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Kickbacks: your Swiss bank may owe you money

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In spite of the practice being outlawed throughout the European Union, many Swiss banks, asset managers, trustees and financial service providers continued to earn and keep commissions and kickbacks on investments such as funds, obligations, structured products and so on in agreements made with distributors of these products on the monies held for their wealth management clients.

Retrocessions are a form of inducement that have for many years been a well-established lucrative income for Swiss banks and other financial service companies.

While the practice of expecting and receiving such inducements has been highly regulated by many countries in the EU, and even banned in some, the Swiss banks have continued to keep these kickbacks, claiming that without them their clients would have to pay more for their services.

The argument against the receipt of these kickbacks is that they are not transparent in most cases and constitute a potential conflict of interest, with the losers being the clients themselves.

Although the banks have tried to remedy their position with regards to these retrocessions by issuing revised "waivers" for their clients to sign, the courts have ruled these are not sufficient to fully inform their clients of the true quantum of the retrocessions being earned.

However, the practice began to come under the legal microscope in 2006, when it was ruled the kickbacks belonged to the client and, therefore, had to be forwarded to them.

Further, in a Swiss Federal Supreme Court Ruling in 2012, it was decided the banks were not allowed to keep the retrocessions on in-house products for such client portfolios.

Then, in 2017, the same court made a clarification regarding the time period over which these retrocession claims could be made; clients could now claim retrocessions retroactively for the past 10 years.

In 2018, the court held the failure to adequately disclose the retrocessions could constitute an act of criminal mismanagement.

In May 2020, the Swiss Federal Supreme Court questioned the validity of certain banks' "retrocession waivers", further opening up, substantially, the number of legal claims that could be made by affected clients, even opening up previously rejected claims. The banks were not, however, ordered to track down and repay their clients. It is estimated up to Sf15bn ($15.4bn) could be reclaimable from the banks.

While banking in Switzerland may have been seen as a way of avoiding taxation or generally hiding one's wealth, the vast majority of clients invested there for legitimate reasons, with the skills and results of Swiss asset managers being highly regarded.

Regardless of whether the client still holds an account with a Swiss bank, or whether held by a company, trust or foundation, the claims would remain valid and actionable.

Assuming all the provided information is correct, the recovery of the claims would generally take between six and nine months.