

TOXICITY IN FINANCE



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ABSTRACT

This paper analyses from a critical perspective the irregularities committed by financial institutions in the use of complex techniques to increase liquidity, the commercialization of toxic financial products, such as preferred participations or multi-currency mortgages, and the bad faith in the commercialization of loans. Firstly we will define what we consider as a toxic financial product or toxic behaviour, together with the definition of each instrument; followed by the commercialization and the consequences on the surroundings; finally, we focus on preventive measures from the institutional bodies that are regulating the situation. This leads to conclusions that help us to understand the wave of lawsuits filed by retail clients requesting the nullity due to a lack of consent in these contracts, based on the lack of information to the customer and the repeated failure to comply with MIFID regulations of financial institutions.

Key words: toxic financial products, preferred participations, ground clause, retail client

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INTRODUCTION

The "subprime mortgage crisis" in the United States in the summer of 2007 unchained a severe international financial crisis of interbank mistrust, originated from the infection of the global system by toxic products and deficiencies in supervision. This crisis has stifled the circulation of credit and led to a chain of bankruptcies in the financial system, which has finally moved to crisis and recession of the entire international economy.

In Spain, a crisis was growing up for the exhaustion of the mortgage model developed in the last 20 years as the basis of the Spanish economy and exacerbated since 2000 and characterized because of absolutely speculative and unsustainable. Since December 2005, the gradually increase of the interest rates by the European Central Bank's has been slowly undermining the ability of Spanish mortgage consumers to repay their mortgage loans and caused the crash of the "housing bubble", connected to a gradual rise of prices by the change to the euro which has led to serious difficulties for many family economies. These facts announced a radical change in the economic trends of our country, based on house speculation and financial debt of families and companies, and made very serious consequences for the economic stability of many families. Millions of consumers have been stuck by debt, mainly mortgage debt, which has finally come to a halt the consumption and serious difficulties to reach the end of the month. At present there are a large number of families in situations of bankruptcy and risk of loss of their home and other assets, as a result of defaults on their mortgage payment, both for personal situations (unemployment or other) and for the abusive financial conditions in their credits, but so far, actually there are not measures to solve these problems. The result of this situation has been that consumers have gone through big troubles for the debt, and the real beneficiaries have been the builders, banks, savings banks, financial institutions and a multitude of credit companies that have made lots of profits in their accounts at the expense of consumers who have blame the heavy weight of the crash.

OBJECT OF THE PAPER

The main objective of this work is try to explain to the reader the reasons why the financial products sold by financial institutions during the years before the crisis and during this, the retail customer don't fit in the profile of a small saver.

The society is aware that the actual financial and economic crisis was caused by the mismanagement of financial institutions as in levels, the national and international. If to this first impression that maintains the society on the banks and savings banks we add the scandals that have been appearing to us to the present time, between which they emphasize great amount of entities that through their advice have been seen involved in a large number of cases of corruption and fraud, the problem of the sale of toxic products or the inclusion, in products as typical as mortgages, of abusive clauses. If we put all this together, it results in a lot of actions that have caused great discontent in society.

In addition to the main objective, the following secondary objectives should be:

1. Try to analyse the fraud or deception by quantifying in data the losses that have meant for the families the possession of complex financial products.
2. Analyse the sentences by the higher justice authorities. Investigate the process used by bodies such as the European Supreme Court or the Spanish High Court of Justice to determine the sentences, and in most cases establish the reasons why they favour to the small saver.
3. Do an investigation about mortgages, as we see how banks and savings banks have focused on these types of loans. In this way it is tried to explain the securitization process, and the commercialization of multi-currency mortgages as well as the inclusion, unilaterally by the financial entities, of clauses of abusive character. Fact that has had immediate consequences, causing the denunciation of a large part of society and large number of institutions, both nationally and internationally, have denounced. The objective will also be to know the measures taken to try to solve this problem.
4. Carry out an investigation on preferred participations, since it was also a particularly important issue according to the analysis carried out. Analysing the characteristics and what has been its commercialization throughout history.

It will also study the preventive measures adopted by Europe and the CNMV [Comisión Nacional del Mercado de Valores] as well as the various alternatives that the investor has to try to get rid of them.

METHODOLOGY

The present work is a study about the consequences of the sale of complex financial products and bad behaviour by the banking sector to a large fraction of society.

For the elaboration, I have been considered official reports, such as those of the CNMV offered by the **Defensor del Pueblo (2013)**, in relation to the commercialization of preferred participations," Study on preferred participations", and the reading of the sentences of the superior courts of justice.

In the other way from these reports, the huge part of the information collected comes from the field work. For the accomplishment of this investigation a total of five steps were followed, next will be described each one:

1. Establishing the dates on which the research was focused. These chosen dates comprise the period between September 2007 and the end of 2014, since it is a sufficiently broad period, as current as possible and due to the great impact of the chosen topic. However, a lot of sentences by the Courts against Banks are from 2016-2017.
2. Consult economic press, specialized websites in economic and financial matters, law firms, or platforms of affected people.
3. The third step was to review the situation prior to the problem, consulting the press and specialized websites in financial markets, to contextualize the before, during and after the global economic crisis.
4. Analysis the collected information and the elaboration of graphs and tables.
5. The last step consisted of drawing conclusions from the collected information and its critical analysis

CHAPTER I: TOXICITY IN THE FINANCIAL FRAMEWORK

To understand the following academic work, we must define what we consider as "toxic product" or in the case "toxic asset". Toxic financial products are those that have been offered with full guarantees, and for a particular customer. This is not a scam, but a product that because of its characteristics, is not suitable for the retail customer, that is, the one who as a general rule, doesn't have the experience, knowledge and skills necessary to make their own investment decisions and to value correctly the inherent risks in such decisions. We are faced with the problem, where the financial institution sells it to the individual, knowing the risk for their savings because there are referenced to variable indexes depending on economic and financial developments.

However, within this definition we also find unfair business practices carried out by the financial institution putting a product or a special feature of a service, in a way that isn't transparent or inadequate for the client's profile. In this way, although not strictly a product the definition encompasses characteristics of a contract, operation, conditions of sale, etc...

On the other hand, according to the digital newspaper **Expansion (n.d.)** a "toxic asset" identifies a type of asset of poor quality, that is, with a lot of risk as to the probability of recovering the initial value, and, therefore, has a very bad rating or *subprime*; this expression that has become popular in the financial markets in the aftermath of the subprime crisis.

The problem for financial institutions is to have on their balance sheets a very high percentage of this type of damaged assets, which can generate large losses and place them in very difficult situations to settle, which has caused governments of a lot of countries to look for different measures to favour the liquidity of the financial institutions that are in this situation.

The origin of these toxic assets it is entered in a poor analysis of client risk or over-expansive risk-granting policies, allowing to lending to people most likely to become insolvent. If this is accompanied by the fall of the value of the assets that guarantee the debt in the first place, the consequence is that toxic asset, whose value has decreased a lot, and is difficult to sell in turn to make it liquid, even obtaining losses.

The financial entities that have carried out this policy are found with a large number of assets that, once the borrower is unpaid, are not worth the loan that was granted for its acquisition. Therefore, any action that damages the retail client by the financial institution and that has been made on the basis of the good will and responsibility of

the bank will be treated inappropriate behaviour in favour of the interests of a single party, fostering a toxic relationship between the client and the financial institution.

CHAPTER II: ANALYSIS OF MOST COMMON TOXIC TECHNIQUES, PRODUCTS AND BAD FAITH IN FINANCE

At continuation, there are defined and analysed the main toxic financial techniques and products that are the most sold and popular in the media. The analysis is done through the study of profitability and risk. Product risk is determined by market risk and credit risk, but also by other aspects such as product complexity and liquidity. Also, there are included the conditions and characteristics of the products or services. And finally, we discuss of the consequences of the sale of toxic products to retail customers.

1. Securitization

1.1 Definition

Asset securitization is defined as a process that allows the transformation of a group of liquid assets into a series of negotiable instruments, liquid and with certain payment flows. This process can be carried out by any company, although it is usually used by the credit institutions because of its capacity to generate numerous financial assets. In this way, the securitization allows the transformation of heterogeneous assets in liquid securities homogenous, of greater value and susceptible of being sold, transferred or ceded to a third party **(Catarienu and Pérez, 2008)**.

The securitization process is done by creating a special purpose vehicle (SPV), which is the one that issues the securities in the market. For this reason, the credit quality of the securities issued by the financial vehicle is directly linked to the credit risk of the underlying portfolio, thus dissociating itself from the credit quality of the originator of the loans.

The important role of the securitization process in recent years was because this process provides a financing mechanism to the credit institutions, while contributions to the financial markets and the growth of the credit.

One of the most common classifications of structured banking products is elaborated by the **European Securitization Forum (2008)**, which includes the following products: Asset Backed Securities (ABS), Collateralised Debt Obligations (CDO), Mortgage Backed Securities (MBS) and Commercial Mortgage Backed Securities (CMBS). Next, we briefly define each one.

- Asset Backed Security (ABS). An ABS is a bond whose cash flow is generated by a portfolio of financial assets normally shorter term. Included in this classification are credit cards, leases, car loans, bills of exchange or promissory notes. In order to achieve a longer term in the amortization of an ABS, the structure of this type of

product usually includes an initial revolving period (between one and three years), where the principal amortized of the portfolio is reinvested in the purchase of new financial assets instead of repaying the bond issued, provided that the securitized portfolio presents a correct evolution with respect to the level of defaults and other selected parameters.

- Collateralised Debt Obligations (CDO). A CDO is a equity whose cash flows are backed by a set of bonds, loans or other type of assets. CDOs do not specialize in any kind of debt, and may consist of a large number of financial assets of diverse nature such as, for example, bonds, loans or ABS. If the title created has as underlying asset a set of bonds of high yield, classified as "junk bonds" or below investment grade, is called Collateralized Bond Obligation (CBO).

- Mortgage Backed Securities (MBS). A MBS is a mortgage bond similar in structure to a CDO, although in this case the set of underlying assets is composed entirely of mortgage loans. These issues are used by the mortgage lenders in order to obtain a large part of the cash flows of the mortgages, since otherwise they would receive them in a long period of time higher.

1.2 Profitability and risk

As **Eva Catarineu and Daniel Perez (2008)** said in a publication, for the Bank of Spain despite the strong growth that the asset securitization market has experienced in recent times, it is still not enough the main reason why a financial institution decides to securitise. While the asset securitization process can help increase the liquidity and commission income, to reduce the risk of credit and interest rates, and to improve leverage ratios, there are many financial institutions that have not yet securitized their assets. Among the disadvantages of securitization of assets, there are the reductions in the saving of the taxes on the debt, which remains on the balance sheet, as well as the costs involved in the creation of the financial vehicle.

The most common classification distinguishes securitization operations taking into account the main motive on the part of the asset originator to carry out this securitization, distinguishing three main causes or effects:

a) Liquidity or search for new financing alternatives.

b) Transfer of credit risk. In turn, the securitization process serves to a greater or lesser extent as a transfer mechanism of the risk. Several authors point out that the securitization technique is used as a more efficient mechanism of transfer of risk and obtaining of liquidity.

c) The arbitration of regulatory capital. The entities have resorted to the use of the securitization technique with a view to reduce capital requirements.

On the other hand, it should be taken into account that when financial institutions transfer a set of mortgage loans to a securitization fund, taking them off the assets of their balance sheet, they are transferring to the buyers or investors of those securities all the risks involved in the possession of mortgage loans in your portfolio investment. In addition, the investor of the securitization bonds will have to support another series of risks related to the structure of the operation, although the degree of subordination chosen by this one counts in greater or lower the risk assumed.

In summary, the main risks faced by investors of this type of assets are those derived from the defaults produced in the underlying loan portfolio, changes in interest rates, the risk of early repayment, the risk of insolvency, the risk management of cash flow and custody, border risk and taxation, and of liquidity risk.

1.3 Commercialization

The conditions and distribution channels of the securitized assets differed in the US and European markets. The lack of regulation in the American subprime mortgage market resulted in the mortgage crisis beginning in the summer of 2007. These loans - granted to borrowers with low credit quality and, therefore, with an implied higher risk - grew to represent a very significant part of the total volume of loans originated in United States. **(BBVA, 2017)**

However, as announced by the **European Mortgage Federation (El Mundo, 2009)**, it is not possible to establish parallels between the US and Spanish securitization markets, so a comparison of their commercialization would not be correct. One of the fundamental differences with the North American model lies in the development of different models of securitization, that is, in the model of origin to distribute characteristic of the American market, compared to the model of origin to maintain typical of the Spanish market. **(De Aguinada, 2010)**

The differences are that in the United States, where the issuance of subprime MBS achieves the total transfer of risk - thus freeing the entire consumption of capital and the appearance on the balance sheet - and in Spain the use of the securitization technique has been mainly used as a financing mechanism, so off-balance sheet securitization only accounts for between 6% and 7% of total operations **(BBVA, 2008)**.

Therefore, although the crisis originated in the US subprime securitization market, the common nexus between the two markets was to form a portfolio with a low credit

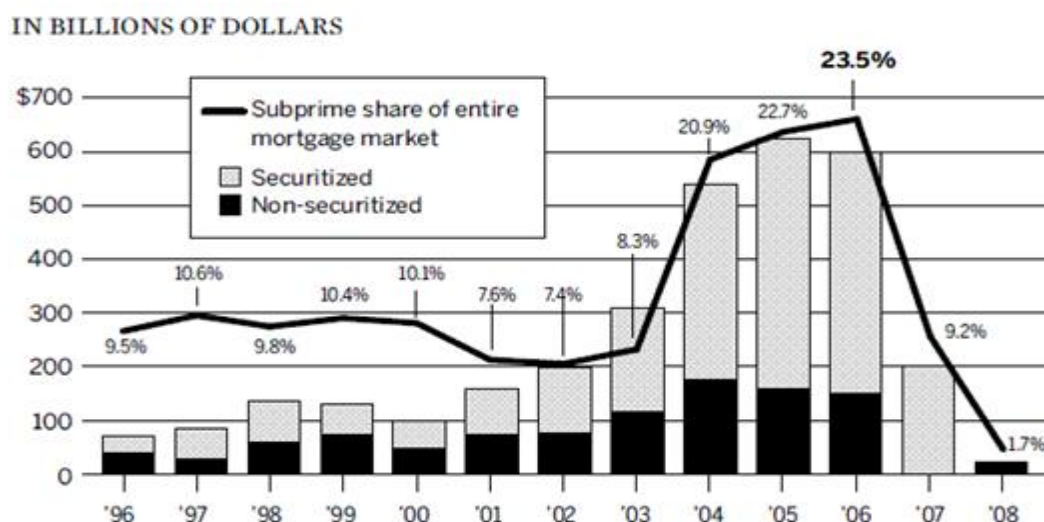
quality, so if it depends directly on variables such as the characteristics of the borrower and/or the amount to be financed. Thus, if the borrowers are of low credit quality or if the assumed debt accounts for a large part of the disposable income, a higher level of default in the portfolio is expected to be transmitted to the financing instruments.

In this way, as **Krugman (2007)** concludes the problem of the credit crisis of the last years of growth of the "great real estate cycle", banks originated a large number of loans of doubtful credit quality, being fully aware of what they were doing, the ball through the securitization of subprime mortgages.

1.4 The fraud of securitization

As we have seen, the origin of the financial crisis lies in high risk mortgages, known in the United States as subprime. This was a special type of mortgage, preferably used for the acquisition of housing, and aimed at customers with poor solvency and therefore with a level of risk of default higher than the average of other loans. Their interest rate was higher than in personal loans (although the early years had a promotional interest rate), and bank charges were more onerous. US banks had a limit to the granting of such loans, imposed by the Federal Reserve (**Novales, 2010**). As we can see at the figure 1 in 2006, 600\$ billion of subprime loans were originated, most of wick were securitized. That year, subprime lending accounted for 23.5% of all mortgage originations.

Figure 1. Subprime Originations



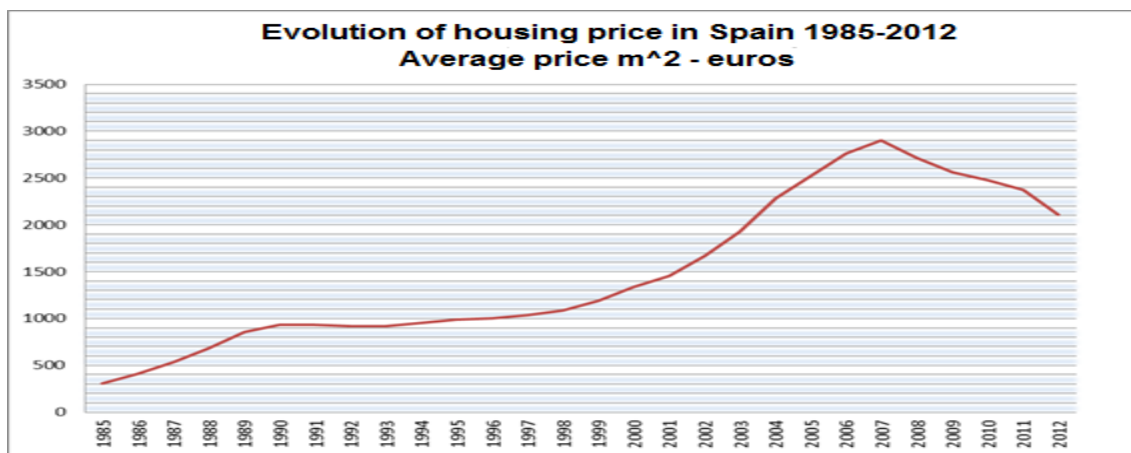
Source: Subprime Mortgage Originations, the Financial Crisis Inquiry Commissions (2011)

Since the debt can be sold and traded through the purchase of bonds or credit securitizations, subprime mortgages could be withdrawn from the balance sheet of the concessionaire and transferred to investment funds or pension plans. Thanks to this operation, a NINJA Loan could be granted to a nickname for very low quality subprime loans as described in No Income, No Job, (and) no Assets and is a term used in the United States mortgage industry to describe one of many documentation types which lenders may allow when underwriting a mortgage. The banks granted these loans to the ninjas with the expectation that the real estate market would continue to rise, since if the client declared insolvent, the sale of the house allowed the bank to earn the difference between the borrowed capital and the price of the sale. **(Toca, 2009)**

However, due to the connection of the global economy and the circulation of financial capital, financing between US banks and the rest of the world was done through portfolios incorporating subprime mortgages. In this way, when the housing bubble burst, all banks were affected by having subprime mortgage loans on their balance sheets of people who could not cope with the initial debt. So when the value of housing fallen, all the mortgages stock in the balance sheet of the entities caused a domino effect of losses.

As shown in the chart below, the **INE (2013)** in June 2007 reached the maximum peak in the price of housing; After 6 years, in June 2013, housing had fallen by 35%. .2 3 By the end of 2013 the price of housing would have accumulated a fall of 45%. Spain was the country in the world where the price of housing fell the most. The third quarter of 2013 the value of the flats in Spain fell 9.46% compared to the third quarter of 2012.

Figure 2. Evolution of housing price



Source: Evolution of housing price in Spain, INE (2012)

2. Preferred participations

2.1 Definition

Although it is not easy to draw a clear profile of preferred participations, according to the **Comisión Nacional del Mercado de Valores (n.d.)**, preferred participations (PPR) are financial instruments issued by a company that do not confer participation in its capital or right to vote. They have a perpetual character and their profitability, generally of variable character, is not guaranteed.

The characteristics of the preferred participations are:

- A) No guarantee political rights to the investor.
- B) The remuneration agreed as payment of interest is conditioned to the obtaining of benefits.
- C) They are instruments without determined expiration date.
- D) The investor is preferred over the shareholder in case of bankruptcy of the company. In the savings banks that did not issue participative quotas, if the insolvency of the entity occurs, the preferred participations have no privilege whatsoever.

In this way, we can classify them as hybrid instruments because they can't be considered shares as they do not have intrinsic political rights, nor as treasury bonds, and without determined expiration date.

In addition, the preferred participations aren't quoted on the stock exchange. It is a financial instrument that is quoted on the in organized exchange, so it can be obtained in both, the primary and secondary market. Its issue is represented by account entries

The incurred costs can significantly affect the investment as: commissions in favour of the financial institution, commissions by intermediaries, or administration and custody costs.

2.2 Profitability and risk

The preferred participations are a complex instrument that poses a high risk, you required high financial skills to operate with certain safety. This aspect was omitted by banks that sold them to the retail customer causing huge losses, after signing without being fully aware of the consequences they could bear to own a product of such characteristics.

In terms of profitability, PRPs provide a fixed remuneration for a short period of time and variable for the rest of the product's life until the expiration date, usually referenced to the EURIBOR plus a spread. Therefore, the situation in the market during the period of the variable remuneration, can lead to losses for the possessor of the preferred, if we are in uncertainty terms. The analysis of the markets will be carried out in the following sections.

In addition, based on **Law 13/1985 Investment factors, own resources and information obligations of financial intermediaries (1985)**, dated May 25, on, "the payment of this remuneration shall be conditional upon the existence of profits or distributable reserve in broadcasting entity or dominant" and is not cumulative, so that if it is not perceived in a period, the investor loses the right to receive it. On the other hand, "in cases where the broadcasting entity or parent company, or its consolidable group or subgroup, has significant accounting losses or a significant drop in the ratios of the shareholder's equity requirements, preference participations shall establish a mechanism to ensure the participation of its possessors in the absorption of current or future losses ... " which implies that the company establishes the possessor of the preferred participation one behind the creditors, and ahead of the ordinary shares in the moment of bankruptcy proceeding.

2.3 Commercialization

As a study carried out on preferred participations (**Defensor Del Pueblo, 2013**) points out, the problem of preferred participations has been the form of commercialization by credit institutions. Most financial institutions have placed a large part of their preferred participations among their retail customers, who had their savings insured in fixed-term deposits within the entity and had a conservative risk profile. For this, the bank entity assured that preferred participations were instruments with a higher income than any deposit and with an absolute liquidity for the acquirer. But they did not explain to them that they are complex financial instruments, high risk, are not covered by any guarantee fund, without an expiration date and for sale they have to go to a secondary market that does not have immediate liquidity. Citizens have been aware of the true nature of the contracted product once they have requested the disposition of the money deposited, when they began to suffer losses or ceased to receive interest.

2.3.1. Period until 2008

Prior to 2008, the nominal value of the preferred participations coincided with their market or sale value, with most of the preference placements indistinctly between institutional and retail investors. In 2005 the CNMV sent a letter to the issuers, which

recommended that at least 10% of the issue be allocated to the institutional tranche, or that in order to determine the financial conditions, two reports or any other mechanism that the issue terms were market conditions. In this period, it was a frequent practice among the entities, depending on the issue and duration, the early amortization, so that the investor recovered 100 per cent of his investment plus the interest received. Another practice of the entities was the repurchase of the participation, when the client requested, at 100 per cent of the nominal and sold to another customer for that price. They also facilitated the line up to 100% of the nominal among customers interested in selling or buying in the own branch office or network of the entity, communicating these cases later to the regulated market AIAF5. In summary, until the end of 2008 investors were able to recover their capital without difficulty.

2.3.2. Period since 2008

As of 2008, with the entry into force of the new Markets in Financial Instruments Directive (MiFID), explained in detail in chapter V, states in detail a rules introduced for the classification and rating of products and the subsequent commercialization of the same. In this way, the entities had to pass to qualify the preferred participations like complex products. Therefore, the entity is obliged to carry out a test on the financial knowledge and experience of the investor and, if necessary, must advise the clients before the commercialization of their lack of knowledge and experience (non-convenience advice). The entities that provide the services of reception, transmission or execution of orders on complex instruments by account of their clients should request information on their knowledge and experience, in order to evaluate if the service or product is suitable for the client. This doesn't mean as an increase in its protection, but rather seeks to give the investor more information, without preventing the latter from finally hiring the product when it deems it appropriate. In addition, the entity must make available to the investor, who buys this product, a triptych / summary of the prospectus of the issue in order to be informed about the risks of the product to be acquired. It includes the characteristics of the product: perpetuity, conditional remuneration on the existence of profits and fluctuation in the nominal value, which could lead to losses in its sale. As of 2008, institutional investors stopped mattering in the purchase of this type of products; as a result, the entities increased the commercialization of preferred participations among the retail clientele. In response to this trend, the **CNMV (2009)**, in the scope of activity about the protection of the investor, communicates to entities issuing fixed income products (preferred participations and subordinated debt, among others) that if these are only traded between retailers investors should include a valuation report from an independent

expert in order to determine whether the conditions of issuance to retailers are comparable to those which a similar issue launched on the wholesale market. The CNMV included an advise in the prospectus in the case that the price of the final valuation offered by the issuer, was different from the price of the valuation report. On the other hand, the economic situation in general and in particular of the financial institutions, starts to move away the market value of the nominal of some preferred participations. The National Commission on Securities Market itself announced to the preference issuers that it is malpractice to carry out buy-sell transactions between retail investors at nominal value, if this is different from the market value, since, in the case of transactions above of the market value, the investor acquiring the securities is being harmed.

2.4 The fraud of the Preferred Participations

The bank fraud that presents the scam of the preferred participations in Spain goes back to the decade of the 90, although it was during the economic crisis next to the housing bubble where they reached the highest number of preferred participations placed between the retail clients, without knowing the risks which implied neither the characteristics of the product.

As **Llamas (2014)** argues, banks offered preferred participations to private investors without financial knowledge. The swindle carried out by the banks was to imply that it was a fixed income instrument, which provided the profitability of a variable, but with the security and risk of fixed income products. However, due to the lack of transparency and the complexity of the product, it has led the clients to report the practices carried out by the bank. These entities had to carry out a test on the financial knowledge and experience of the investor and, if appropriate, must advise the clients before the commercialization of their lack of knowledge and experience (non-convenience advice). The entities that provide the services of reception, transmission or execution of orders on complex instruments on behalf of their clients should request information on their knowledge and experience, in order to evaluate whether the service or product is suitable for the client. This does not imply an increase in its protection, but rather seeks to give the investor more information, without preventing the latter from finally hiring the product when it deems it appropriate

As of 2008, institutional investors stopped mattering in the purchase of this type of products, as a result of which the entities increased the commercialization of preferred participations among the retail clientele. The increase in the supply by banks and savings banks of this type of products during the years 2008-2014 was born from the

need to increase capital to cover the risks assumed in the face of the crisis. In May 2011, the outstanding balance of preferred stock was 29,713 million euros held by retailers, of which approximately 75% corresponded to credit institutions (about 22,000 million) and about 7,000 million to non-financial entities.

Figure 3. Preferred participations

GROUP	PREFERRED PARTICIPATIONS (Millions €)
La Caixa	4898
Bankia	388
BBVA	3475
Banco Santander	1966
Nova Caixa Galicia	903
Mare Nostrum	942
CAM	1310
Caixa Catalunya	480
Banca Civica	9043
Caja España de Inversiones	412
Banco Sabadell	850
Banco Popular	878
EFFibank	178
Ibercaja	0
Banesto	497
Bankinter	343
Unnim	173
Caja 3	0
Banco Pastor	250
Deutsche Bank	0
BBK Bank Cajasur	150
Caixa Ontinyent	0
Banco Etcheverria	0
TOTAL ISSUES	22374

Source: Own elaboration based on the study by Defensor del Pueblo, 2013

3. Ground clauses

3.1 Definition

According to the definition provided by the website **CrediMarket (2017)** dedicated to provide information on possible financial products or services offered by banks, savings banks or credit institutions, this is a clause that establishes a minimum to pay in the instalments of the mortgage although the ordinary interest that has been agreed with the entity is below. Most mortgages in Spain have an interest rate referenced to the EURIBOR plus a spread. Therefore, the ground of the mortgage will be the one that sets a minimum percentage although the interest arising from the sum of the EURIBOR plus the differential is lower.

3.2 Profitability and risk

To explain the profitability and risk provided by the clauses we will take as an example a mortgage to EURIBOR + 1, which has the interest of the EURIBOR and an extra point in interest rates. This index is reviewed annually, and is the one that affects the payment of the monthly instalments according to their value.

Faced with the fluctuation of this value, many mortgages incorporated ground and roof clauses, which functioned as maximum and minimum. The question is, that the EURIBOR reached the highest points of the decade in 2008 and the lowest in 2009. This meant that with the EURIBOR surpassing 5%, those mortgages to EURIBOR + 1 the debtors were paying 6% of interest. However, the roof clauses didn't get activated since the entities had fixed on 13% average.

On the other hand, in 2009, people who owned a mortgage with ground clauses stopped to see their instalments go down. This was because, although the EURIBOR would be set at 1%, the clause was set at 2% to 3%, a percentage that was not difficult to reach, especially in comparison with the roof clauses.

3.3 Commercialization

These clauses are within a legal context when included in the contract signed by the client, but for this must have been agreed by all parties that make up the mortgage contract. The ground and roof clauses were incorporated in the deeds that formalized the mortgage under the names or headings: limits to the application of variable interest, limits of variability, and variable interest rates.

At present, there are a large number of court decisions that cancel mortgage contracts because there is no apparent agreement between the signatory parties when

establishing such clauses. All this, at the end, is a benefit for the bank and a detriment to the client against the fluctuations of the reference index.

3.4 Fraud of ground clauses

During the period when the housing bubble was created, in Spain the mortgages that were subscribed at a variable interest rate referenced to the EURIBOR plus a spread. As described in the previous paragraphs, the operation of this index was based on a fixed minimum that although the EURIBOR plus the differential would be reduced would pay the minimum interest set, ie, the real decline in interest rates.

This is not operating outside the law, as the Bank of Spain and the Spanish Mortgage Law permit it. However, there is talk of fraud because financial institutions did not duly report their presence, and the consequences that could entail.

It is estimated that the amount defrauded by banks would amount to 4,000 million euros according to data from the Bank of Spain and would affect about 3.3 million Spaniards **(Publico, 2016)**. In December 2016, the European Court of Justice (ECJ) forced to apply total retroactivity to the ground clauses. That is, it obliges to return to the entities everything collected from the beginning of the application of these conditions if the contracts were abusive **(Rincón, 2017)**. However, a new sentence in April this year issued by the Spanish Supreme Court estimated that it will not review sentences about abusive ground clauses issued prior to the December European Court of Justice sentence. This is a victory for entities - first BBVA, Abanca y Cajamar, and later Popular -, who will not have to return the money improperly collected before the date of the court's first sentence, May 9, 2013 **(Segovia, 2017)**

This pronouncement by the Supreme Court is due to a cassation appeal filed by the Association of Users of Banking Services (AUSBANC) in court. This ends a long process that saw its first sentence on September 30, 2010, when the Mercantile Court No. 2 of Seville condemned BBVA, Cajamar and Caixa Galicia to eliminate, for abusive, such clauses of the contracts issued and to refrain from use them in the future. This judgment understood that it was an abusive clause, because it is a condition generally incorporated by the bank to mortgage loans, without possibility of negotiation with the client. The main argument about this type of practice is that it transgresses the principles of good faith, to the detriment of the customer, causing a significant imbalance in consumer economies. And this ground clause has been the main responsible for the progressive reduction of the reference rate in variable rate mortgages (in the case of Spain, the EURIBOR) was not reflected in a generalized fall in monthly instalments payable by the holders of the mortgages. AUSBANC was the

first association to detect this bad banking practice and has raised numerous demands for this clause to be declared abusive and removed from the contracts. At the moment, more than fifty favourable judgments have already been detected.

In the lower graph, we can estimate the value that people with ground clauses in their mortgages can achieve with the total retroactivity of the clause or since May 2013 when Spanish Supreme Court considered the ground clauses abusive.

Figure 4. Ground clauses

ENTITIES	Value with total retroactivity	Value without total retroactivity (since May 2013)
ABANCA	10.000-13.000€	4000-7000€
BANKIA	10.000-13.000€	4000-7000€
BBVA	10.000-13.000€	4000-7000€
BMN	13000-16000€	7000-10000€
CAIXABANK	10.000-13.000€	4000-7000€
CAJAMAR	10000-13000€	4000-7000€
IBERCAJA	13000-16000€	7000-10000€
KUTABANK	13000-16000€	7000-10000€
LIBERBANK	13000-16000€	7000-10000€
POPULAR	13000-16000€	7000-10000€
SABADELL	13000-16000€	7000-10000€
SANTANDER	4000-7000€	600-4000€
UNICAJA	13000-16000€	7000-10000€

Source: YVANCO&ABOGADOS, 2017

4. Multi-currency Mortgage

4.1 Definition

A multi-currency mortgage is a type of loan that allows the payment in another, currency different than the Euro (dollar, yen, pound, etc...) according to the judgment of the **Supreme Court on Act June 30 (2015)** . The Plenary estimate that" it's a derivative financial instrument in that the quantification of the obligation of one of the parties in the contract depends on the amount that reaches a different value, called the underlying asset, which is a foreign currency. As a derivative financial instrument related to foreign exchange, it is included in the scope of the Securities Market Law in accordance with the provisions of art. 2.2 of the law, and is a complex financial instrument under the provisions of art. 79.bis.8 of the Securities Market Law, in relation to art. 2.2 of the law."

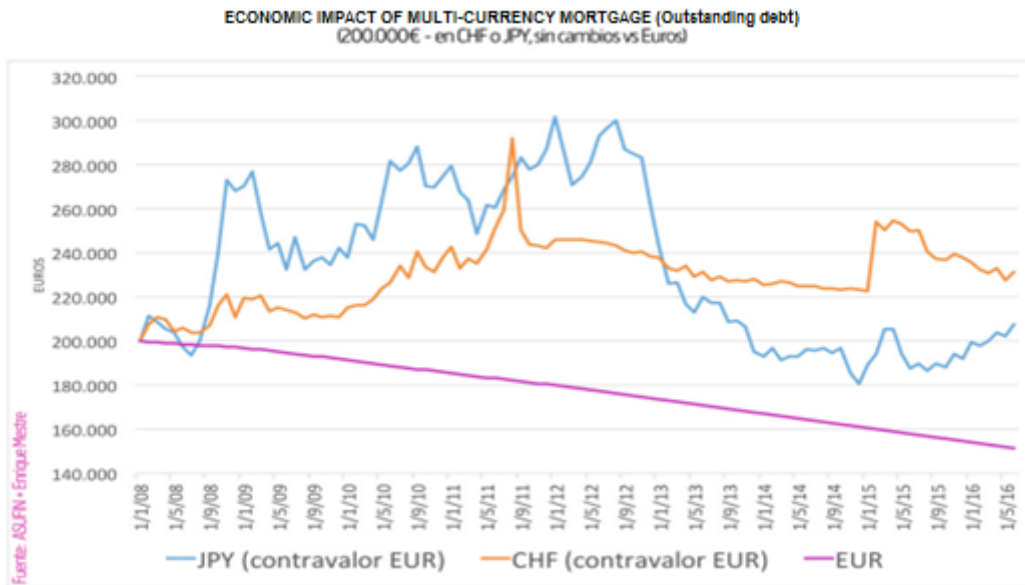
4.2 Profitability and risk

The main advantage of the multi-currency mortgage was to reduce the interest rate against a negative variation of the currency against the euro. With this, a fall of the currency against the euro benefited to him, and a positive variation prejudiced to him.

The profitability that could be obtained when granting a mortgage in another currency, was the interest rates so low that they had currencies like the yen or the Swiss franc. However, during the years in which the global economic and financial crisis erupted, connected with the strong volatility of the exchange rate markets, the euro fell against the currency, leading to a fall in house prices, but at the same time derive on a rise in the amount to reimburse. In this way, the client who couldn't pay the instalments lost the house, obligate to return the money to the bank for most of the loan received, because consumers were not warned that not only was the monthly instalment recalculated, otherwise also, the capital outstanding.

The lower graph made by the **ASUFIN (2016) [Asociación de Usuarios Financieros]** shows the difference between the evolutions of a loan contracted in January 2008 for 200,000 euros indexed to yen or Swiss francs against a traditional loan in euros. Thus, we note that at the end of 2016 the customer's mortgage in euros is reduced to 150,000 euros, but the outstanding debt for those with yen mortgages amounts to almost 300,000 euros, and more than 280,000 euros for those who they had it in Swiss francs.

Figure 5. Multi-currency mortgage



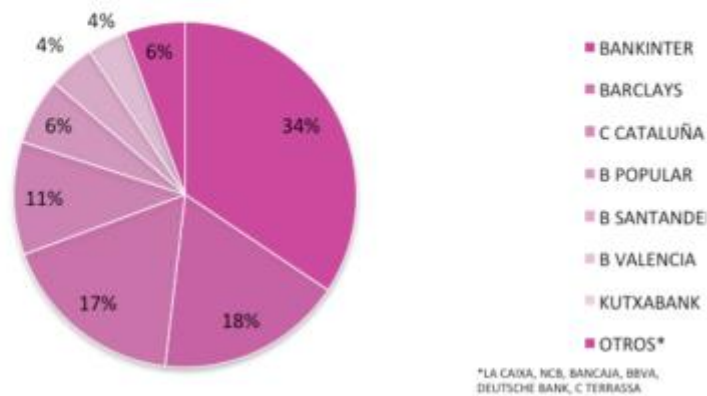
Source: Economic impact of a multi-currency mortgage, ASUFIN (2016)

4.3 Commercialization

Multi-currency mortgages are a financial hybrid that combines a mortgage loan with a derivative. In this type of product, the client contracts the mortgage in euros but the instalments and the amount to be repaid are recalculated periodically in the chosen currency, whether yen, Swiss francs or other currencies. The client mortgages his home as collateral for repayment of a loan whose amount would varies continuously in the margin of the value of the home.

Figure 6. Multi-currency mortgages commercialization

Multi-currency mortgages commercialization



Source: Multi-currency mortgages commercialization, ASUFIN (2016)

In the previous graph classify the 160 resolutions by financial institutions. It notes clearly that with 34%, Bankinter is the entity that most multi-currency mortgages has commercialized; followed by Barclays with 18%Caixa Cataluña with 17% and behind, Banco Popular, with 11%. Also we can find smaller commercialization of multi-currency mortgages in entities such as Santander, Kutxabank or Banco de Valencia.

4.4 Fraud of Multi-currency Mortgages

Owing to the abuses suffered by the retail client requesting a loan with these characteristics without financial knowledge, the Supreme Court as we have seen previously, has been pronounced considering that we are dealing with a derivative and complex instrument that is applied by the MIFID regulation in catch to the investor. Although this regulation will be described in more detail in the following sections, roughly requires banks to assess the knowledge and experience in the financial markets before offering the multi-currency mortgage, or if appropriate, a product appropriate to their profile.

According to the report of the **ASUFIN (2016)** in Spain it is estimated that there are 70,000 multi-currency loans, of which about 46% is indexed in yen, 52% in Swiss francs and the rest in pounds and dollars. In addition, ASUFIN estimates that the entities could have placed more than 14,000 million euros indexed in other currencies.

During the last years, a number of judgments have been a key in order to be able to declare the total or partial nullity of the multi-currency mortgage agreement (**ECJ 26/13, 2014**), Supreme Court decision 303/2015 June qualifies multi-currency mortgages as a loan plus a financial derivative and, with it, the application of the Securities Market Law (MIFID). Finally, the European Court of Justice ruled again (**ECJ C312-14, 2015**) with a judgment in which it considers that in the specific case of Litis we are not dealing with a more financial derivative loan, leaving National Court to determine if could be. This new sentence are great news for Spanish consumers of mortgages, as they can be released from these unfair and abusive terms that were imposed by banks without prior negotiation with the client and that blocked the mortgage payments reflect the declines in mortgage reference rates such as the EURIBOR.

5. Miscellaneous

5.1 Case of Bernard Madoff

Bernard Madoff's fraud consisted of taking capital in exchange for large profits that were effective at first, but later revealed to be a pyramid scheme or Ponzi scheme. Victims of Madoff, with philanthropic reputation, were both banking entities and investor groups, some foundations and charitable organizations, mainly from the Jewish community of the USA, were also victims of its scam. Bernard Madoff fraud is estimated in 50.000 million dollars. **(Badía, 2008)**

5.2 Fraud in bank accounting

The legislation of the different countries usually guarantees deposits up to an amount, for it requires contributions from banks, insurance, a cash ratio (available liquid money also called legal reserve coefficient, and reserve ratio) and accounting transparency, but in sometimes a bank misrepresents its accounts and issues shares and shares and deposits with falsified accounting figures or manipulated legal reserve ratio.

The cases of Bankia (former Caja Madrid) and many other Spanish savings banks broken by their bad management forced a process of mergers and mergers with huge public aid to clean up the balance sheets broken by the Spanish real estate bubble and the consequent Spanish real estate crisis 2008 -2013. Bankia has needed 147 billion euros in its rescue. **(El País, 2014)**

5.3 Fraud due to tax evasion and money laundering covered by bank secrecy

These frauds do not harm banks because it allows them to get deposits - whether legal or not - protected by bank secrecy. The damage is usually for the countries where the crime is committed that do not receive taxes. The Lagarde list, the Falciani list (Hervé Falciani) and the Swiss Leaks have highlighted the generalization of financial crime and tax evasion with the protection of banks and sometimes, as in the case of Luxembourg or Lux leaks Leaks-, of the governments. **(El País, 2017)**

- **List Lagarde**

The Lagarde list contains the names of some 2000 potential tax evaders with undeclared accounts at the Swiss bank HSBC in Geneva. The list is a small part of the Falciani list.

- **List Falciani**

The Falciani list contains more than 130 000 tax evaders that Hervé Falciani took from the Swiss subsidiary of the HSBC bank and has served in several countries to uncover cases of tax evasion in countries around the world.

- **Swiss Leaks**

Swiss Leaks is a leak in 2015 of one of the best known frauds that would affect the British multinational HSBC through Swiss subsidiary HSBC Private Bank (Suisse).

5.4 Implication of banking in dirty business

A report from **SETEM (2011)** analyses economic and financial relationships between Spanish banking groups (including their subsidiaries) and controversial arms producers since January 2006. The research focuses on the 30 companies whose involvement and participation in the production and maintenance of controversial weapons is known: cluster munitions, nuclear weapons, anti-personnel mines, depleted uranium weapons and biological and chemical weapons.

On the other hand, we also find a report by **Friends of the Earth Europe (2012)** which analyses the activities of 29 European banks, pension funds and insurance companies, including Deutsche Bank, Barclays, RBS, Allianz, BNP Paribas, AXA, HSBC, Generali, Allianz, Unicredit and Credit Agricole. It reveals the significant involvement of these financial institutions in food speculation, and the direct or indirect financing of land grabbing.

CHAPTER III: ECONOMIC ENVIRONMENT AND EVOLUTION OF FINANCIAL MARKETS

In this chapter we briefly discuss the current economic environment that has facilitated irresponsible behaviour on the part of financial institutions and the negative consequences of market developments on financial products owned by retail customers.

1. Economic environment

To understand the economic crisis we have to go back to 2008. It originated in the United States financial markets, beginning with the sale of so-called "toxic assets", and continuing with the bankruptcy of Lehman Brothers. The panic generated by the collapse of this entity considered too big to fail affected the global financial system and thus ended up spreading throughout Europe, mainly in peripheral countries, especially in the Mediterranean. The functioning of the financial system has been the main problem of the crisis and with the intention of solving it and transforming it into an efficient system a restructuring has been carried out, modifying the laws that regulate and supervise financial institutions.

Although the US is at the epicentre of the crisis, Spain has been one of the most punished countries by the crisis, since the country's macroeconomic and financial imbalances have increased; excessive indebtedness, loss of competitiveness and confidence, and unsustainable increase in unemployment rates led to negative perspectives on the future of the Spanish economy.

In this way, once the crisis has spread through the Spanish banking system, a lack of liquidity on the part of the banks led the entities to consider selling toxic financial products to the retail client without financial knowledge. The use of this type of products by financial institutions served as a way to find financing cheaply when markets began to close after the fall of Lehman Brothers in the United States.

2. Evolution of financial markets

To analyse the evolution of the markets and to get an idea of the direct consequences of the financial crisis on these, the variations of the index, exchange rates and interests will be exposed.

During 2008, financial markets plummeted causing the biggest declines in their history according to **Expansion (2008)**. Under the data available at the close, the Dow Jones, the most important Wall Street index, fell 777.68 points (6.98%), to 10,394.92 units. The Stock Exchange did not drop many points since September 17, 2001, the day of

the reopening of markets after the terrorist attacks of September 11 (9/11), which dropped 684.81 points (-7.13%).

The nervousness spread to Europe, where the trading floor extended their falls by more than 5%. The Ibex was one of the best unemployed in the continent with a decrease of 3.88%. Meanwhile, the Paris Cac 40 index plunged more than 5% and recorded its lowest level since 2005. Very similar situation lived both the London FTSE and the German Dax, which were left 5% and 4.2% , Respectively, driven by fears about the situation of the financial sector.

However in the Spanish case during the period, the Ibex-35 fell 39.4% during 2008, the biggest fall in history, losing almost 6,000 points. In 2009 it rose near 3,000 points, and from 2010 began a steady decline, reaching 7,763 basis points at the end of the second quarter of 2013 **Gance, 2008**).

However the foreign exchange market, as noted by **Alcalde Gutierrez, Calvo Bernardino and Paúls Gutiérrez (2014)** has continued to show its strength since, despite the economic and financial crisis, it has achieved in this triennium a growth of more than 35%. The US dollar remains the main reference currency, accounting for 87% of the world's foreign exchange transactions, followed by the euro and the yen with a share of 33.4 and 23% respectively. Although, it should be noted that the first and the last have improved their relative importance in the last triennium to the detriment of the euro, mainly due to the sovereign debt crisis experienced since 2010 by some European countries, which introduced a high degree of uncertainty with respect to the Eurozone and its possible rupture. Secondly, the most traded currency pairs are the dollar against the euro with more than 24% of the exchange rate and the US dollar against the yen (18.3% of transactions). Thirdly, on the basis of the produced transactions, the greater importance of swaps is maintained, although spot transactions have substantially approached the previous ones, being the ones that contributed the most to the total market growth (40.6%). Fourth, operations in which the other financial institutions act as counterparties have continued to grow in importance. Cross-border operations also predominate, accounting for almost 58% of the market.

The peaks that the value of the common currency from that year draws the deep financial crisis caused by the collapse of Lehman Brothers (September 2008), which revitalizes the strength of the euro, to which investors seek refuge, and the decision of the Federal Reserve of the United States to reduce the interest rate to a historic low of 0.25%.

As we can see in the graph below, at the end of 2009, with the beginning of the Eurozone debt crisis, the euro weakened in all areas. It is time for the ECB and its monetary policy to save the euro to come to the fore in order to revive the economy. The solution was, a reduction of interest rates to the record mark of 0.05% (November 2011) and the launch of its 'Quantitative Easing' (QE) program in March 2015. The euro, as of 2011 begins to weaken, until approaching the parity at the end of 2015. In its last value, the euro is changed by 1, 09 dollars.

Figure 7. Exchange EUR/USD



Source: Historical rates (Fxtop, 2017)

In this way the European currency, the euro, is approaching day to day to parity with the dollar in the face of the possibility of rate increases by the US Federal Reserve. The euro has fallen in a few months around 0.03%. As can be seen, the European currency has been higher than the US since the end of 2002 and in 2008 it reached almost US \$ 1.60.

CHAPTER IV: CONSEQUENCES ON THE RETAIL CLIENT

This chapter will attempt to quantify the consequences on the retail customer following the evolution of markets. The possession of complex products has generated losses in the families causing some of them to become homeless, under the poverty thresholds and in debt to a capacity superior to the one of their purchasing power.

5.1 Families and indebtedness

According to the **Ruling of the Consumers and Users Board on the indebtedness of families (2009)**, the main cause of debts in families is the mortgage loan. This puts us at the top of the international ranking of family indebtedness, and has reached such level of seriousness that the threat of seizure of housing, payrolls and other assets of families, is hovering over hundreds of thousands of consumers. Family debt has systematically grown above income in recent years, so the ratio between the two variables has grown from 45% in 1995 or 76.7% in 2001, to over 140% in 2008.

Data on family encumbrance, particularly the extremely increase in the level of indebtedness between 1996 and 2008, especially since 2003, are closely linked in the current situation with the fact that default have tripled in a year, reaching 3.8% and predicted to reach 6 or 7% in 2009. The latest analysis and datum already speak of more than 100,000 families in mortgages foreclosure proceedings, figures that may double in the coming years according to almost all analysts.

In 2012, according to the **Bank of Spain (n.d.)**, with filtered datum from financial institutions that manage just over 85% of mortgage credit, there were 32,490 mortgages foreclosures, of which 14,110 were payments (43% of the total) and another 4,215 voluntary deliveries. When the judicial commission arrived to execute the eviction 2,405 houses were still occupied and in 355 cases of judicial deliveries of occupied habitual houses the intervention of the police was required for the realization of the launch or eviction. The Bank of Spain underline that 85% of the mortgages that could not be paid in 2012 were contracted in 2007 or earlier, during the real estate bubble.

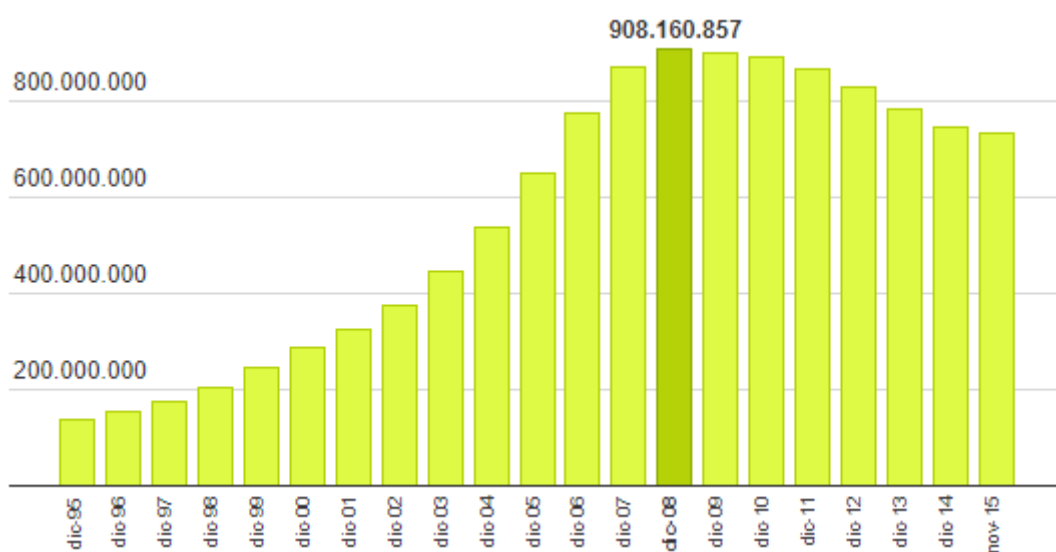
On the other hand, the Organization for Economic Co-operation and Development (**Valero, 2015**) disseminated through a report that, after the global crisis, poverty had increased in the countries of Southern Europe and, in the case of Spain, underline that a part of the poorest population had worsened their situation. Exactly in the case of Spain, the Gini coefficient, which measures income inequality within a country, has increased by 7.6 percentage points. The OECD also uses it to assess the inequality between incomes derived from household economic activities. This aspect, closely

related to the value of work, is where Spain moves away from the average more than any other country.

In March of this year, the OECD (**Gómez, 2017**) again submitted a report which showed that in the economic recovery enjoyed by Spain, poverty has increased, mainly due to the lack of quality employment that provides sufficient hours of work and adequate income.

Since 2008, according to the data handled by the Bank of Spain, households and companies have reduced their debts by half a trillion euros (approximately half of domestic GDP), which has led them to make one of the most important Europe to balance their finances. In this way, if the reduction of the last year is maintained, households will reach the eurozone level in 2018. Therefore, families would have to take out at least another 30,000 million more, to reduce their debt below 700,000 millions of euros to end the process of deleveraging the private sector.

Figure 8. Family debt

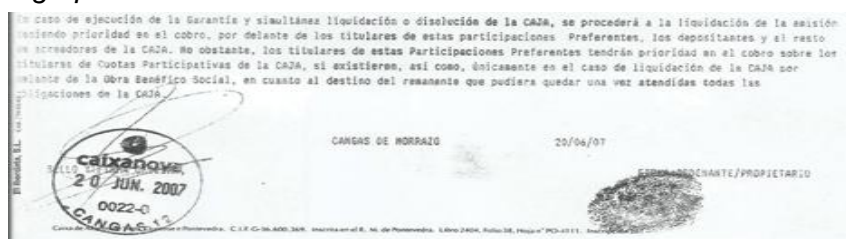


Source: Evolution of debt in Spanish families, Idealista (2016)

5.2 Uncertainty and mistrust

The direct consequence suffered by retail customers has been the uncertainty of what will happen to their savings. A large number of retail customers invested in these products believing that they were making a safe investment, as confirmed in the contract. So, when they wanted to realize, their savings were immobilized due to the lack of liquidity linked to the product, or they were obliged to consolidate the debt. It should be noted that a significant portion of the customers who purchased this product were retired, who sought to make a return to their lifelong savings, or young people seeking to save money on their mortgage. On the other hand, the existence of irregularities in the commercialization of the product, was the sold of preferred participations to illiterates or people with Alzheimer's disease (Esteve, 2012).

Figure 9. Fingerprint



Source: Signature with the fingerprint of an illiterate person (El País, 2012)

To have a general idea of the trust level in the society, we are going to study the report presented by Edelman. In this way we will try to justify this loss of trust (Trustbarometer, 2015).

Figure 10. Trust barometer



Source: TrustBarometer, 2013

As we see in the before graph, Spain in 2014 was dominated by mistrust between society. Spain was above countries like Russia or Poland with 39 points. However, seems that in the year 2015 increased trust levels among the Spaniards, but without big changes, only 6 points. Another reason that I think interesting to highlight, is the result of the study in terms of trust in companies. In Spain, the reasons for lack of trust in companies are: 51% lack of economic growth, 47% does not help families to improve their quality of life, and 44% do not help the productivity of society. On the other hand, in terms of sectors, society is mistrust about financial services (54%), banking (53%) and the media (51%).

CHAPTER V: PREVENTIVE MEASURES

In this chapter, are developed the actions developed by the competent bodies in the matter.

4.1 MIFID (Market in Financial Instruments Directive)

In 2008, after the increase in complex financial products to the retail customer, MiFID was born as the normative that harmonizes in Europe the regulation of the securities markets, the financial instruments traded in them, the organization and relationship with clients of financial institutions that provide investment services and investor protection that came into force on November 1, 2007 **(CNMV, 2008)**.

The main objectives of this directive are: to protect the customer so that he knows and understands the product which is going to buy, knows to assess the risk and makes the decision accordingly, regulate the behaviour of the financial institution and increase the competition between financial institutions.

In order to ensure that institutions take appropriate measures to protect each type of investor, MiFID establishes the obligation to classify all clients of entities into two categories, professional and retail customer, and one additional to what it calls eligible counterparties .

In the first place we find professional clients who are those who are presumed to have the experience and knowledge to understand and take on the risks involved in the investment services or financial products they wish to hire. Therefore, they are granted less protection and less information rights than a customer classified as a retailer. However, this classification gives the right, with an enunciative and non-limiting character to:

- Right of information regarding the nature and risks of the financial instruments, execution centres of orders, incentives, expenses and costs associated with the contracting or the service rendered.
- Right to know the Best Execution Policy, Conflict of Interest Policy, and Asset Safeguard Policy.
- Right to have the contracts made with the entity, as well as the orders executed in its name by the entity appear in the corresponding records.

In the other hand, the retail customers, the main customers of this work. They are the rest of the clients, and they enjoy the maximum level of protection in order that they can make informed decisions about their investments. Some of the rights are:

-Right to information related to financial instruments and investment strategies, order execution centers, associated costs and costs so as to enable them to understand the nature and risks of the investment service and the specific type of financial instrument which is offered.

- Right to know the execution policy, the conflict of interest policy and the policy of safeguarding assets.

- Right to have the contracts made, as well as executed orders, appear in the corresponding records.

Finally we have the eligible counterparts. They are specialized clients who do not need any protection, given their knowledge and experience in the markets. This is the case for, for example, other financial institutions.

4.2. CNMV

The CNMV is the manager of the application of the rules of conduct of the entities in front of customers and over the last few years can be verified either through communications or through reports that have tried to regulate the sale of complex financial products to retail customers. The **CNMV's Activity Plan (2012)** establishes a series of specific objectives related to the sale of preference shares and subordinated debt:

1. Strengthen the supervision of the liquidity mechanisms of fixed income issues to the retail customers (degree of compliance with the liquidity commitments and the transparency of the platforms).

2. Maintain thorough supervision of the marketing practices of these products.

3. Issue recommendations for the improvement of the valuation reports that accompany the emissions directed to the retail customers. In any case, the CNMV will reiterate in its publications and appearances the need for investors to be properly informed, through the documentation offered by the issuing entity and the CNMV, on the nature and risks of the products, before finalizing its investment decision.

4.3 Spanish Government

The malaise of the Spanish population with the current mortgage situation is due to a deficient regulation of the same by the financial institutions as by the successive governments that have gone through the power in the last years. In recent years, due to the worrying statistics on the subject of evictions by financial institutions and the numerous mobilizations that Spanish society has carried out, it seems clear that need a

very important change. This has led to the start of trying to find a solution to this problem. It is evident that in the midst of the scandals of the ground clauses and the payment of expenses related to loans for the purchase of housing, the Government is working on a new law that regulates all the fronts that so many headaches are provoking to the financial entities, in order to provide greater juridical security to the mortgage system and protect the citizen **(Anton, 2017)**.

With this regulation, the Government wants to underpin all the concepts referring to mortgage loans susceptible of diffuse interpretations, such as the different clauses that can be considered abusive, the commercialization of swaps, multi-currency mortgages or the responsibility that at any given time can be attributed to notaries or property registrars.

CONCLUSION

After read and analysed the information to do this paper, I can't get over it. Entities have introduced highly complex products and clauses among retail customers. As a future graduate in Finance and Accounting, I am surprised at how banks sold this type of product to people who have no knowledge of financial and economic markets, not obey with the legal obligation to safeguard the interests of consumers, and abandoned them in the complexity and volatility of the markets, making them unknowingly assuming risks of large investment funds and financial experts. I have noticed that there is some toxicity in the financial framework, mainly encouraged by financial institutions.

According to the **Collins dictionary (2017)** a bank " an institution offering certain financial services, such as the safekeeping of money, conversion of domestic into and from foreign currencies, lending of money at interest, and acceptance of bills of exchange." From my point of view, it is that as a company which the main objective is to maximize profits, reason why the others as social welfare, are in the background. The bank will do all to achieve its goals, which is why I believe that they allow your mortgage trade in the stock market, a pensioner without financial knowledge has derivatives, finance production of weapons (**SETEM, 2011**), speculate with food (**FoEE, 2012**) or placing abusive terms in contracts. In general, they do irresponsible and uncontrolled activities, in a non-transparent way.

Thus, as we have seen, most judgments coincide in one concept: lack of transparency. This characteristic is one of the theoretical necessary conditions for a free market policy to be efficient.

As the author **Pertiñez Vilchez (2013: 5)** explains, the lack of transparency occurs "when the financial institution does not inform sufficiently the characteristics or existence of a product or clause before the conclusion of the contract and its consequences in case of a foreseeable downgrade scenario of the reference rate, its inclusion in the contract, which causes the surreptitious alteration of the credit price, on which the borrower believed to have given his consent from the information provided by the entity in the pre-contractual stage."

Therefore, transparency ensures, in relation to the main purpose of the contract, that the consumer is aware of the economic burden arising from the contract and the benefits that the other party will receive. In short, what is intended is that the customer, has the possibility, certain and immediately to compare different offers and options that exist in the market for the contracting of a financial product. In summary, the lack of

transparency in certain actions, the perversion of financial products that were targeted to inappropriate segments, misleading advertising, lack of information (when not deceiving) to shareholders and regulators ..., all this leads clearly to induce a lack of ethics in the performance of organizations, with a significant negative impact on their credibility and trust.

Finally, as students and future professionals in the financial sector, it is our responsibility to eliminate the toxicity that has proliferated in recent years in the financial framework, controlling, supervising and acting from the most ethical, responsible point of view and solidarity.

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