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Assets frozen in fund linked to Madoff

By Peggy Hollinger in Paris and James Mackintosh in London and Joanna Chung in New York

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A Luxembourg judge has frozen some assets held by UBS for Luxalpha, one of the principal European investment funds that gave money to US money manager Bernard Madoff, said a lawyer in the Grand Duchy on Monday.

The move is believed to be the first legal action in Europe connected to the \$50bn fraud scheme allegedly operated by Mr Madoff.

Separately in New York, a US judge granted Irving Picard, the trustee liquidating Mr Madoff's business, broad power to subpoena witnesses and documents to aid him in his search for assets, and a second judge ruled Mr Madoff can remain free on bail until his trial.

Karine Vilret Huot, lawyer for an unnamed French investor, said the assets of an account held by the UBS subsidiary in Luxembourg on behalf of Luxalpha were frozen by a judge there several days ago.

A hearing was held on Monday and the investor's claim – believed to be in the order of €1m (\$1.3m) – is being considered by the court. The investor claims to have sought to cash in his account at the \$1.4bn Luxalpha fund in October or November, well before Mr Madoff's arrest in December, but he sought the asset freeze after learning of the alleged fraud.

The alleged "Ponzi" scheme run by Mr Madoff has already sparked several lawsuits in the US against Mr Madoff and some of the "feeder funds" that funnelled money to him.

The Luxalpha asset freeze appears to be the first court action in Europe, but almost certainly will not be the last. Another private investor in a second UBS-run feeder fund, Luxembourg Investment Fund-US Equity Plus, is also considering legal action against the Swiss bank. Others are considering joining forces with a view to possible joint action against UBS and Ernst & Young, auditors to the feeder funds.

Deminor, the shareholder group, has publicly said it was looking at its options for legal action. UBS declined to comment. Bank insiders have said the two Luxembourg funds were not actively marketed by the bank and were set up at the request of clients to send money to Mr Madoff.

UBS was custodian bank to Luxinvest and Luxalpha, and although this responsibility had legally been delegated to third parties in some cases, investors argue it still had the duty to verify that the assets existed.



Mr Madoff will remain in his Manhattan apartment under house arrest and electronic monitoring. The judge also ordered Mr Madoff to compile an inventory of all “valuable portable items” in his home. A security company is to check the inventory and search outgoing mail to ensure no property is transferred.



Luxembourg judge 'freezes' some assets of Madoff feeder vehicle

By Peggy Hollinger in Paris and James Mackintosh in London and Joanna Chung in New York
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A Luxembourg judge has frozen some assets held by UBS for Luxalpha, one of the principle European investment funds that gave money to US money manager Bernard Madoff, a lawyer in the Grand Duchy said yesterday.

The move is believed to be the first legal action in Europe connected to the \$50bn fraud scheme allegedly operated by Mr Madoff.

Separately in New York, a US judge has ruled that Mr Madoff can stay out of jail while he awaits his trial. US magistrate Judge Ronald Ellis denied prosecutors' requests to jail him pending trial because he posted packages containing more than \$1m in jewellery and other assets to friends and family members.

Karine Vilret Huot, lawyer for an unnamed French investor, said that the assets of an account held by the UBS subsidiary in Luxembourg on behalf of Luxalpha were frozen by a judge there several days ago.

A hearing was held yesterday and the investor's claim - believed to be in the order of €1m (\$1.3m) - is being considered by the court. The investor claims to have sought to cash in his account at the \$1.4bn fund in October or November, well before Mr Madoff's arrest in December, but he sought the asset freeze after learning of the alleged fraud.

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Deminor, the shareholder group, has publicly said it is looking at its options for action. UBS declined to comment. Bank insiders have said the two Luxembourg funds were not actively marketed by the bank and were set up at the specific request of clients who wanted to send money to Mr Madoff.

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Place financière

6 février 2009

En attendant le signal fort

Suite de l'affaire Madoff

Véronique Poujol

La Commission de surveillance du secteur financier (CSSF) n'a pas laissé le temps aux dirigeants du fonds d'investissement Luxalpha, dont les actifs se sont envolés avec la révélation du scandale Madoff, de convoquer une assemblée générale extraordinaire comme la loi du 20 décembre 2002 concernant les organismes de placement collectif le prévoit lorsque le capital social d'un fonds est inférieur aux deux tiers du capital minimum. Les administrateurs avaient quarante jours pour le faire, à compter du 15 décembre. La procédure engagée cette semaine par la CSSF contre Luxalpha et sa banque dépositaire UBS Luxembourg, avec le retrait de l'agrément du fonds et la décision de lancer, devant le tribunal de commerce, une procédure de liquidation judiciaire pour les manquements à la législation financière, a pris pas mal d'investisseurs et leurs avocats de court. Ils saluent évidemment ce premier geste fort du régulateur, mais attendent davantage, notamment que la CSSF s'occupe avec la même pugnacité des cas Luxinvest et Herald Funds et qu'elle place devant leurs responsabilités les banques dépositaires, qui rechignent à rembourser les clients. Le placement en liquidation judiciaire, s'il était validé par le tribunal de commerce de Luxembourg, va faire des investisseurs de Luxalpha des créanciers, avec des droits différents, a fait savoir mercredi l'avocat Luc Schaack, qui a été mandaté par Deminor pour engager plusieurs procédures en référé contre Luxalpha, mais aussi Luxinvest et Herald Funds. But de l'opération : demander et obtenir la nomination d'administrateurs ad hoc de ces fonds et par ce biais accéder à la documentation que les banques dépositaires se refusent encore à fournir, malgré les injonctions de certains clients. Mardi par exemple, l'avocat Luc Schaack s'est rendu avec un huissier de justice au siège d'UBS Luxembourg à laquelle il avait écrit un jour plus tôt en lui enjoignant d'ouvrir ses dossiers. L'avocat est reparti avec certains documents, notamment les copies des contrats entre le fonds d'investissement et la banque, qui montreraient, selon les assertions de Deminor, certaines défaillances dans le contrôle du régulateur luxembourgeois ainsi que dans l'audit.

Deminor envisage d'ailleurs de saisir la justice en mars prochain pour faire la lumière sur les responsabilités de chacun, y compris celles de la CSSF et du réviseur Ernst & Young. Cette ouverture d'UBS n'est pas suffisante aux yeux de l'avocat de Deminor. Les investisseurs exigent davantage et notamment les copies des contrats liant les sociétés de Madoff aux fonds et à leurs banques dépositaires. Il faut prouver les fautes, les irrégularités et les manquements, en vue sans doute d'une sortie d'artillerie lourde devant la justice pénale. Ce sera la seconde étape. Il s'agit aussi de démontrer que les dépositaires et les gérants sur le papier n'étaient que des boîtes aux lettres, ce que la législation Luxembourg OPC de décembre 2002 interdit, et que le véritable instigateur s'appelait Madoff, gérant de fait des Sicavs qui, avec leur passeports européens, se sont retrouvées dans de nombreux portefeuilles d'investisseurs lambda. Ceux-ci ne demandaient pas autre chose qu'une gestion de bon père de famille, ignorant pour la plupart que leurs

d'Land





économies étaient gérées par l'ancienne star de Wall Street.

Clonage exotique

Après Luxalpha, voici Groupement financier, sa version exotique, qui est placé sous les feux de la rampe. Jeudi 6 février, l'avocate Karine Vilret-Huot a plaidé en référé contre ce fonds d'investissement pour le compte d'un de ses clients qui y avait investi ses économies. Le recours est principalement dirigé contre la Banque de Luxembourg, en sa qualité de « teneur de compte » de ce fonds hébergé dans les îles vierges britanniques. L'avocate demande à la banque de produire les documents contractuels des souscriptions et de possession des titres porteurs, selon des informations parues dans le quotidien La Tribune. Groupement financier est l'un des « fonds Madoff ». Ce véhicule ressemble à s'y méprendre à deux autres fonds d'investissement qui ont également été investis dans Madoff : même banque dépositaire, en l'occurrence UBS Luxembourg, même avocat conseil, Me Pierre Delandmeter et même gestionnaire, Access Partners. Ce qui fait la différence avec les autres fonds qui sont établis au Luxembourg, c'est d'abord l'origine exotique de Groupement financier, qui, sur le prospectus du moins, plaçait la barre assez haut pour y accéder. Le ticket d'entrée selon le prospectus que le *Land* s'est procuré, était en effet à un million de dollars par investisseur. Dans la réalité, les promoteurs n'ont pas fait la fine bouche aux souscriptions en dessous de ce seuil. Les actifs de Groupement financier à la fin du mois de septembre 2008 atteignaient 525 millions de dollars. Ce fonds se trouvait, entre autres, dans le portefeuille de la Sicav Elite Stability Funds, liquidée par ses promoteurs peu avant que n'éclate le scandale Madoff.

Banque Degroof Luxembourg en était le dépositaire, Access le gestionnaire et Pierre Delandmeter l'avocat.



Aff. Madoff/UBS Luxembourg: investisseurs obtiennent saisie sur comptes Luxalpha

Luxembourg (AWP/AFP) - La justice luxembourgeoise a décidé de saisir, à la demande d'un groupe d'investisseurs français, un million d'euros sur les comptes du fonds d'investissement Luxalpha, qui avait placé des actifs dans des sociétés de Madoff aux Etats-Unis.

"Une ordonnance est intervenue il y a quelques jours dans le cadre d'une procédure de saisie arrêt sur le compte bancaire de Luxalpha", a indiqué mardi à l'AFP l'avocate Karine Vilret-Huot, qui défend les investisseurs français.

Le président du tribunal de commerce de Luxembourg a autorisé cette saisie arrêt des comptes en banque, mais il faut encore faire exécuter cette décision, a précisé Me Vilret-Huot.

Le montant d'un million d'euros est symbolique par rapport aux engagements totaux des investisseurs dans Luxalpha, a relevé l'avocate.

Luxalpha est, avec Luxinvest, l'un des deux fonds d'investissements basés au Luxembourg qui ont placé au total 1,9 milliard d'euros drainés auprès des épargnants européens dans des fonds du financier américain Bernard Madoff.

Ce dernier est sous le coup d'une procédure judiciaire pour fraude aux investisseurs à hauteur de 50 milliards de dollars.

L'affaire met aussi en cause la banque UBS Luxembourg, dépositaire des deux fonds d'investissement.

Me Vilret-Huot a par ailleurs introduit une autre procédure dont la décision devrait tomber encore cette semaine, qui met également en cause UBS Luxembourg.

Mardi, le ministre du Trésor et du Budget luxembourgeois Luc Frieden a appelé la banque dépositaire à ses responsabilités, en indiquant qu'un dépositaire d'organisme de placement collectif relevant du droit luxembourgeois devait assurer "une obligation de conservation, de restitution, de surveillance et de contrôle" des actifs des fonds.

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scandale

La Banque du Luxembourg assignée en référé dans l'affaire Madoff

La Tribune.fr - 21/01/2009 à 18:49 - 153 mots

Un cabinet d'avocats luxembourgeois a assigné en référé la Banque de Luxembourg dans le cadre de l'affaire Madoff.

Le cabinet d'avocats luxembourgeois Vilret-Huot a assigné en référé, pour le compte d'un de ses clients, actionnaire du fonds Groupement financier, la Banque de Luxembourg en sa qualité de teneur de compte. Maître Karine Vilret demande à la banque de produire les documents contractuels des souscriptions et de possession des titres porteurs. L'audience du référé aura lieu le 9 février.

Cette démarche est la même que celle appliquée en France par le cabinet d'avocats Lartigue-Tournois à l'encontre des banques *BNP Paribas*, *Crédit Mutuel* et *Neuflize*.

Toujours en France une enquête préliminaire de police visant la banque UBS a été ouverte mardi a annoncé le parquet de Paris. La brigade financière a été saisie pour "abus de confiance et escroquerie". La plainte a été déposée jeudi 15 janvier par une épargnante française qui a déclaré avoir placé 540.000 euros, via UBS, dans la sicav luxembourgeoise Luxalpha. UBS n'a pas fait le moindre commentaire sur cette plainte.

Thierry Serrouya

Lien permanent vers cet article :

<http://www.latribune.fr/entreprises/banques-finance/industrie-financiere/20090121trib000334346/la-banque-du-luxembourg-assinee-en-refere-dans-laffaire-madoff.html>



Madoff Sparks Oddo Suit to Pry EU30 Million From UBS (Update2)

By Alan Katz and Jacqueline Simmons

Jan. 13 (Bloomberg) -- French fund manager Oddo & Cie. sued UBS AG, Switzerland's largest bank, seeking to recover 30 million euros (\$40 million) that had been invested with alleged fraudster Bernard Madoff.

Oddo sold the shares it held for clients in the LuxAlpha Sicav - American Selection fund on Nov. 4, more than a month before Madoff was charged with securities fraud, and hasn't received the money, said Arnaud Ploix, an Oddo spokesman in Paris. UBS acted as custodian for the Luxembourg-based fund.

"Oddo has an ongoing legal procedure against UBS in Luxembourg to recover those funds," Ploix said.

Madoff's firm collapsed last month after he told his sons it was a \$50 billion Ponzi scheme, according to a complaint filed by the Federal Bureau of Investigation. Shortly before he was arrested, Madoff allegedly told employees he had \$200 million to \$300 million left, the complaint said.

UBS didn't send the cash after Madoff's arrest on Dec. 11 because, as custodian, the bank needed to ensure that any action it took was in the interest of all investors, said Paul Mousel, co-head of the financial services practice at law firm Arendt & Medernach in Luxembourg, which represents UBS.

"The net asset value was calculated and the redemption request was processed, but the process was just finished when the crisis broke out, so there was a question whether the fund was still in a position to pay the monies for the redemption," Mousel said.

Tatiana Togni, a spokeswoman for UBS in Zurich, couldn't immediately comment on the case.

Funds Frozen



Oddo's asset management unit held the investments through four funds, Ploix said, which had total assets of 644.3 million euros as of Jan. 8, according to data compiled by Bloomberg.

The court yesterday also heard an investor's claim, worth about 1 million euros, said Karine Vilret-Huot, a lawyer for the French investor who filed the lawsuit. She said her client, who she declined to identify, had sought to redeem investments made in the LuxAlpha fund at the end of 2008, before Madoff's arrest.

The Luxembourg court froze some of the assets held by UBS for LuxAlpha, Vilret said. She said it was the first such order against the fund.

"The asset freeze was ordered by the Luxembourg court after Madoff's arrest," said Vilret, declining to give the exact date. "We want to protect the confidentiality as much as possible at this stage."

10 Investors

Vilret said she represents 10 investors who will likely bring claims that "are being prepared at the moment."

A court clerk in Luxembourg who declined to be identified said hearings were held in both cases yesterday and rulings are scheduled for Jan. 15.

Funds sold in the European Union to retail investors have strict rules governing the way money can be invested and the rights and responsibilities of the custodian banks charged with setting up the funds and managing cash inflows and payments.

The issue of a custodian's role sparked a political spat between France and Luxembourg, with French Finance Minister Christine Lagarde sending a Jan. 12 letter to European Union commissioner Charlie McCreevy and Luxembourg Prime Minister Jean- Claude Juncker.

"French law from the transposition of this article imposes the strict obligation for the custodian to reconstitute the assets that were entrusted to it," Lagarde wrote. "This path wasn't followed by all of the member states."

Luxembourg's Budget Minister Luc Frieden said French criticism of investor protection rules in the country is unjustified. The laws for custodian banks in Luxembourg "are identical to the French texts," Frieden told reporters in Luxembourg today.

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UBS Wins Lawsuit Over Money From Madoff-Linked Fund (Update2)

By Stephanie Bondoni and Heather Smith

Feb. 27 (Bloomberg) -- UBS AG won a ruling in a Luxembourg lawsuit filed by Banca Intermobiliare SpA seeking to force the release of 5.1 million euros (\$6.5 million) from an account belonging to a fund that had invested with Bernard Madoff.

A Luxembourg court said BIM's claims were unfounded in an emergency ruling today. BIM argued UBS had a duty to pay it after sending the Italian bank a confirmation for a redemption request from the British Virgin Islands-based Groupement Financier fund made before Madoff was arrested Dec. 11.

Luxembourg's financial regulator on Feb. 25 faulted UBS for inadequate due diligence in its role as a custodian bank for the Madoff-linked LuxAlpha Sicav-American Selection fund. While today's decision was the first to deal with UBS as an account holder rather than as custodian, it may show that the regulator's statement has "limited" influence on the courts.

"The legal effect in court of the content of such a press release is limited," said Olivier Sciales, a Luxembourg-based lawyer with Chevalier & Sciales, who isn't involved in the case. "A press release or circular issued" by the regulator "must limit itself so as to interpret the rules set out under the applicable Luxembourg laws, without being able in principle to create new rules."

Other Cases

More than 10 Madoff-related cases are going through the Luxembourg courts, most filed by investors seeking repayments or documents on potential liability. Zurich-based UBS argues it can't make payments on pending redemption requests as long as investigations into Madoff continue.

Karine Vilret-Huot and Olivier Rodesch, lawyers for BIM, couldn't immediately be reached for comment. A spokesman for Turin, Italy-based BIM declined to comment.

UBS spokeswoman Tatiana Togni said in an e-mailed statement that the bank "took notice of the decision and welcomes it." Judge Pascale Dumong also BIM to pay 1,000 euros in legal fees.



This is first of two cases to target UBS over payments from an account for Groupement Financier, a fund linked to Madoff. BNP Paribas SA, France's biggest bank, asked a Luxembourg judge Feb. 20 for a court order forcing UBS to release 1.5 million euros from the account.

The local unit of UBS Fund Services confirmed BIM's request for a redemption 5.1 million euros on Dec. 9, based on the fund's net asset valuation of Nov. 17, according to Vilret-Huot.

UBS said at a hearing earlier this week that it had received BIM's redemption request. Still, as a bank holding an account for the fund that had by Feb. 13 shrunk to about 255,000 euros, it wasn't in a position comply, its lawyer Francois Kremer said.

Madoff was arrested on Dec. 11 at his Upper East Side apartment in Manhattan after allegedly confessing that he and his firm used new money to pay old investors in a classic Ponzi scheme. The investment adviser hasn't formally responded to the one federal securities fraud charge now pending against him. He faces as much as 20 years in prison if convicted, and is free on \$10 million bail. He has been ordered to remain in his apartment under house arrest.

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