Swiss Banks Send U.S. Client Data Before Cascade of Settlements

By Giles Broom and Carolyn Bandel - Jul 31, 2014

Swiss banks will on the whole meet the deadline for delivering information on offshore accounts to the U.S., improving their chances of settling the cases this year.

Roiled by the demise of the country’s oldest bank, the lenders are helping the Justice Department build cases against Americans who failed to report money stashed in Switzerland, a $2.3 trillion global hub for cross-border banking.

As many as 106 banks have entered the department’s program to deliver documents showing how they helped clients hide money from the Internal Revenue Service. Bloomberg News contacted 34 of the lenders, 20 of whom said they will meet today’s deadline. Five others declined to comment, and seven didn’t have clear-cut answers. Two banks said they have dropped out of the program.

The results indicate that banks with few exceptions will comply with the program’s exacting terms. This would put them in position to pay fines and avoid the fate of Wegelin & Co., a more than 270-year-old bank forced out of business by a U.S. tax probe that led to a guilty plea in 2013.

“Most Swiss banks in the disclosure program will reach a settlement with the U.S. this year, subject to continued cooperation over account information exchange,” said David Fidan, a partner at Deloitte AG in Zurich.

Guilty Plea

Excluded from the program are about a dozen category 1 Swiss banks, including Julius Baer Group Ltd. (BAER) and HSBC Holdings Plc (HSBA)'s Swiss unit. For these lenders, voluntary disclosure is not an option as they are already under investigation in the U.S. Until recently, category 1 included Credit Suisse Group AG (CSGN), the No. 2 Swiss bank that was fined $2.6 billion in March after it pleaded guilty to aiding tax evasion. UBS AG (UBSN), the country’s largest lender, paid $780 million to defer prosecution in 2009.

Having met the deadline, some smaller banks will take a break from assembling reams of documents. For larger companies such as Cie. Lombard, Odier SCA, Geneva’s oldest bank, and Rothschild Bank AG of Zurich, as well as for some regional lenders including Aargauische Kantonalbank, the work will continue throughout the summer as they try to reduce possible fines by persuading clients to come clean directly to U.S. authorities.

Banks that opted out of the category 2 program have until the end of the year to submit a letter of
intent to the tax division of the Justice Department under categories 3 and 4 of the program, according to a letter from the department dated June 5. Category 3 is for banks without undeclared U.S. clients that are applying for confirmation from the DoJ that they aren’t being investigated. Category 4 is for Swiss banks with only local clients.

**Information Flow**

“There’s a huge amount of information flowing to the U.S. authorities from Swiss banks at the moment,” said Jay Rubinstein, a lawyer with Withers LLP in Geneva. “It’s a pretty confusing program with moving deadlines and documentation requirements. It all helps the Justice Department and the IRS build their cases.”

Swiss law forbids the transfer of client names to foreign governments, unless requests for information conform to criteria set out in tax treaties. But banks can send other information to complement what the U.S. government gleaned from over 43,000 voluntary disclosures by American taxpayers.

Category 2 banks must disclose the total number of U.S. accounts since 2008, their highest dollar value, and the employees who managed them, in documents verified by an independent examiner, according to a joint Swiss-U.S. government statement announcing the program last August.

**Account Disclosure**

June 30 was the deadline for turning over information on Americans considered in breach of U.S. tax rules. Today marks the end of the second wave of deliveries and includes documents that show which American clients were compliant.

Some banks will try to mitigate penalties by providing documents to the Justice Department by Sept. 15 to support their claims that they encouraged clients to disclose accounts to the IRS through its offshore voluntary disclosure program.

Other category 2 participants include Union Bancaire Privee, the Geneva-based bank used by American Jordan Belfort, according to his memoir “The Wolf of Wall Street,” the international arm of Coutts, the private bank owned by Royal Bank of Scotland Group Plc, and the Swiss unit of Schroders Plc. (SDR)

Fines will based in part on a formula applied to the amount of non-disclosed U.S. assets at the bank. To gain non-prosecution deals, banks must pay 20 percent of the value of accounts not disclosed to the IRS on Aug. 1, 2008, 30 percent for such accounts opened between then and February 2009 and 50 percent for accounts opened afterward.

**U.S. Penalties**

EFG International AG (EFGN), the Swiss bank controlled by billionaire Spiro Latsis and his family, said last week it set aside 21.4 million francs to pay a penalty to the U.S. authorities. Neither the timing of an accord, nor the size of the final penalty, is “set in stone,” EFG Chief Executive Officer John Williamson said at the time.
Schroders Plc set aside 15 million pounds ($25 million) for a potential fine in its 2013 accounts. Schaffhauser Kantonalbank said in a financial report on July 21 that it was “confident” it will settle this year. St. Galler Kantonalbank (SGKN) bank expects to conclude talks by the end of the year and said on Feb. 12 it set aside 36.7 million francs after tax for costs and a possible fine.

Barclays Plc (BARC)’s Swiss unit said yesterday it withdrew from the program after an internal review of client accounts.

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