



St. Gallen, 14 October 2025

## Media Release

regarding the partial decision B-2334/2023 of 1 October 2025

### Unlawful write-off of AT1 capital instruments

**The write-off of the Credit Suisse AT1 capital instruments as ordered by FINMA in March 2023 lacked legal basis. The Federal Administrative Court has therefore revoked FINMA's decree in a partial decision.**

On 19 March 2023, representatives of the Federal Department of Finance (FDF), Swiss Financial Market Supervisory Authority (FINMA), Swiss National Bank (SNB), and the involved banks announced a comprehensive set of measures for the takeover of Credit Suisse (CS) by UBS. It included the write-off of CS's entire Additional Tier 1 capital instruments (AT1 bonds) with a nominal value of approximately CHF 16.5 billion. On the same day, the Federal Council amended the recently adopted Emergency Ordinance with a provision (Article 5a) authorising FINMA to order a concerned bank to write off its core capital. Acting inter alia on this provision, in its decree also of 19 March 2023, FINMA instructed CS to immediately write off all AT1 bonds and to notify the respective bondholders, which CS consequently did.

#### **FINMA decree of 19 March 2023 revoked**

About 3'000 complainants lodged appeals with the Federal Administrative Court (FAC) against this decree in approximately 360 cases. In the resulting multiparty proceeding, these complainants participate in one and the same proceeding (one decree, same facts). A particularity of a such proceeding is that any party's individual right to be heard extends to the submissions and evidence of all other parties, insofar as their requests may not be granted.

In essence, the complainants requested that the decree be revoked, and moreover, that the write-off be reversed. They contended that there was neither a contractual nor a sufficient statutory basis for writing off the AT1 bonds. For their part, FINMA and UBS primarily challenged the complainants' right to appeal, and argued that, on 19 March 2023, the contractual conditions for writing off the AT1 bonds were met as well as that Article 26 of the Banking Act (BankA), Article 31 of the Financial Market Supervision Act (FINMASA) and Article 5a of the Emergency Ordinance provided sufficient legal basis for FINMA's decree.

On 1 October 2025, the FAC passed a partial decision in one of the appeal cases. It confirmed the complainants' right to appeal and revoked the decree of 19 March 2023. The FAC has not yet decided on the reversal request. The other cases are now suspended until the decision regarding the revocation of the decree has become final.

### **Prerequisites for write-off not fulfilled**

For regulatory purposes, AT1 capital instruments form part of a bank's additional core equity; they are typically structured either as conditional mandatory convertible bonds or, as at hand, as bonds with a conditional debt waiver ("write-off bonds"). Write-off bonds may be written off by the issuing bank upon occurrence of a contractually predefined event ("viability event"). The FAC held that the conditions for a write-off were not fulfilled because the contractual viability event had not been triggered: at the time of the write-off, CS was sufficiently capitalised and met regulatory capital requirements. The measures granted by the federal government and the SNB served solely to ensure liquidity and, according to a trust-theory based understanding of the bond prospectus, had no direct impact on the equity base.

### **Lack of legal basis**

The Court further examined if there was a statutory basis for the write-off order. It considered that the bondholders' property rights were seriously interfered with, which would have required a clear and formal legal basis. But no such basis existed: Article 26 BankA, which provides for protective measures in the event of an impending insolvency, addresses a different subject matter, and in any event, it is too vague to be relied upon for a write-off of third-party rights under the principle of legality. The same applies to Article 31 FINMASA and Article 5a of the Emergency Ordinance of the Federal Council. Since the decree of 19 March 2023 is based on the Emergency Ordinance, the FAC also examined its constitutionality on a preliminary basis. Article 5a of the Emergency Ordinance proved unconstitutional in several respects, namely because it violates constitutional requirements in relation to emergency ordinances by the Federal Council (Articles 184(3) and 185(3) of the Federal Constitution, FC), to the delegation of expropriation rights (Article 178(3) FC), as well as to the guarantee of ownership (Article 26 FC).

This decision is subject to appeal to the Federal Supreme Court.

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### **About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 395 employees (334 FTE) and its 78 judges (70 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.