Bank Settles Shelter Suits By Investors

By LYNNLEY BROWNING

Deutsche Bank has reached a settlement with hundreds of wealthy investors to whom it sold aggressive tax shelters, a major shift in how it is dealing with the legal woes surrounding its tax shelter work.

The bank, Germany's largest, aggressively fought the civil claims until early January and reached an agreement with the investors' lawyers several weeks ago, the lawyers said yesterday. The size of the settlement was not disclosed but it is likely to be at least tens of millions of dollars.

Deutsche Bank was a major creator and seller of the tax shelters from the late 1990s through recent years and is now the focus of a widening federal criminal investigation.

The bank has yet to reach a final agreement with federal prosecutors in Manhattan and with the Justice Department. Two tax lawyers said yesterday that the bank could potentially face a criminal penalty of up to $1 billion, as well as a requirement to admit to criminal wrongdoing.

It was unclear whether Deutsche Bank's sudden settlement of the bulk of its civil claims presages a settlement of its criminal case with the government.

A Deutsche Bank spokesman acknowledged the settlement yester-

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day but declined to provide details.

The bank worked with accounting, law and financial firms to make and sell questionable tax shelters that improperly deprived the United States Treasury of billions of dollars in unpaid taxes.

Last quarter, in a supplemental filing to the Securities and Exchange Commission, the bank said that for its previously filed earnings for the fourth quarter of 2006, it had increased "additions to provisions for legal exposures" by about 350 million euros ($455 million).

That move was not previously highlighted in news reports. It was not immediately clear what Deutsche Bank's total reserves were for such exposures. Last March, it reduced its 2005 earnings by nearly $300 million to cover what it called "newly discovered" legal costs related to its tax shelter work.

Neither the bank nor lawyers for investors have disclosed the size or terms of the civil settlement, citing a confidentiality agreement. The deal covers about 340 investors, approximately half of whom filed a total of about 60 lawsuits against the bank in state and federal courts after the Internal Revenue Service had disallowed their deductions, said the lead lawyer for the investors, David R. Deary of Dallas.

The settlement could potentially be higher than the tens of millions of dollars if the civil settlements with other tax-shelter promoters are a guide.

Those other settlements have varied widely. In 2005, a federal judge in New York approved an $81.6 million settlement between the law firm Jenkens & Gilchrist and about 1,100 individual investors who had bought aggressive tax shelters through the firm. The I.R.S. found those shelters invalid, and the bank paid an average settlement of $74,000 apiece.

Deutsche Bank, which collaborated with Jenkens on some of the shelters, appealed the Jenkens settlement. It sought to force the investors to submit to arbitration to resolve their dispute with the bank, but last month it quietly withdrew its objections.

In June, a federal judge in New Jersey gave final approval to a $154 million settlement between the accounting firm KPMG and more than 200 investors, who received an average of $770,000 apiece.

Mr. Deary, the lawyer who represents the 340 investors, declined to provide details yesterday, saying only that "my clients are very pleased," and that he had filed motions seeking to have Deutsche Bank dismissed as a defendant in the lawsuits. Firms including Ernst & Young, BDO Seidman and a unit of American Express are still defendants in the cases.

Mr. Deary will probably earn up to tens of millions of dollars in fees from the settlement.

His clients paid fees ranging from millions of dollars to tens of millions of dollars to promoters, including Deutsche Bank, for shelters with names like Cobra, Homer, Blips, Pico and Pops. Each shelter sought to shield income ranging from several million dollars to $200 million from federal income taxes.

The tax shelters typically involved fake loans and fake trades to generate artificial losses that were then used to improperly offset taxable income from legitimate sources.

Investors began to sue Deutsche Bank around 2004. In response, it filed scores of procedural motions seeking to force the investors to submit to arbitration and to have the cases dismissed. But with some of the civil cases nearing trial in state and federal courts, and with current and former Deutsche Bank employees facing the prospect of being deposed or testifying, the bank dropped its counteroffensive.

Asked if the recent settlement marked a change in approach by the bank, a person close to the civil and criminal matters, who spoke anonymously because of the sensitivity of the issue, said yes but declined to provide details.

Deutsche Bank still faces some civil claims from investors. At least one lawyer for those investors, Blair Fensterstock of New York, said yesterday that he was not negotiating with the bank for a settlement.

Federal prosecutors looking into the tax shelters have also gone after KPMG, which reached a $465 million deferred-prosecution agreement in 2005, the largest of its kind; Ernst & Young, which is still under criminal investigation; and the law firm Sidley Austin Brown & Wood, as well as an array of other accounting, financial and law firms, according to various civil lawsuits filed against the bank in recent years.