning it could only go through in USD or for a given number of securities. However if this was so, what Altae should have done was seek new instructions from the client.

In fact the order presented no particular problem, and could have been executed by changing the amount in euros specified to the corresponding sum in the investment currency and then formalising the subscription.

Also, the CIS prospectus in force at the time invited investors to place their orders in any generally accepted, freely convertible currency (even those other than the currency denominated for the compartment or sub-fund of the target scheme), indicating that settlement in such cases would be in the currency in which the order was placed, applying a competitive exchange rate.

Nor could the entity accredit having informed the customer in a timely manner of the exchange rate applicable to his transaction, as required by the standards of clarity, transparency and due diligence incumbent on investment service providers.

R/107/2008 - Banco de Finanzas e Investments, S.A. The entity was unable to prove that it had correctly processed redemption orders on shares held in foreign CIS sub-funds.

Specifically, these orders went through with a NAV corresponding to a later date than the date that would ensue from the date and time specified in the written order placed by the complainant. Fibanc argued that the orders had not been confirmed until the following day, when the client did so by phone, but could provide no evidence to back its case. Nor was it specified in the order forms signed by the complainant that their execution was contingent on a later decision.

A3.2.3 Transfer of investments between CIS

Incidents in the course of transfers between delivering and receiving entities

R/351/2008 - R/368/2008 and R/369/2008 - Banco Inversis, S.A and Gesmadrid, SGIIC, S.A. The complainants had requested a transfer from a mutual fund marketed by Banco Inversis, S.A. to one marketed by Banco Banif, S.A.. The order lay unfilled for weeks without the customers being advised of any incident.

Banco Inversis, S.A. argued that as this was an outside transfer ordered from Banif and its only role was as distributor of the delivering fund, it need play no part in the transfer process beyond registering the outflow of units in its systems when so notified by the management company.

Banco Banif, S.A., meantime, blamed the delivering fund's management company Gesmadrid, which had rejected the transfer on several occasions without passing on the relevant information. It was confirmed that Banco Banif had indeed forwarded the signed transfer requests on time and in due form.

Gesmadrid admitted that it had initially rejected the requests because of an IT system error in identifying the receiving funds. This same error meant the incident was not relayed to the receiving entity until several weeks later, which the CNMV sees as a clearly unacceptable delay.

After this first rejection, Banif issued a new transfer request of identical content which was duly received by Gesmadrid. According to the data furnished by the latter, the cash transfer and forwarding of details via SNCE to the manager of the receiving fund went through with a few days' delay over the legally established deadline.

This second request was however rejected by the manager of the receiving fund on the grounds that the value stated by the delivering manager for the outstanding units in the delivering fund did not coincide with the cash amount transferred. On being advised of this rejection based on an error by Gesmadrid, Banif should have informed the customer promptly explaining the reasons for the incident.

The CNMV conclude that Gesmadrid had committed several errors in executing the transfer request issued by the complainant: (i) it rejected the initial request without due cause and without even informing the counterparty until several weeks later; (ii) it sent the second transfer request to the receiving fund manager with the wrong cash amount and (iii) it took almost three months to resolve the incident. Also, (iv) with the second transfer order, it took ten working days to redeem the units from the delivering fund and make the corresponding cash transfer. Inversis too was deemed to have acted incorrectly by not including the re-subscribed units in the statement sent to its client.

R/652/2008 - Banco de Andalucía, S.A. The complainant and his wife were customers of Bestinver and through its offices had purchased units in Bestinver Exchange FI both individually and on a joint ownership basis. These units, in turn, had been pledged as security.

The couple asked Banco de Andalucía to approach Bestinver with a request to release the pledge on the units held in their individual names and, in parallel, ordered their transfer to a mutual fund. These transfer requests were reiteratedly turned down by Bestinver, and finally went through with a considerable delay.

The CNMV concluded that Banco de Andalucía had mishandled the clients' instructions, first by wrongly identifying them as joint owners in the orders placed through the SNCE, when in fact the units transferred were under each one's individual ownership.

It also considered that Bestinver was right to reject the transfers. If Banco de Andalucía had been acting diligently it would have contacted Bestinver on hearing of the first rejection to check the reasons and correct any flaws found. It would also have informed the customers of the incident, which it did not in fact do until after the second rejection.

R/199/2008 - Bankinter, S.A. This complaint was originally directed against Caixa Gestión de Activos, SGIIC, S.A. as delivering manager, but concluded in a report unfavourable to Bankinter.

The complainant alleged that he had tried on as many as six occasions to transfer his investment to a mutual fund of Bankinter. On the first two occasions, the reason for the rejection was that the holder's ID was wrong or incomplete. On the next four it was the misidentification of the delivering fund, despite the content being amended according to the data furnished by La Caixa. In view of the stalemate, the investor decided to redeem all his units in the delivering fund, suffering the damage occasioned by the intervening decline in their net asset value.

In all the above cases, the requests were filled in by the complainant on Bankinter's website and relayed to the same entity as distributor of the receiving fund.

La Caixa acknowledged that it had received three of these requests, which it had turned down on the grounds that the tax code of the delivering management company was incorrect. The other three may be presumed to exist, but never reached La Caixa because the delivering manager was stated as BBVA, S.A.; an obvious error.

The responsibility for correctly completing an online mutual fund transfer form lies firstly with the customer, since it is he who enters the data directly in the appropriate fields without consulting with the receiving entity, in this case Bankinter.

Nevertheless, Bankinter should have facilitated certain basic details to help the customer complete the order form. If the data of the managing entity had come up automatically when the customer keyed in the name of the delivering fund, certain evident confusions could have been avoided, like the name of BBVA, S.A. or a brokerage house being cited as managers of a fund called Morgan Stanley Exchange, FI.

R/219/2008 - Abante Asesores Gestión, SGIIC, S.A. Abante was deemed to be at fault because of information errors regarding the unit lots to be transferred from the delivering fund, causing the transfer request to be turned down by the receiving entity.

It was also considered negligent in its handling of the redemption order and the NAV assigned to a subsequent ordinary redemption requested by the same complainant, in that it did not inform him properly about the resubscription of fund units following rejection or about the alternatives available to him.

R/285/2008 - Banco Inversis, S.A. The complainant ordered the partial transfer of 238.96783 units in the fund Gesconsult Renta Variable FI to Gesconsult Cash and

Banco FI. Minutes later, he ordered the transfer of his remaining units in Gesconsult Renta Variable, FI to Gesconsult Renta Fija Flexible, FI. This second order specified 57.14389406 units to be transferred, and that the transfer in question was for the total outstanding amount.

However the bank forwarded the second order as a total transfer without specifying the number of units and also reversed the timing of the two orders in the file sent to the receiving fund manager.

The manager executed the orders in the same sequence as they appeared in the file. Logically, after executing the total transfer that was in reality the client's second order, it was unable to execute his first, partial transfer, as by then there were no units left in the delivering fund.

The manager was not at fault as it had confined itself to executing the orders in the sequence established in the file sent by Inversis, assuming as it would, in the absence of any obvious error, that this was what was intended. And as it lacked any numerical reference in the total transfer order, it could not detect the inconsistency between the two sets of instructions.

Banco Inversis, S.A. was deemed to have acted incorrectly. Although the instructions were clear enough taken in the right order, in case of doubt it should have checked with the customer. Instead, it transmitted the second order as a total transfer without specifying the units affected and put it into first place in the file sent to the fund manager.

The complainant also alleged a delay on Inversis' part in placing the Gesconsult Renta Fija Flexible, FI units at his disposition. As Inversis neither refuted nor explained this supposed delay, it was judged to have acted incorrectly in this respect also.

R/212/2008 - Caixa Gestión de Patrimonios, S.V., S.A. (subsequently, Morgan Stanley – currently, Caja de Ahorros and Pensiones de Barcelona). In November 2007, the complainant ordered an inter-CIS transfer that was rejected by the entity receiving the cash amount of the redemption (Banco Inversis, S.A.) on the grounds that Morgan Stanley had neglected to supply tax information for some of the transferred units. He tried ordering the transfer on two subsequent occasions and each time it was turned down for the same motive until it finally went through in February 2008.

The respondent entity argued that the missing tax information was not in its power but in that of Fonditel, which had taken until 25 January 2008 to pass it on.

The regulations on transfers between CIS state that the delivering company must send the receiving company not only the cash amount of the redeemed units but all the attendant financial and tax information. The return of the cash transfer is entirely warranted in the event that the tax information is incorrect or incomplete, as both sides admit was the case here.

So when the investment was transferred to Morgan Stanley, it should have procured the tax information for all the mutual fund lots received. It could not expect to complete the requested transfer without providing tax details for all the units and/or shares transferred, nor could it reasonably disclaim any knowledge of information that should long ago have been in its power.

The entity was deemed to have acted incorrectly in the following ways: (i) not taking care to procure all the necessary tax information on units transferred from Fonditel and (ii) attempting to execute a transfer without warning the receiving company that it was not enclosing tax information for all lots of units and/or shares.

R/775/2007 – Cajamar, Caja Rural, Sociedad Cooperativa de Crédito. Cajamar was deemed to be at fault for the incorrect handling of an inter-CIS transfer order, which it had failed to send immediately to the receiving entity.

In January 2007, the complainant approached Caja Duero to request the transfer of its shares form a foreign CIS sub-fund to a Spanish mutual fund for which it was distributor. The distributor of the delivering CIS was Citibank España, S.A. The transfer was not executed until March 2007, following a second request from Caja Duero.

The reason for the delay was that the transfer order had to go through Banco Inversis, S.A. and Caja Duero (by then Cajamar) had sent its first request through Citibank España, S.A.

Citibank España, S.A. stated that it had no record of the first transfer order. It had ceased to handle CIS transfers through national clearing house SNCE in January that same year, and Banco Inversis, S.A had taken over this function. This change was communicated to Sociedad Española de Sistemas de Pago, S.A. (Iberpay) for notification to all member entities.

Iberpay assured us that all members are informed well in advance and by various methods of changes in SNCE participant entities, in order to avoid problems in order transmission.

As such, it was considered unreasonable for Cajamar to claim no knowledge of the change in the receiving entity for the transfer notice and the date it took effect.

R/016/2008 - Caja de Ahorros y Monte de Piedad de Navarra.A transfer of investment from a foreign CIS to a Spanish mutual fund was executed late because the receiving entity sent the transfer request via SNCE to the distributor of the delivering scheme (Caja Navarra) instead of the custodian (Ahorro Corporación Financiera, S.A., Sociedad de Valores).

Under the current regulations governing CIS transfers, when the delivering scheme is foreign, transfer requests should be sent to the distributor of the receiving scheme, in this case Caja Navarra.

However, entities may designate third parties as custodians of foreign CIS holdings, in which case notifications through the SNCE should be sent to its attention.

Caja Navarra was expressly requested to furnish evidence that it had publicised the fact that transfer orders should be sent to Ahorro Corporación and, particularly, that it had asked Iberpay to circulate this information, but no such documentation was forthcoming. It was accordingly deemed to be at fault in not providing the above information in a sufficient and timely manner.

R/464/2008 – Bestinver Gestión, S.A., SGIIC – Crédit Suisse Gestión, SA, SGIIC. The motive for the complaint was a delay in executing a transfer order because the

originator's signature was missing. It was concluded that receiving entity Bestinver had been lax in its management because it had not acted promptly to resolve the error.

Crédit Suisse Gestión, S.A., SGIIC (originator and proxy holder for the owner of the fund units) has also acted incorrectly in passing on an order that lacked an essential detail and in not actively monitoring its progress.

Incidents in the execution times of CIS transfers

R/124/2008 - Gaesco Gestión, S.A, SGIIC. The complainant was a unitholder in several equity investment funds managed by Gaesco and submitted an order to transfer all his holdings to a fixed-income fund run by the same manager. The next day he received confirmation that the transfers had been completed although in fact they were delayed and this caused him a considerable loss as NAVs were affected by the declining market at the time.

Gaesco claimed that, although it was manager of all the delivering and receiving funds and Gaesco Bolsa their distributor, the funds had different custodians and that in the case of transfers involving different custodians the NAV applicable on redemption of the delivering fund should be calculated on the date the custodian's notice is received, usually D+1.

Gaesco was, however, found to have failed to act in the diligent and timely manner required of organisations that process orders for third parties. When the transfer is between mutual funds run by the same manager, the statutory periods for transferring information from the receiving to the delivering entity and to carry out the necessary checks do not apply, as they are one and the same, which makes the verification process easier.

The CNMV concluded that the effective redemption rate for the original funds should have been the day the transfer requests were signed by the customer, with no delay applied, irrespective of whether or not the custodian was the same for both funds. As a result, Gaesco was found to have failed to process the instructions given by its customer with due diligence and to have applied the wrong NAVs to the delivering funds in the transfer.

R/229/2008 and R/276/2008 - Banco Banif, S.A. Both these cases concerned customers who had signed discretionary portfolio management and administration agreements for their holdings in different mutual funds. At a particular moment, they ordered the bank to cease management of their basket of investment funds and transfer them to a cash fund. However, the length of time the bank took to comply, in their view, prejudiced their interests.

Banif argued that clause 10 of the discretionary portfolio management contract signed by the complainants gave the bank 15 days to comply with a written request to terminate the contract by placing the necessary orders, charging the owner any fees due and terminating and reporting on its management. On termination of the contract the bank also had to deliver the assets to the customer by executing their instructions in the matter.

Banif further argued that, in addition to the contractual 15 day period to wind up the contract, they should also be allowed the maximum legal term for the execution of all the transfers and subscriptions to the receiving fund.

The CNMV considered that Banif had 15 days to close the management account and make the resulting assets available to the owner, complying with the instructions that the customer had given. This meant that the closing the management account should involve executing the customer's instructions on how to dispose of their assets and it was therefore illogical to wait 15 days before placing their transfer orders. In other words, the purpose of the 15 days leeway was to allow time to carry out the appropriate and pending transactions so that the portfolio could be handed over to the customer.

In this case, the cancellation of the management contract did not require liquidation of the portfolio by the sale of all its positions. All it took was the direct transfer of all positions into the Banif Dinero, FI fund, without previously liquidating the portfolio. As a result, as soon as the transactions that were "in progress" when the cancellation request was received had been settled, Banif should have immediately transferred the customer's portfolio to the receiving cash fund.

We therefore find that Banif was at fault, that it delayed termination of the management contract without good reason and with it the execution of the instructions to transfer the complainant's portfolio.

R/225/2008 – Axa Ibercapital Agencia de Valores, S.A. It became apparent that the entity had failed to act with due care and diligence when processing orders to transfer and redeem mutual funds.

The complainant submitted an order to transfer a mutual fund that was completed six days later. The complainant also submitted an order to redeem their fund portfolio which was executed 21 days later. In both cases the order was placed by an e-mail from the complainant to the entity, of which the entity acknowledges receipt. However, the entity failed to provide any evidence to justify the delay.

R/639/2008 – Caja de Ahorros de Galicia. The entity was found to have acted incorrectly in taking 24 days to execute a transfer of various mutual funds. In its defence, it argued that the receiving manager was different from the delivering manager even though the funds were sold through the same distributor. It also claimed that the delay had been financially beneficial to the complainant.

R/682/2007 – Caja de Ahorros y Monte de Piedad de Madrid. This case concerned an order to transfer holdings between mutual funds, which failed to execute on two occasions. Based on the documentation submitted, particularly the records of the two orders' submission to the SNCE, it was found that both had been correctly input to the system by the receiving management company, in accordance with SNCE handbook 334 on transfers between CISs.

As a result, Caja Madrid's claims that it failed to receive the first order were not upheld. Nor was it shown that there was an adequate reason for the rejection of the second order. So, in the absence of any reason that might justify the rejection of the order and the failure to receive the first order, it was found that Caja Madrid had failed to fulfil its customer's transfer request with due diligence.

R/009/2008 – Banco Español de Crédito, S.A.
R/692/2007 – Caja de Ahorros y Monte de Piedad de Madrid.

In both cases the entities should have informed their customers that they could synchronise the redemption leg of the transfer with the subscription to the real

estate fund. Although the position in the delivering fund could be redeemed immediately, the receiving fund - the real estate fund - only took subscriptions on a specific date of the month, which delayed completion of the transfer. Had they known, the customers might have decided to delay their redemption order until the subscription date at the risk of favourable or unfavourable movements in NAV in the interim.

As for the provisional placement of the redeemed amount, for tax reasons and others to do with the way the transfer was structured, the cash could not be made available to the contributor in the intervening period. As a result, the entity kept the amount earmarked for subscription in a temporary account belonging to the fund until the subscription date.

Incidents in transfers between funds with the same distributor

R/374/2008-R/581/2008 – Open Bank Santander Consumer, S.A.
R/467/2008 – Banco Banif, S.A
R/265/2008 – Popular Banca Privada, S.A
R/672/2008 – Open Bank Santander Consumer, S.A.
R/137/2008 – Open Bank Santander Consumer, S.A.
R/734/2007 – R/147/2008- R/172/2008 – R/234/2008 – R/236/2008 – Banco Inversis, S.A.

The complainants ordered a transfer of their investments between CISs that were managed by different management companies but marketed by the same entity, which is the respondent in these complaints. In all these cases the grounds for the complaint were unreasonable delays in executing instructions.

The critical issue in such cases is that the transfer should be processed as though it was a transfer between two CISs managed by the same management company, without applying the maximum transfer and verification times stipulated in article 28 of the Spanish CIS Law. Accordingly, the effective date of the redemption request at the delivering funds should be the same as that of the transfer requests signed by the customer.

The only case in which the maximum times might apply is when, although the delivering and receiving funds are marketed by the same entity, the original subscription to the delivering fund was made through another distributor. In this case, the information on the unitholder's position in the delivering fund would be held by the original distributor.

In the complaints cited, it was found that the actions of the entity did not meet these criteria and the resulting delays were therefore at least partly their responsibility.

In case **R/234/2008** it was also found that Banco Inversis, S.A. had provided incorrect information to the complainant when formalising the order to transfer the investment, which had contained inaccuracies and failed to meet the required standards for clarity and comprehensibility. Specifically, on the screen used to place the investment transfer order, in the place where the customer had to specify the original CIS and the number of units included in the order, it said: "Days delay NAV: D+0, where D is: the date the order is communicated to the manager". According to the entity this information applied to redemptions executed as the first leg of an investment transfer.

In the CNMV's opinion this information is not clear enough and could mislead the person placing the order.

It was also found that the NAV being applied to redemptions ordered directly by investors was not that for the day the CIS manager received the order either. Instead, if the order was received before 4:00 p.m. (for which the order had to be given to Inversis before 2:00 p.m.) on a trading day, the NAV applied would be that of the next working day (D+1).

R/322/2008 - **Banco Inversis, S.A.** In this case, too, Inversis was marketing both the delivering and receiving funds and should not have applied a delay for exchange of information and verification of transfer orders.

The NAVs used for the redemption and subscription orders should have been calculated as though these terms did not apply. Consequently, Inversis was found to have applied the wrong NAV to some of the redemption legs when transferring investments between CISs marketed by the same entity.

R/378/2008 - **Open Bank Santander Consumer, S.A.** This complaint concerned a number of incidents. First, the transfer from sub-funds of a foreign CIS to Spanish mutual funds took too long. The term for exchange of information and verification of the orders in the delivering entity should not have been applied.

As stated, it made no sense for Open Bank to carry out checks on a request submitted directly by the investor besides those that would be carried out anyway as part of the CIS redemption and subscription processes, within the statutory periods allowed.

It was also found that the complainant was not properly informed about the exchange rate applying to the transactions, or about the cut-off time applied by Open Bank as distributor of the scheme.

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

R/104/2008 - **Caixa Catalunya.** The complainant was a unitholder in the guaranteed fund Caixa Catalunya Doble, FI, which offered a liquidity window allowing investors to exit the fund commission-free on 25 November 2007. Knowing it would be hard to use this liquidity window to make a transfer to a fund from another entity, the complainant went to a Caixa Catalunya branch intending to subscribe for a FIAMM fund from which he could subsequently transfer his investment to a Cajasol fund without incidents or costs.

At Caixa Catalunya they explained, verbally and in writing, that this would not be necessary and that all he had to do was ensure his transfer request was submitted to the receiving entity after 13 November 2007, which was the starting date for reception of this type of order. However, Caixa Catalunya then charged a redemption fee amounting to 5% of the total redeemed for a transfer that was in fact executed on 22 November 2007.

The rules in force do not specify any fee for the transfer of fund holdings as such. However, exiting from a mutual fund to reinvest in another involves redeeming units in the delivering fund and then subscribing for units in the receiving fund.

Consequently, both the redemption and subscription legs of the transfer incur the fees set out in the fund prospectuses.

Accordingly, in the circumstances envisaged, this transaction would be tax-free at the time (tax is deferred, with the value and acquisition date of the redeemed units being recorded for tax purposes), but fees would still be payable on both funds.

As previously explained, the CNMV recommends that investors make a bridge transfer within the delivering company to a different low-risk fund that does not charge redemption fees and then request a second transfer to the other (receiving) entity. It also considers it to be best practice that entities should propose this option to investors. This would mean going to the delivering fund manager and asking to take advantage of the window to transfer their investment to another low-risk fund within the same entity that charged no redemption fee. As the transfer would be arranged directly with the delivering entity there would be no doubt about the moment that the order was received and the purpose of the transaction, so to be sure of enjoying the window it would be enough to place the order on the date (or with the notice) stated in the portfolio.

We therefore consider that the course of action originally proposed by the complainant was appropriate as a way of reducing the uncertainty of the transaction, and that the staff in the branch failed to warn of the real risks of carrying out a direct transfer; risks that proved well-founded in the event. Nor did they tell the customer about the instructions he should give the receiving entity to ensure the transfer went through successfully.

R/587/2007 – Banco Santander, S.A. The bank was found to have wrongly charged a redemption fee despite having received an order to sell in the liquidity window provided for in the prospectus. The liquidity window for the delivering fund was set for 15 April 2007, a Sunday. In these cases, according to the fund prospectus, it should have been automatically postponed to the next working day, Monday 16 April 2007. The delivering manager received the transfer order via SNCE on 16 April. The entity was therefore wrong to charge the redemption fee, since the liquidity window coincided with the day the entity received the redemption order.

Incidents with the application of NAV

R/061/2008 – La Caixa Gestión de Patrimonios, S.V., S.A. The complainant disagreed with the way NAV was calculated and applied to his redemption of shares in a CIS as part of a transfer order.

The entity explained that after a transfer order has been received by the distributor it has to be passed on to the management company, so the order was executed the next working day after the distributor received it, i.e., the day it was received by the manager.

However, the marketing memorandum submitted in evidence said, in the section on Subscription and Redemption Procedures, that orders would be processed the same day provided they were received by the distributor on a working day before the cut-off time.

The CIS prospectus set the cut-off time for the Transfer Agent at 1:00 p.m. All of which suggests that if the order was submitted to La Caixa before 1:00 p.m., it should

have been processed the same day and at that day's NAV. If submitted after the cut-off time, it would be processed along with those received by the distributor the next working day.

Based on the documents and statements submitted, it does not seem that the complainant had been advised beforehand of any cut-off time for the distributor to accept orders different from that contained in the prospectus. As a result, the CNMV found that the redemption order should have been processed the same day, not the next day as the entity claimed.

Similarly, given that the cut-off time did not appear among the entity's submissions, it was reminded that the time the order is placed with the distributor must be entered in its order records, as stated in the rules of conduct. This information was needed to resolve the disputed NAV in this case.

R/200/2008 – **Popular Banca Privada, SGIIC, S.A.** The entity was found to have applied the wrong NAV to a fund redeemed as part of a transfer. The transfer and verification times allowed for in the transfer procedure were correctly applied. The problem lay in the application of the rules for assigning NAV set out in the fund prospectus.

Specifically, the fund prospectus states that the NAV applied to a subscription or redemption order should be that for D+1. NAVs in this case were published daily, on working and non working days alike. In settling the redemption in question, therefore, the NAV applied should have been that of Saturday and not the following Monday.

Incidents with order registration and filing

R/418/2007 – **Banco Santander, S.A.** Banco Santander confirmed that it had no copy on file of a fund transfer order, contrary to the rules of conduct on conserving supporting documentation for orders.

R/583/2007 – **Banco de Sabadell, S.A.** The bank failed to keep certain fund transfer orders that should have been conserved in its order records.

Incidents with unitholder information

R/406/2008 – **Caja de Ahorros y Monte de Piedad de Madrid.** The customer ordered his units in a mutual fund to be transferred to another fund run by the same manager which applied a minimum subscription threshold. Since the amount redeemed was below the minimum threshold, the transfer was initially rejected. The customer needed to subscribe for additional units in another fund so that the transfer could go ahead, via this third fund, to the fund he had initially chosen. The investor complained that this process had obliged him to subscribe for the new fund later than intended.

The Complaints Service found that the entity had been at fault since, as distributor of the receiving fund, it was perfectly apprised of this minimum subscription requirement. Caja Madrid should therefore have informed its customer about the limit at the time of the original order, and set out the various options available so

that the transfer could be completed as soon as possible. This would have avoided the initial transfer order being rejected for failing to meet the minimum threshold.

R/470/2007 – **Banco Santander, S.A.** The bank was found to be at fault in failing to inform its customer about the notice required when ordering a transfer via the receiving company. The prospectus for the delivering fund stated that the manager would apply no fees to redemptions on certain dates, but required at least three working days' notice before the execution date of the redemption. This condition allowed the manager to know in time the volume of redemptions that it would have to meet on that day, so that it could liquidate the necessary cash from the portfolio.

The order submitted failed to give the obligatory three days' notice period required by the manager to take advantage of the liquidity window, because it ignored the one-day delay in orders being passed on to the delivering management company. The CNMV considered that the complainant should have been appropriately informed about the timing of his transfer request, something that was not done when he spoke to Banco Santander's telephone banking service.

R/538/2007 - **Caja de Ahorros de Mediterráneo (CAM).** The complainant was a unitholder in a foreign mutual fund bought through CAM and contacted the entity to ask for the details of the delivering distributor, which he needed to transfer his investment to other foreign CISs with a different distributor. He was given CAM's details.

Using this information, the customer requested the transfer of his investment but the order was rejected, the reason being that the delivering distributor should have figured not as CAM but as Banco Inversis.

It was shown that CAM had never warned the complainant that the transfer order should be sent not to CAM but to Inversis and was therefore found to be at fault.

R/122/2008 - **Banco Español de Crédito (Banesto).** The settlement statements sent to the complainant on execution of a transfer between CISs with different base currencies failed to provide clear, precise and sufficient information on the conditions on which the sum redeemed in euros from the delivering fund would be converted into Japanese yen before being invested in the receiving fund.

R/721/2007 - **Banco de Sabadell, S.A.** The CNMV found against the entity in its report for sending the complainant a statement that failed to explain the transaction giving rise to a fee, the base on which it was calculated and the taxes applying.

In this case, the statement submitted showed only the amount charged but not the reason for the charge (redemption fee), the base it was applied to or the percentage fee.

A3.2.4 Fees and expenses

R/237/2008 –**Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y Rioja (IberCaja).** The unitholder ordered the part redemption of his investment in a fund to which he had subscribed on two separate occasions: once less and once more than 6 months previously. The prospectus made the charging of a redemption fee conditional on remaining invested for more than 6 months.

The fund manager, which was responsible for keeping the register of unitholders and issuing certificates of fund positions, should have made a distinction between the duration of the unitholder's position in the fund (based on his entry date in the register of unitholders for fee purposes) and its duration for tax purposes (used for calculating capital gains and applying any withholdings).

Then, when it received partial redemption or transfer requests subject to redemption fees based on the length of the investment, it could comply with the tax criterion (FIFO) while also acting more in the spirit of the condition, which was designed to penalise redemption of investments held in the fund for only a short time.

The report concluded that Ibercaja had redeemed the oldest units shown in its records for tax purposes, although these were in fact the most recent from the point of view of their time in the fund. This interpretation by Ibercaja, cited to justify its charging of the fee, is acceptable in theory and on the grounds of operational simplicity. However, the fund prospectus made no mention of this criterion. In the absence of any specific indication, the entity should have adopted the interpretation most beneficial to the interests of the unitholder.

R/235/2008 - **Bestinver Gestión, S.A., SGIIC.** The complainant disagreed with a 3% redemption fee charged on a mutual fund position. Specifically, according to the fund prospectus, the fee only applied to investments that had been held for less than one year. The complainant had invested on 30 December 2006 and issued a redemption order dated 31 December 2007, i.e., when the investment was more than one year old. However, the entity received the order by post on 28 December and executed it the same day, charging the 3% redemption fee.

A3.3 Testamentary execution

A3.3.1 Incorrect information

R/462/2008. **Banco Inversis, S.A**. The entity was found to have inadequately informed the heirs about the process of transferring some securities. Specifically, the complainants asked to transfer some securities from a securities account owned by their late father to a receiving account in the name of the three heirs. The entity claimed it was not possible to do this and that each heir had to open a securities account at the entity as an intermediate step before the transfer to a joint account in which all three were holders.

The CNMV considered that this information was incorrect. A transfer of the type described could have been done by converting the deceased's securities account into a joint account in the name of the heirs, with the corresponding change of ownership and charging of fees. Once this step was completed the transfer requested by the complainants could have gone ahead normally, as the holders of the delivering and receiving accounts would then have been the same.

R/486/2008. **Citibank España, S.A**. The entity was found to have been at fault in failing to adequately inform the complainant about the documentation needed to initiate the testamentary process and, particularly, to change the ownership of an investment fund acquired *mortis causa*. It was found that the entity had failed in its duty of diligence by only informing the complainant of the said documentation nearly two years after his application.

R/715/2008 – Caja de Ahorros y Monte de Piedad de Madrid. The complainants inherited units in a mutual fund but were not informed of the steps to take, in these circumstances, to redeem their units on the date specified in the prospectus.

It bears mention that before a mutual fund can be redeemed in these circumstances, in order for the heirs to dispose of the inherited units, the records showing ownership of the units in the corresponding registers have to be changed from the name of the deceased to the name of the heirs. Entities must act promptly to place the fund units in the heirs' name as soon as they have all the requisite legal documents.

Once the change in ownership has taken place, the customer must submit the corresponding redemption order, attesting his intention to redeem the units in a particular mutual fund on a particular date. In this instance, the process followed by Caja Madrid was to change the ownership of the inherited units, which it did within a reasonable time.

However, the Complaints Service found that the information it provided on the redemption process (changing the ownership of the units and requiring an order to redeem them signed by the heir) was insufficient.

A3.3.2 Delays in executing changes of ownership under testamentary instrument

R/80/2008. Banco Santander, S.A.
R/381/2008. Banco Español de Crédito, S.A.
R/492/2008. Caja de Ahorros y Monte de Piedad de Madrid
R/610/2008. Banco de Sabadell, S.A.

In these cases the entities were found to have taken too long, without good reason, to change the ownership of inherited securities. In one case, the entity took more than two months from the time it had all the requisite documents to carry out the process, even though the inheritance concerned was perfectly simple.

A3.3.3 Errors in executing changes in ownership under testamentary instrument

R/027/2008 - Monte de Piedad y Caja de Ahorros de San Fernando de Huelva, Jerez y Sevilla. The complainant claimed that, in processing the inheritance from her father, the entity had obliged the heirs to sell a fund owned by the deceased and then subscribe for units in the same fund in their own name.

This was considered an incorrect way to change the ownership of inherited units, requiring the redemption of the fund followed by a resubscription in the name of the heirs.

R/603/2008. Open Bank Santander Consumer, S.A. The CNMV found the bank to be at fault for taking four months to change the ownership of inherited units. The entity justified the delay by citing IT problems, the work involved in opening a new account – although the complainant already had an account with the same entity – and the need to submit him to a suitability test. On this last point, the CNMV noted that the rules did not require banks to assess the suitability of an investment in the case of ownership changes under testamentary instrument.

A3.3.4 Failure to comply with instructions given by heirs

R/044/2008 - **Banco Popular Español, S.A.** The entity was found to have been at fault when it redeemed the whole of an inherited mutual fund, instead of limiting the redemption to the amount needed to pay inheritance tax, as the heirs of the deceased had instructed it to do.

A3.3.5 Disposition of assets before distribution of the estate

R/667/2007. **Caja de Ahorros de Castilla y La Mancha**. The complainant, an heir, asked the entity for information on some redemptions from a mutual fund belonging to her dead aunt; operations that only she could authorise. She asked the entity to provide information on three redemptions made before the death of her aunt and two made subsequently, none of which the entity provided.

The entity was found to be at fault in taking nearly six months to answer this enquiry. It was also found to be at fault for allowing redemptions to be made by one of the heirs without the corresponding instrument of partition.

R/031/2008 - **Banco Santander, S.A. and BNP Paribas España, S.A**. In this case, the CNMV found that both entities had acted wrongly in allocating the inheritance of the complainant's father relying on a document that was not endorsed by all the heirs so could not serve as support for the transaction.

R/041/2008 - **Banco Inversis, S.A.** In this case, the entity was found to have wrongly denied the heirs the right to dispose of units in inherited mutual funds before their distribution.

It was considered that the entity should have allowed their disposal before distribution, provided the heirs unanimously consented to the actions being taken.

R/120/2008 - **Caja de Ahorros y Monte de Piedad de Madrid.** The complainant represented that, during the processing of her mother's inheritance, the entity had allowed her father to dispose of 50% of a mutual fund deposited with it.

The entity argued that as this product was in the name of both spouses under the *régimen económico de ganaciales* (marital financial arrangement where assets are shared), and one of the holders had died, the marital arrangement was annulled and the ordinary law on *cotitularidad* (joint ownership) applied instead, allowing the surviving joint owner to dispose freely of their share (50%) even before the distribution of the estate.

In this case, the entity was found to have acted incorrectly in splitting and allocating one of the assets that formed an integral part not only of the shared assets left from the marriage but also of the inheritance of one of the joint owners, on the request of one of the heirs, before the estate had been distributed and without the consent of all the heirs.

R/439/2008. **Banco Santander, S.A**. The entity had de facto allocated concrete goods forming part of the complainant's father's estate to one of the heirs. Specifically, it allowed the deceased man's wife to dispose of the preference shares owned by her husband and transfer them to an account in her own name, without an allocation document permitting the transaction agreed by all the heirs.