

Swiss Banking Ombudsman, Summary of Annual Report 2009

General remarks

The crisis on the financial markets was dominating almost the entire year under review. In this second year of the crisis, the volume of cases submitted for mediation reached the all time high since foundation of the office. In numbers: A total of 4757 cases were submitted, which represented a further increase of almost 15% versus the previous year, which was already earmarked by a considerably higher than usual volume. Because the predominant number of cases mentioned below were in the area of "savings products", i.e. absolute return investments and capital protected products issued by Lehman Brothers, comparison with prior years in individual categories of banking transactions must be made with caution.

The build-up of personal capacities initiated shortly after the collapse of Lehman Brothers (September 2008) had to be enhanced in the year under review by temporary hiring of further staff members and external attorneys. Despite of this timely accurate build-up, the office reached the limits of its capacity, which resulted in unavoidable setbacks in the "unité de doctrine" demonstrated over years in the evaluation of single cases. The efforts undertaken by all staff members helped to keep such setbacks within acceptable limits. The fact that satisfactory solutions could be worked out for many customers - some expressed their gratitude for the support even if no solution for them could be found - remunerated us for this extraordinary effort.

Customers invested in the usual bond and equity-markets (investors in the sense of the word) were generally affected by the market turmoil. This customer segment, however, only counts for part of the increase in cases involving investment counselling and discretionary wealth management. The bulk of the wave of cases came from supposedly secure investment vehicles, which we named "savings products" already in our last year's report. Such investments were praised in the selling brochures as "low risk" products and were sold predominantly to savings customers or customers with conservative investment patterns. Main characteristics of such products with similarities to straight bonds are a variable coupon as well as a guarantee offered by a group company of the issuer, i.e. products with a so-called capital protection. Examples of names are Lehman Brothers and Kaupthing Bank. As a result of their collapse, these banks were not in a position to honour their guarantees, i.e. the effective capital protection. In other words: There was in fact a capital protection assigned to such products, but it became worthless overnight.

The second product category were diversified investment funds, that were to achieve positive yields regardless of market developments. Because of this, such products were tagged as "Total Return" or "Absolute Return", thus pointing to low risk products with only minor fluctuations in value. According to our knowledge, some of these funds in fact succeeded to well withstand the market turbulences. From customer complaints, however, we were mainly confronted with cases where this main goal was by far not achieved and customers faced considerable losses. In this context, the Ombudsman was quite astonished by the explanation attempts from some fund managers. They did not hesitate to attribute the failure to reach the investment purpose to the

adverse market conditions. In view of such an oversimplified argumentation, the Ombudsman can well understand that affected customers were unhappy.

Roughly half of the cases submitted in written form could be attributed to such savings products. Because some banks seemingly forced the sale of such products, a new category of customers - namely the savings customers in the narrow sense or customers that were previously concentrated on and happy with traditional savings or possibly cash bonds - suffered considerable losses or, in cases of capital protected investments, lost the entire investment.

The fact that the time frame needed to resolve some cases was considerably longer than usual can not only be attributed to the heavy workload at our office. In view of the extraordinary wave of cases, the banks also needed more time than usual to look into individual aspects and explain their positions. But not only this: Whereas some banks rapidly took over the lost capital protection on their own or offered tailor-made solutions, others had difficulties to accept that the Ombudsman looks at each case individually, i.e. that only an evaluation of individual aspects of every case on a stand alone basis will allow a final judgement whether or not the bank has become liable towards this customer or not.

In addition, differences in the material judgement of the cases Lehman Brothers hat to be noted. Most banks did agree with or did largely share the basic evaluation criteria applied by the Ombudsman or demonstrated at least their appreciation and accepted a reasonable and professional dialogue and exchange of arguments. With these banks, it was therefore possible to achieve satisfactory solutions on a single case basis. A few banks, however, did not support the argumentation of the Ombudsman and enforced across-the-board-approaches based on criteria set by them. It goes without discussion that such an approach cannot sufficiently consider individual aspects of single cases. The resulting compensation payments were, in the opinion of the Ombudsman, in many cases below expectation or simply not sufficient, specifically in cases involving inexperienced savings customers or in cases where active counselling by the bank resulted in an unacceptable risk concentration. Unfortunately, in the view of such customers - shared by the Ombudsman -, the confidence placed in their bank was not justified and it might take years to rebuild their trust in the banking system.

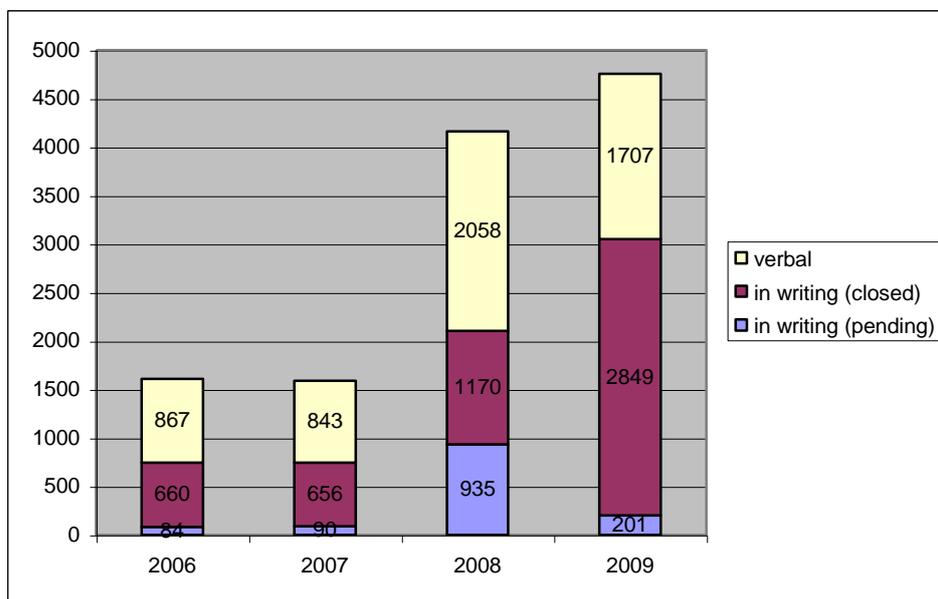
A specific thank you goes to those banks that let themselves to be convinced by the arguments of the Ombudsman - in Lehman Brothers cases too - and offered acceptable solutions. For the large majority of banks, it went without saying that the well-rehearsed cornerstones of a mediation process (such as providing enough time for the customer to approach the Ombudsman) are supported. There was a need, however, to remind a few banks about such basic issues.

In the year under review the unsatisfactory cooperation of a few banks called for some fast decisions, which needed the attention of the president and the members of the foundation board. The board was thus more involved than in regular years, and the fast and uncomplicated support from its members and specifically its president confirmed the Ombudsman and staff members in the strive to achieve satisfactory solutions and to successfully surpass this extraordinary period. For this, we would like to express our gratitude.

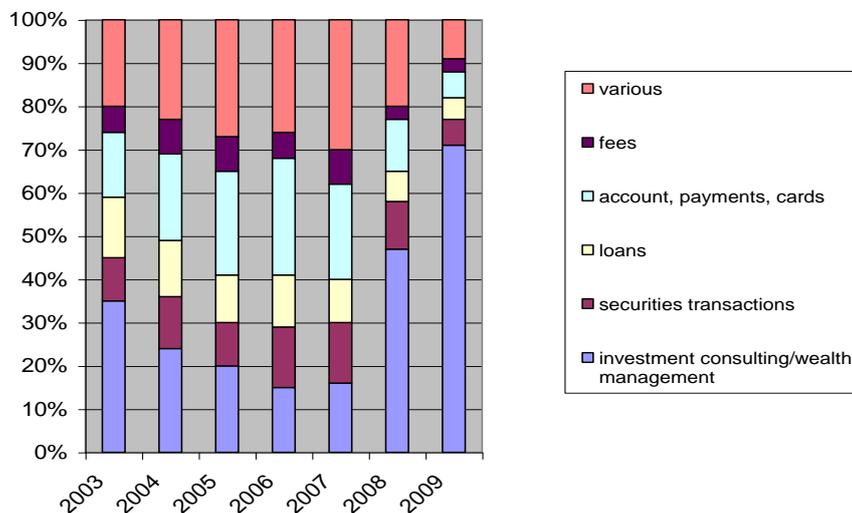
During the last quarter of the year under review, the previously expanded infrastructure could partially be reduced. The volume of new cases submitted, however, was still above the level experienced prior to the finance crisis. This means that our office is still strongly absorbed, although a return into more normal tracks is visible.

Key Statistics mediation

Development of cases handled and closed



Development of the share of individual product segments



Dormant accounts

Since 1996, the central claims office placed under the supervision of the Ombudsman supports entitled persons in the identification process of so called dormant accounts supposedly maintained with an unknown bank in Switzerland. Basis for this activity are the "Guidelines of the Swiss Bankers Association on the treatment of dormant accounts, custody accounts and safe-deposit boxes held in Swiss banks" dated July 1, 2000. These guidelines were elevated as binding code of conduct and thus are valid for all banks in Switzerland, independent of a membership at the Swiss Bankers Association.

When an account meets the criteria to be classified as dormant, the respective bank must report certain information about the account holder into a central database, which can only be accessed by the claims office of the Ombudsman. Before doing so, the claims office has to make sure that the claimant is legitimated by means of relevant official documents. If he is and if the database reveals a match, the claims office forwards the documents to the respective bank for further review. The final decision as to if or not the customer relation searched for in fact matches the name in the database and if or not the claimant is legitimated to get information is within the responsibility of the specific bank. The claims office, however, is entitled to question negative responses by banks.

In the year under review, the claims office was asked to send 764 (2008: 693) questionnaires. 491 (375) of the returned questionnaires were deemed to be sufficiently documented and resulted in 554 (415) name searches put into the database. Of the resulting numerous matches, 94 (60) were qualified by the claims office as being plausible. These files were forwarded to the reporting banks for closer review and 23 (22) cases turned out to be effective matches. In this way, a total amount of CHF 2.25 Mio. as well as 2 safes could be made available to claimants. Since 2001, a total of 206 dormant relationships with a total value of CHF 25.1 Mio. and 22 bank safes could be made available in this way.