Madoff scandal, 4th anniversary

Do Luxembourg SICAVs deserve their reputation as safe investment products?

On 12 December 2008, tens of thousands of private investors were told that their investment in Luxembourg based UCITS funds like Luxalpha and Herald Lux had gone completely lost. Yet these funds had been widely distributed to retail investors on the basis of prospectuses approved by the Luxembourg supervisory authority CSSF. Moreover, first class institutions including UBS and HSBC had lent their credibility to these funds as promoters, managers and custodians.

Major financial institutions had given a blank cheque to Madoff

Shortly after the revelation of the losses, investors understood what had gone wrong. Despite explicit promises made in the prospectuses, UBS and HSBC had entrusted the entirety of the funds' assets to one single man, Bernard Madoff. Madoff had received a blank cheque to invest the monies, execute transactions and keep the assets in custody. Although UCITS rules prohibit such unlimited and uncontrolled delegation to one single entity, major auditing firms such as Ernst & Young did not raise any objections, allowing the banks and other service providers to continue pocketing hefty fees for many years.

UBS even knowingly concealed the delegation to Madoff from the Luxembourg authorities (1).

It has been proven, it has been confirmed by the CSSF (2) and Luxembourg's Minister of Finance Mr. Luc Frieden publicly said the banks should compensate investors (3).

No fair chance of defence in Luxembourg

Yet, until today, 4 years later, these institutions have refused to compensate investors.
Luxembourg courts are desperately slow and investors are struggling to enforce their rights. Not a single debate on the merits has been held before a Luxembourg court, many cases are waiting to be heard, direct actions by investors have been blocked for lack of legal standing and the defendants are using all possible procedural tactics only to further delay the proceedings.

Americans have received some money back.
Europeans not a single Euro cent.

In the US, wealthy investors who directly invested with Madoff have started recovering their losses. Paradoxically, small investors in European UCITS who entrusted their monies to professional managers, custodians and auditors are left in the cold. For these investors the UCITS protection looks nice on paper, but does not work in practice. Even worse, it has penalized them when trying to recover their losses.

No incentive for better behaviour in Luxembourg

How can European investors continue to have faith in the functioning of Luxembourg UCITS funds and the integrity of financial institutions promoting, managing and controlling these funds, if such blatant wrongdoing is left unsanctioned? How can European authorities expect financial institutions to behave more responsibly in the future, if investors are left without effective remedies?

The 2,500 investors advised by Deminor ask nothing more and nothing less : that they are offered a fair chance to present their case, to defend their rights, and to fight back. Until then, they will not rest.

deminor
RECOVERY SERVICES

For more information, read on www.deminor.com :
- **Madoff scandal 3rd anniversary - Open letter to Mr. Luc Frieden, 12 Dec. 2011**
- **Madoff scandal 4th anniversary - Deminor position paper, 12 Dec. 2012**

(1) UBS Luxembourg, Report 02/81 submitted to the CSSF, 31 Dec. 2007, on the exercise of UBS's function of depositary; UBS Luxembourg, Operational Memorandum regarding Luxalpha, 16 Oct. 2008;
(2) CSSF, Press Releases of 25 February 2009 and 18 November 2009 regarding UBS and HSBC;
(3) Interview with Mr. Luc Frieden, published by Bloomberg, 5 June 2009.