

Investors call for UBS to pay

By Ellen Kelleher

Blame game: investors say UBS misled them over its links to a feeder fund to Bernard Madoff's Ponzi scheme

Investors in a Luxembourg-listed fund that funnelled over 90 per cent of its money into Bernard Madoff's Ponzi scheme have attacked the Grand Duchy's financial regulator for failing to take action against UBS over its role in the investment vehicle's management.

They argue the Commission de Surveillance du Secteur Financier should bring proceedings against the Swiss bank for issuing allegedly contradictory statements on its involvement with Access International Advisors' Luxalpha SICAV, a Ucits-style Madoff feeder fund, which has now closed.

In a prospectus sent to investors, UBS is named as Luxalpha's sponsor or custodian bank. But in 2004, UBS and Access signed a so-called indemnity agreement, never revealed to the public, in which UBS said it would act only as a "figurehead" to third parties, in the fund's sponsorship and management. This document protected UBS from bearing losses endured by investors in Luxalpha, so Access International Advisors bore responsibility for the fund's failure.

Albert Biebuyck, managing partner with Investor Protection Europe, the for-profit group representing investors, last week sent a scathing letter complaining about the issue to the CSSF, as well as to Jean-Claude Juncker, prime minister of Luxembourg, and Michel Barnier, the EU commissioner responsible for internal market and services.

"By simultaneously approving these two contradictory statements, UBS did agree to the misleading use of its brand and reputation to enable the launch and development of a fund," Mr Biebuyck wrote. "Luxalpha being a Ucits fund [with a European passport] ... both Luxembourg and Union laws have been infringed in this context."

CSSF declined to comment while UBS issued a statement, denying responsibility for losses by investors in the Luxalpha fund.

"UBS does not have responsibility to these shareholders for the unfortunate results of the Madoff scandal," it said. "These investors, their advisers and Luxembourg's regulator CSSF were informed about the fact that the sole purpose of Luxalpha was to enable the funds to be invested with Madoff."

Hundreds of suits have been lodged in Luxembourg against UBS and HSBC over their custodian responsibilities to Madoff-related funds. But efforts by funds' investors to recoup a portion of their losses have so far failed in many cases. So-called indirect investors, who include investors in Madoff feeder funds, are eligible to make claims for compensation from the \$2.35bn Madoff victims fund, a vehicle organised by the US Justice department.

Given that more than 10,000 investors had exposure to Madoff's scheme, however, compensation may be scant.

“A victim is a victim whether they are British, Swiss or American,” said Richard Breeden, the compensation fund’s organiser and an ex-chairman of the Securities and Exchange Commission. “Investors just have to demonstrate their losses ... And you have to be the ultimate investor. We’re not going to pay managers.”