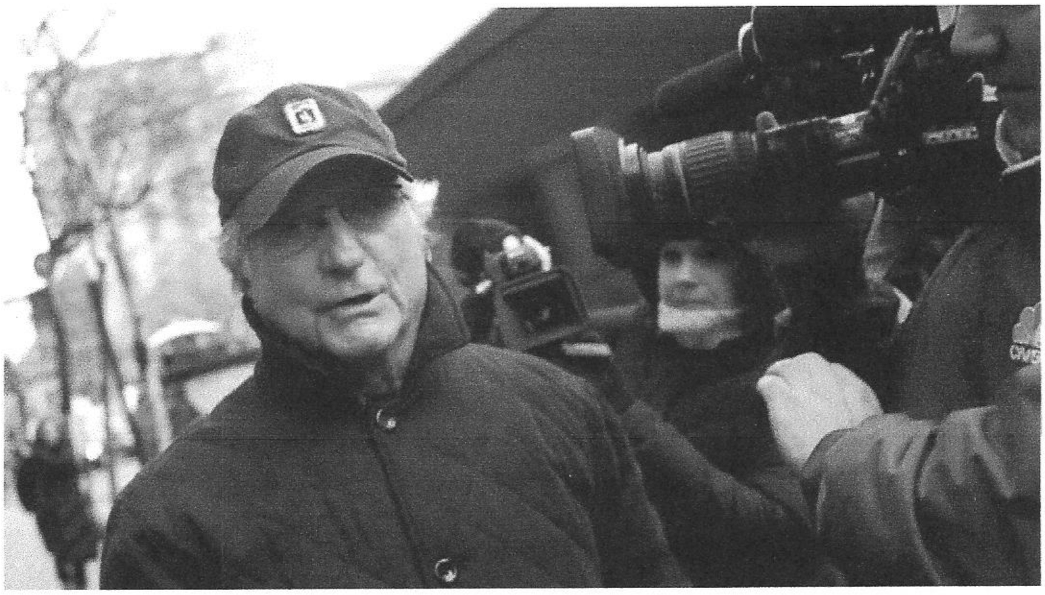
**FTfm** EU financial regulation

# Madoff victims accuse Luxembourg of failing to take action

UBS fund investors say grand duchy regulator has not enforced its own rules



The $1.4bn Luxalpha fund was one of the main European investment funds that gave money to Bernard Madoff (pictured in New York in 2008) © Reuters

Siobhan Riding 6 HOURS AGO

Investors in a Luxembourg-listed fund that funnelled more than 90 per cent of its money into Bernard Madoff's $50bn Ponzi scheme have accused the grand duchy's financial regulator of incompetence after it claimed it was not obliged to enforce its own rules regarding investor compensation.

The $1.4bn Luxalpha fund was one of the main European investment funds that gave money to Madoff but investors in the vehicle have never received compensation for the fraud.

Investors have repeatedly urged the regulator, the commission de Surveillance du Secteur Financier, to flex its muscles against UBS's Luxembourg arm over its role in Luxalpha's management. The Swiss bank was the vehicle's named investment manager and custodian.

The investors point to CSSF rules that they claim entitle them to compensation from UBS. Under a so-called circular — a common instrument by which the regulator sets out its practices — on investor protection, the CSSF states that investors have the right to receive damages if it is proven that the fund's investment rules were breached and if its net asset value was incorrectly calculated.

Both these breaches occurred in the case of the Luxalpha fund, making UBS liable to pay an award for failing to fulfil its duties, according to the investors.

The CSSF has privately told investors, however, that it will not force UBS to pay because it is not obliged to enforce the compensation rules.

In court documents seen byFTfm, the CSSF says managers that have breached the rules may compensate investors on a voluntary basis. The regulator, which declined to comment for this article, refers to its circular as "a transparency tool without mandatory value".

Albert Biebuyck, managing partner at Investor Protection Europe, a group representing Luxalpha investors, criticised the regulator for its "nonsensical" position.

Pointing to the fact that the CSSF recently fined another financial institution €125,000 for failing to comply with a separate circular, Mr Biebuyck said the CSSF was "selectively" applying its rules.

He accused the regulator of not coming down hard on UBS because it feared that the bank would move jobs and investment out of the grand duchy. UBS declined to comment.

Mr Biebuyck added that by acknowledging its rules were not mandatory, the CSSF was "undermining its own authority" as a financial supervisor. Luxembourg is the biggest centre for funds in Europe and the second-largest in the world.

According to Mr Biebuyck, the CSSF's argument that its circulars are not legally binding puts the watchdog at risk of "serious resistance" from financial groups when it tries to enforce its rules.

Mr Biebuyck is urging Luxalpha's liquidators to demand that the CSSF enforce its compensation rules. He sent a letter to them last week outlining why the CSSF position is untenable.

Not all investor protection groups favour this approach. Erik Bomans, partner at Deminor Recovery Services, which is also fighting for Luxalpha investors, said he doubted the CSSF's authority to force parties to pay damages in the case of wrongdoing.

Mr Bomans said it was for the courts to decide "whether the [fund's] service providers [including UBS] failed to adequately supervise Bernard Madoff, to whom they delegated most of their duties".

According to Mr Bomans, if the court concludes that the answer to this question is no, the service providers would be liable to pay compensation.

He lamented that there have so far been no rulings concluding that the banks that serviced the Madoff feeder funds are liable for the losses, due to bureaucratic hurdles in the Luxembourg court system.

Mr Bomans said: "We're still fighting about procedural issues. That says a lot about investor protection in one of Europe's most significant fund [markets]."