FINANCIAL TIMES
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May 19, 2013 4:32 am

'Lax' Luxembourg fund rules attacked

By Ellen Kelleher

Letters of complaint regarding the regulator's failure were sent to Luc Frieden, Luxembourg's minister of finance, Jean-Claude Juncker, the prime minister, and Steven Maijoor, chairman of the European Securities and Markets Authority

Luxembourg's financial regulator is under attack for refusing to help a group of bond fund investors who lost money in a fund that violated the grand duchy's investment laws.

The regulator's reticence comes despite the Commission de Surveillance du Secteur Financier, the Luxembourg regulator, acknowledging that the bond fund – run by Belgian broker Petercam – had breached the jurisdiction's fund rules.

Investors are now on a campaign to highlight what they call the "lax and selective" supervision of funds listed in Luxembourg.

Luxembourg defends its regulatory standards amid claims that its investors are less protected than in other EU countries. This issue took root after the 2008 Bernard Madoff fraud in which several Luxembourg-based Ucits funds funnelled money into the Ponzi scheme.

Albert Biebuyck, managing partner with Investor Protection Europe, the group representing disgruntled Petercam investors, last week sent a flurry of letters to influential industry players to complain about the regulator's failure to offer compensation.

The list of recipients included Luc Frieden, Luxembourg's minister of finance, Jean-Claude Juncker, the prime minister, and Steven Maijoor, chairman of the European Securities and Markets Authority.

Their efforts have intensified since the CSSF told the group in October 2011 to seek redress from Petercam, which has €13.6bn under management, or take their concerns to court.

Mr Biebuyck said: "If the [CSSF] applies the same lax and oblivious supervision approach to other Luxembourg-based funds, violations of fund investment rules will remain commonplace or even increase."

Amin Rajan, chief executive of Create Research, the fund consultancy, believes regulatory lapses are on the rise in Luxembourg due to fierce rivalry with Dublin.

"There is a race among regulators to attract fund managers," said Mr Rajan. "As a result of that, regulations on paper in Luxembourg are different than what is enforced. Both Luxembourg and Dublin have been competing with each other furiously. These regulatory lapses in Luxembourg are inevitable."

The CSSF laid out the violation of Petercam's L Bonds Eur Inflation-Linked fund (formerly known as Eur Medium), as well as the violation of Luxembourg's fund laws, in written correspondence sent to Petercam investors in October 2011.

In the letter, the CSSF said that the fund's investments in perpetual bonds were "not permissible" as the fund's managers said they would invest only in bonds of a limited duration. The fund's prospectus, according to the CSSF, also did not comply with Luxembourg's laws, which state that the "simplified prospectus ... must contain the information necessary" for investors to assess the investment and "the risks inherent in it".

Patrick Hommel, a member of the secretariat general of the CSSF, said it did not comment on cases. Petercam also declined to comment. However, it said a complaint related to a case in 2008 was filed with the CSSF and the bond fund's net asset value was recalculated in order to settle the matter.

“Such calculation was performed under the supervision of our auditors and communicated to the CSSF. Petercam considers that it has respected its obligations towards both investors and regulators,” the broker said.

Investors in the Petercam L Bonds Eur Medium fund endured a loss of 26.67 per cent in 2008, while Morningstar’s Global bond-Euro biased index gained 0.33 per cent over the same period. The Petercam fund lost 25.50 per cent in 2009 while the Morningstar index rose 6.39 per cent.