

AT1 WRITE-DOWN AND CONVERSION TRIGGERS

1. Executive Summary

- The write-down of Credit Suisse Group AG's (CSG) additional tier 1 (AT1) instruments has resulted in AT1 investors bearing losses ahead of CSG's common equity tier 1 (CET1) investors.
- CSG's AT1 terms provide for write-down at the point of non-viability (as determined by the Swiss Financial Markets Supervisory Authority (FINMA)) and/or following the provision of extraordinary support, if FINMA determines that CSG would have become non-viable without that support.
- FINMA has confirmed that the AT1 instruments were written down at its direction in accordance with the contractual terms of the instruments themselves and powers granted to FINMA under emergency legislation passed on 19 March 2023. CSG was not placed into resolution.
- This should be of limited relevance to UK and EU issuers of externally issued AT1 instruments. There is no requirement under UK or EU law to include contractual triggers of the sort contained in the CSG AT1 instruments. Applicable UK and EU legislation instead provides the Bank of England (the Bank) and relevant EU resolution authorities with the power to write-down or convert AT1 and certain other capital instruments in those circumstances.
- That legislation (including the Banking Act 2009 (the Banking Act) in the UK) requires the Bank and EU resolution authorities to exercise those powers in a

way that ensures that CET1 instruments bear first losses.

- The write-down of CSG's AT1 instruments ahead of CET1 appears therefore to reflect a specific feature of the Swiss AT1 market and/or legal and regulatory framework, rather than an inherent feature of AT1 instruments as an asset class.

2. The CSG AT1 instruments

1. FINMA announced on 19 March 2023¹ that the provision of extraordinary support to CSG would trigger a complete write-down of the nominal value of all of CSG's issued AT1 instruments.
2. It is not proposed that any losses will be imposed on the holders of CSG's CET1 instruments, although those investors will absorb some losses by virtue of the discounted valuation at which CSG will be merged with UBS Group AG.
3. This has caused some disquiet, as AT1 instruments rank in priority to CET1 instruments, but AT1 holders will in these circumstances suffer losses ahead of, and in a greater proportion to, CET1 holders.
4. In addition to the standard CET1 ratio trigger,² however, CSG's AT1 instruments require that they be written down to zero following: (i) any determination by FINMA that this is required in order to prevent CSG from becoming insolvent, bankrupt or unable to pay its debts as they fall due, or from ceasing to carry on its business; and/or (ii) the provision of

¹ Link [here](#).

² Under Basel III standards, all AT1 instruments must provide that the principal amount thereunder is converted to equity or written-down if the issuer's solo and/or consolidated CET1 ratio falls below a prescribed level. This is set at 5.125% under Basel

standards and the CRR/UK CRR, although a number of regulators require that this is set at a higher level (the UK Prudential Regulation Authority requires a trigger of 7% or higher, for example). CSG's AT1 instruments contained either 7% or 5.125% CET1 triggers.

extraordinary support from the public sector where FINMA determines that without such support CSG would have become insolvent, bankrupt or unable to pay its debts as they fall due, or unable to carry on its business.

5. We understand that FINMA expects this language to be included in all AT1 instruments issued by Swiss issuers. At least one Tier 2 instrument issued by CSG also contains similar triggers, although none of CSG's Tier 2 instruments were written down - this is consistent with the more senior position of those instruments in the creditor hierarchy.
6. The inclusion of these terms reflects Basel III standards, which require that AT1 instruments can be written down by a supervisory authority at the point of non-viability or following the provision of support by the public sector.³
7. On 19 March 2023, the Swiss Federal Council also amended the ordinance passed on 16 March 2023 in order to permit the provision of emergency liquidity assistance to CSG (the **Ordinance**). The amendment would appear to permit FINMA to direct a write-down of AT1 instruments following the provision of emergency liquidity assistance.⁴
8. On 23 March 2023, FINMA confirmed that it directed CSG to write down its AT1 instruments based on both the contractual triggers in those instruments and the provisions of the Ordinance.⁵

3. Impact on EU and UK issuers

1. The additional triggers contained in the CSG AT1 instruments are not required in the UK or the EU or generally included in UK/EU externally issued AT1 instruments.⁶ Such instruments would generally only be subject to write-down or conversion: (i) upon breach of the mandated CET1 trigger, i.e. in accordance with their terms; or (ii) at the direction

of the relevant resolution authority, i.e. through the exercise of a statutory power.

2. The Basel III standards referred to above have been implemented in the UK and EU through legislative provisions providing resolution authorities with the power to write-down AT1 instruments in those circumstances.⁷ In Switzerland, we understand that FINMA expects issuers to include contractual write-down triggers on the same terms.
3. In the UK, the Bank acts as resolution authority and is required to exercise its powers in accordance with the provisions of the Banking Act. The Single Resolution Board (**SRB**) acts as the resolution authority for Eurozone institutions and for Bulgaria; national resolution authorities exercise that function in other EU jurisdictions. In both cases, the SRB and relevant EU resolution authorities are required to exercise their powers in accordance with legislation implementing the BRRD.
4. In the case of a write-down caused by a breach of the relevant CET1 trigger, it is conceptually possible that AT1 holders could suffer losses ahead of the holders of CET1 instruments; for example, if the issuer's CET1 ratio were to fall below the mandated level, but without the relevant resolution authority taking any action in relation to the issuer's other capital instruments.
5. This reflects an essential feature of AT1 capital under the CRR and UK CRR and is key to its "equity-like" characteristics.⁸ In practice, however, many institutions would reach the point of non-viability (and satisfy the trigger for intervention) before breaching the prescribed CET1 ratio.
6. In the case of a write-down required by a resolution authority, the relevant resolution authority would be required to exercise its powers so as to ensure that

³ See CAP10.11(16) (link [here](#)).

⁴ See Article 5a of the 'Ordinance on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the Swiss National Bank to Systemically Important Banks' (link [here](#)).

⁵ Link [here](#).

⁶ Additional considerations may apply in relation to internally issued AT1, depending on the resolution strategy applied in respect of the group in question.

⁷ See Article 59(3) of Directive 2014/59/EU (as amended) (the **BRRD**) (EU) and sections 6A(3) and (6) of the Banking Act (UK).

⁸ See, for example, Article 28(2) of Regulation 575/2013/EU (the **CRR**) and the same article in the CRR as it forms part of the domestic law of the United Kingdom pursuant to the European Union (Withdrawal) Act 2018 (the **UK CRR**), which provide that CET1 retains its required first loss qualities notwithstanding any write-down of AT1 instruments.

CET1 holders bear losses ahead of AT1 holders. This is because:

- a. if the resolution authority requires a write-down or conversion of AT1 instruments as part of formal resolution proceedings, it is required to do so in a way that respects the creditor hierarchy.⁹ On 20 March 2023, the Bank published a notice to that effect on its website,¹⁰ as did the SRB, European Central Bank and European Banking Authority in a joint statement published on the same date;¹¹ and
 - b. while these protections do not apply in the same way if the relevant resolution authority uses its powers to write-down or convert an instrument without initiating formal resolution proceedings, the resolution authority would in those circumstances still be required to ensure that CET1 instruments bear first losses.¹²
7. Under existing UK and EU legislation, the Bank (in respect of UK issuers) and relevant EU resolution

authorities (in respect of EU issuers) would therefore be required to ensure that any write-down of AT1 instruments that they direct using their statutory powers is achieved in a way that does not result in losses being imposed on the holders of those instruments ahead of CET1 investors.

8. It is of course always possible that a national government or the legislative bodies of the EU could amend, repeal or replace the relevant legislation to permit or require a different outcome, including in a crisis scenario.¹³ There would, however, be significant legal and political hurdles to overcome in order to do so.
9. The write-down of CSG's AT1 instruments therefore reflects specific features of Switzerland's AT1 market and legal and regulatory regime. Those features are not inherent to AT1 instruments as an asset class, and do not reflect the position that would apply in relation to any write-down required by the Bank or relevant EU resolution authorities under existing legislation.

⁹ Articles 34(1)(g) and 48(1), BRRD (EU); section 12AA, Banking Act (UK).

¹⁰ Link [here](#).

¹¹ Link [here](#).

¹² Articles 60(1), BRRD (EU); Section 6B, Banking Act (UK).

¹³ While HM Treasury has the power to disapply or modify the law in order to give effect to any exercise of powers under the special resolution regime (or pre-resolution write-down or conversion), it cannot do so in relation to the Banking Act itself, and could not therefore disapply the protections referred to above.

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