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Santander Offer Pressures Rivals to Match It

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The unusual proposition by Banco Santander to hand out 1.38 billion euros ($1.8 billion) in shares to private-banking clients for losses linked to the Bernard L. Madoff fraud case puts pressure on other banks to follow suit.

As the pace of litigation against financial institutions picks up and banks realize that their clients' money is not all that was lost, the offer by Santander is aimed at repairing its reputation as a conservative Spanish institution that was tarnished when it emerged as one of Mr. Madoff's biggest victims.

The offer, which was made only to clients of the private-banking unit and not to institutional investors, shows that Santander accepts at least some responsibility for its clients' losses and is setting an example for other banks.

But some European rivals are still far from offering any compensation as they scramble to determine their involvement with Mr. Madoff, who is accused of operating a $50 billion Ponzi scheme. Others do not have the means to compensate customers.

"It was a huge blow to the reputation, but with that step Santander really shows it cares," said Bernhard Bauhofer, founder of Sparring Partners, which is based in Switzerland and advises companies on improving their reputations. "The question is, do others have the funds to do the same?"

Santander's clients lost 2.33 billion euros ($3.06 billion) to Mr. Madoff's firm, the largest amount of any commercial bank.

The bank said Tuesday that it would repay its private clients, most of them in Europe and Latin America, all their initial investments in the Optimal Strategic U.S. Equity fund, which invested with Mr. Madoff.

No repayment will be made to institutional investors, whom the bank considered sophisticated enough to be responsible for their own decisions.

Any payment will be in preferred Santander stock with an annual coupon of 2 percent and an option for the bank to buy back the shares in 10 years.

It will cost the bank 500 million euros ($658 million). Clients who take advantage of the offer must agree not to sue the bank.

José Antonio Álvarez, chief financial officer of Santander, said the bank and its shareholders would be "better off" in the long term paying compensation because they would be "keeping clients with the bank."

"We're the first bank to offer something in this case," he said, "and we think it's a good offer."

Yet lawyers representing investors who lost money said Wednesday that the offer should include institutional investors and that their clients would be happier with cash than with preferred shares.

"This is an initial victory, but it is not sufficient," said Javier Cremades, senior partner of Cremades & Calvo-Sotelo, a law firm representing 1,800 individual and institutional investors who had lost money in the Madoff case.

If not satisfactory for their own customers, Santander's offer might benefit those investors who had lost money with Mr. Madoff through other banks, since it gives lawyers additional ammunition to press for compensation.

David Greene, head of litigation at Edwin Coe, a London law firm preparing a lawsuit against some European asset management firms that acted as intermediaries, said he expected more financial entities to take responsibility for the losses. "Santander's offer reinforces any claims and the point that there needs to be some responsibility," Mr. Greene said.

But for now, Santander's offer stands alone. A spokesman for Union Bancaire Privée, which is based in Geneva and had $700 million of clients' money invested with Mr. Madoff, declined to comment on whether the bank was considering compensating its clients.

UniCredit, the Italian bank, which is exposed through some of its own money and a stake in Bank Medici, which is based in Austria and directed $3.2 billion toward Mr. Madoff, also would not comment. A lawyer for Bank Medici said compensation was not an issue for the bank because its role in respect to the funds did not cause such liabilities.

A spokeswoman for the Swiss bank UBS, which together with the British bank HSBC has come under pressure for their role as custodians, did not return calls seeking comment.

"We're reviewing the situation and we continue to defend our position," said a spokeswoman for HSBC in London.

Spanish regulators asked Santander to release its earnings figures early after the bank announced its compensation offer. The bank said Wednesday that it had a net profit of 8.9 billion euros in 2008 and a total dividend of 65 euro cents a share. It will report more detailed results on Feb. 5.

In a separate statement, Optimal, a Santander fund of hedge funds, said it would close 12 of its funds after more customers sought to withdraw money.

Santander has offered compensation to some clients before. In November, a unit of the bank offered bonds in another of Santander's businesses to clients who bought products backed by Lehman Brothers guarantees.