

Interview: Dr. Daniel Fischer, Leading Attorney of Madoff Victims

"Banks Have Not Learned Yet To Speak About Their Problems"

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Dr. Daniel Fischer, senior partner of the Zurich law firm [Fischer & Partner](#), plays a central role in the aftermath of a number of the latest financial scandals. He filed a successful class action suit – the first of its kind in Switzerland – on behalf of clients financially hit by the collapse of Lehman Brothers. Dr. Fischer is also part of the international alliance of attorneys representing victims of Bernard Madoff's ponzi scheme. In this exclusive interview with MyPrivateBanking.com Dr. Fischer gives us his view on the role of wealth managers in the Madoff scheme and on

the missing cooperation of banks to compensate clients.

MyPrivateBanking.com: Why have certain funds and wealth managers failed to protect their clients from investing in Madoff products?

Dr. Daniel Fischer: Starting point for understanding the whole problem are four areas: Firstly a lack of transparency in the area of funds; secondly a conflict of interest of the responsible staff/agents; thirdly the payment of kickbacks and finally an insufficient controlling

The mixture of these problems results in the today's unsatisfactory situation. They were so "blinded" by the performance figures that they simply wanted to be part of the game, in order to receive performance fees, placement fees and management fees. Not asking too much, since that could have placed everything at risk, and since it seems that Madoff didn't like to be questioned. Their "income stream" would, therefore, have been at risk.

MyPrivateBanking.com: What are the learnings clients and wealth managers should take from the Madoff case?

Dr. Daniel Fischer: You should take the Russian saying to heart: „trust but control

"reflecting the saying of Lenin: "Trust is good, control is better". What looks too good to be true, is often simply not true. Foremost, it is not sufficient to trust someone who trusts on the other hand someone else.

MyPrivateBanking.com: We have just heard that a banker in Austria, Sonja Kohn, has allegedly received USD 40 million in kickbacks from Madoff. What is your opinion on the practice that wealth managers receive kickbacks from hedge funds and other product providers?

Dr. Daniel Fischer: Generally it is known that too many rewards are paid in the area of funds. I doubt the amount in the case Medici; I do believe that only a small part of the amount stayed with Mrs. Kohn and the bank Medici.

MyPrivateBanking.com: In your experience, how co-operative are the banks in compensating clients for losses they had due to bad advice?

Dr. Daniel Fischer: Not very cooperative, or at least, not without "pressure". At the very beginning they tried to put all the "blame" on the clients, mostly saying, that everything were done by the clients and that they, the banks, were only executives. Then, after our involvement, their behaviour changed quite a lot, in favour of the clients.

Regrettably the banks have not learned yet to speak openly about their problems. The banks only want to be responsible for the good performance and the customer is responsible for the rest. Rethinking has to take place. In the case that the banks' gain, they should receive bonuses. On the other hand the banks have to be responsible for the losses as well.

The most important value for a bank is trust. In the end they receive money from someone else. Today's society forces us to bring our money to the bank because of money laundering. Banks have to play fair. Otherwise, this gives a basis for capitalism-criticism. A fair treatment of customers strengths the relationship with the bank. It is well known that I contributed a lot to the settling between Swiss banks and their customers regarding Lehman Brothers. The banks that proceeded in a fair way acquired a lot of capital because of their behaviour. I would like to state, that I additionally facilitated several settlements with other banks. It is clear that these settlements contain a duty to observe secrecy.

MyPrivateBanking.com: Would you advice your clients to claim back the kickbacks their wealth manager received for selling them financial products?

Dr. Daniel Fischer: It depends on the situation. Basically yes, in the good years the customers did not receive the illegal kickbacks because "never bite the hand that feeds you". This attitude has changed today. It is reasonable to claim these kickbacks themselves or in combination with other claims of compensation. In some cases the

fund managers indirectly threatened the customers who demanded their kickbacks to make a report to the revenue authorities regarding the offense of banking secrecy. I particularly advise these customers to claim their kickbacks back. Apart from this untruth, the kickbacks could help pay the taxes if you declare the money as white money.

MyPrivateBanking.com: Dr. Fischer, thank you very much for the interview!