Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

FINMA Report

Lessons Learned from the CS Crisis

Bern, 19 December 2023

Contents

1 List of abbreviations

In addition to this abbreviations list, the glossary (section 8) contains brief explanations of various technical terms.

Art.	Article
ASF	Available stable funding
AT1	Additional Tier 1
BA	Banking Act
BO	Banking Ordinance
CAO	Capital Adequacy Ordinance – Banks
CDS	Credit default swap
CEO	Chief Executive Officer
CET1	Common Equity Tier 1
CFC	Committee on Financial Crises
CFP	Contingency funding plan
CMG	Crisis Management Group
CO	Code of Obligations
CS	Credit Suisse Group
CS AG	Credit Suisse AG
CSG	Credit Suisse Group AG
ELA	Emergency liquidity assistance
ELA+	Emergency liquidity assistance plus
FDF	Federal Department of Finance
FFA	Federal Finance Administration
FinDel	Finance Delegation of the Federal Assembly
FinIA	Financial Institutions Act
FINMA	Swiss Financial Market Supervisory Authority
FINMASA	Financial Market Supervision Act
FinSA	Financial Services Act
FSB	Financial Stability Board
FTE	Full-time equivalent
G-SIB	Global systemically important bank
HQLA	High-quality liquid assets
IMF	International Monetary Fund
LCR	Liquidity coverage ratio
LCT	Liquidity crisis template
LPA	Loss potential analysis
LSFF	Liquidity-shortage financing facility
Margin no.	Margin number
No.	Number
para.	Paragraph
PLB	Public liquidity backstop
PLB-EO	Public Liquidity Backstop Emergency Ordinance
PONV	Point of non-viability
RWA	Risk-weighted assets
SC	Steering Committee
SIB	Systemically important bank
SIF	State Secretariat for International Finance
SNB	Swiss National Bank
TBTF	Too big to fail

2 Executive summary

March 2023 saw a worsening of the crisis of confidence with which Credit Suisse Group (hereinafter CS, the bank or the Group) had been confronted for some considerable time. Especially from 2018 onwards, confidence in the bank was dented by repeated scandals (e. g. the Mozambique case, the surveillance affair, as well as the Greensill and Archegos cases), which resulted in extensive measures, fines, losses and reputational damage. In addition, the repeated attempts by CS over the years to reduce the size of the investment bank in order to generate more stable returns were incomplete and insufficiently effective, and were unable to impress the market and clients. The problem was exacerbated by the upheavals in the US banking market and other events, resulting in many clients withdrawing their money and market participants restricting their business activities with the bank. In mid-March 2023, there was an imminent threat of CS becoming insolvent.

The Confederation, the Swiss National Bank and FINMA instituted measures to safeguard CS's solvency and to assist the acquisition of CS by UBS, which was announced on 19 March 2023. All of the authorities involved, including FINMA, had concluded that in the present circumstances the scenario of this takeover was the best and most reliable way of achieving the aims, first and foremost that of stabilising the market as quickly as possible. On 12 June 2023 the merger of CS Group AG and UBS Group AG took legal effect. This meant that the aims of protecting the creditors and the proper functioning of the financial markets were met – even in this dramatic crisis – and hence also that FINMA's goals were met. At the same time, the disappearance of one of Switzerland's two large global banks was a traumatic event for the Swiss financial services sector. As state support was necessary despite the "too big to fail" regulations introduced after the 2008 financial crisis, a thorough analysis of the events is required.

FINMA has subjected both the background to and the acute phase of the crisis to a comprehensive analysis and assessment. The present report sheds light on developments relating to CS between 2008 and 2023. As the supervisory authority responsible for CS, FINMA has deep insights into these developments that extend back many years.

The options available to FINMA and their limits

The present report illustrates, based on the CS case, what the options are and where the boundaries of supervision lie. Due to the proliferation of problems and deficiencies at CS, FINMA had increasingly intensified its supervisory and enforcement activities in relation to the bank, adopting a more stringent approach and instituting increasingly incisive measures. These culminated in higher loss absorbency requirements (Pillar 2), interventions in governance, and specific restrictions on business activities. Ultimately, however, all these measures were insufficient to rectify CS's weaknesses in a sustainable way and to restore confidence in CS among its customers and on the markets.

Within the scope of the currently applicable laws, FINMA went to great lengths to fulfil its supervisory duties in respect of CS. Since 2012, it has conducted 43 preliminary investigations of CS for potential enforcement proceedings, issued 9 reprimands, filed 16 criminal charges, completed 11 enforcement proceedings against the institution and 3 proceedings against individuals. 11 of these 14 proceedings took place in 2018 or after. In this context and within the scope of its authority, FINMA warned CS of the risks in no uncertain terms and called for improvements and measures. Between 2018 and 2022, FINMA also conducted 108 on-site supervisory reviews at CS and recorded 382 items requiring action. Of these, 113 were classified as high-risk or critical. These figures clearly illustrate the limitations of even intensive supervisory activity and FINMA's statutory competencies. Responsibility for the bank's strategy and management, including appropriate organisational and risk management, was at all times with the Board of Directors or the responsible management team.

In assessing the crisis, FINMA identified various areas in which it believes that an extension of the legal framework or clarification of the implementing provisions needs to be discussed, or where it will make selective adjustments to its supervisory activities. However, it must be noted that it will never be possible to subject financial institutions to supervision that is 100% watertight. Even with greater regulation and extended supervision there is no guarantee that a financial institution will not fail. However, the possible solutions reduce the probability and impact of a failure.

What were the main reasons for the failure of CS?

- The bank adopted numerous initiatives for strategic changes with the aim of downsizing the investment bank, reducing the volatility of its earnings, and focussing the business model more strongly on asset management. Ultimately, these strategy changes were never implemented in a consistent manner. Earnings remained volatile in the investment bank, but also in asset management.
- Recurrent scandals undermined the bank's reputation, weighed on its results, and resulted in customers, investors, and the market losing faith in the bank.
- Reorganisations as well as high costs, fines, and losses also eroded its capital base. As a result, CS was repeatedly forced to raise capital on the market.
- Even in years where the bank reported large losses, variable remuneration remained high. Negative results had little impact on remuneration. CS shareholders made little use of the possibilities available to them to influence remuneration.
- CS's problems manifested themselves in a range of business areas and as various risk types. In almost all cases, serious deficiencies in risk management played a role. FINMA's measures targeted these deficiencies and tightened up checks and controls. FINMA also took up the bank's poor risk management culture with the bank. Despite some extensive adjustments over the years, the bank's executive bodies were unable to remedy the repeatedly identified deficiencies in the bank's organisation in a holistic and sustainable manner.
- CS met the regulatory capital requirements. Even this capital adequacy situation was unable to contain or prevent the massive crisis of confidence. The parent company, CS AG, had the weakest capital adequacy situation within the Group and thus represented the weakest link in the chain.
- CS also met the regulatory requirements for liquidity and held comfortable liquidity buffers in summer 2022. However, the loss of confidence in the bank led to very rapid and widespread liquidity outflows, which were exacerbated by digital means of communication (digital bank run) and ultimately brought the bank to the brink of insolvency.

The core of the present report is section 7, which explores eight problem areas, elucidates FINMA's actions – and their impact – in each of these areas, and infers possible solutions from them. What lessons, briefly, can be learned from these problem areas?

- **Strategy:** It is the responsibility of the Board of Directors to define, implement, and monitor the bank's strategy. FINMA may only intervene if it is able to demonstrate that the strategy leads to increased risks that are insufficiently limited, namely insufficiently reflected in the bank's capital resources. In the case of CS, FINMA actually did impose additional capital charges for the increased risks arising from its business activities. In future, FINMA will analyse the risks entailed in strategy implementation even more systematically. For this purpose, for example, the current loss potential analysis will be reviewed and adjusted if necessary. High risks should be more systemati-

cally subjected to additional capital charges (Pillar 2) in the future. An adjustment of the statutory implementing provisions should also be examined for this purpose.

- **Corporate governance:** The current legal framework severely restricts FINMA's influence in matters of governance. An extension of FINMA's competencies could significantly increase its options. In particular, FINMA does not currently have a Senior Managers Regime, powers to impose fines, or the option of publishing enforcement proceedings on a regular basis.
- **Remuneration:** FINMA will continue to exert pressure on inappropriate variable remuneration within the framework of the law. However, if FINMA is to be able to exert greater influence on gearing remuneration systems to risk, its powers in this regard would have to be extended.
- **Risk management:** In the event of shortcomings in the control environment, FINMA promptly demanded improvements, ordered additional capital, and, in serious cases, even restricted business activities. FINMA intends to use its ability to require additional capital even more systematically in the future, but considers the approaches in the areas of governance and remuneration to be equally relevant to risk management.
- **Capital:** FINMA's obligation to grant relief at single entity level, introduced by the legislator in 2013, led to a weakening of the parent bank. The regulatory treatment of participations in subsidiaries introduced in 2017 had a pro-cyclical effect during the crisis. FINMA will therefore put forward its viewpoint that stricter regulatory requirements should be imposed at single entity level in the context of the review of the TBTF requirements.
- **Liquidity:** The regulation already provides for an extension of the liquidity requirements for systemically important banks. FINMA will incorporate the lessons learned from the CS crisis when determining the special liquidity requirements applicable to systemically important banks as of January 2024. It will also put more focus on the system and process capabilities required to produce timely and accurate forecasts regarding the liquidity and cash situation of banks. FINMA will furthermore expand its existing tools in liquidity supervision (e. g. in the area of bank run scenarios).
- **Recovery plan:** FINMA last reviewed and approved CS's recovery plans in 2022 and called for improvements. The concrete application in the crisis showed that some measures could not be implemented in the planned form. FINMA required the bank to develop alternatives and measures going beyond its recovery plan at an early stage and with increasing vigour. In future, FINMA will place a stronger focus on ensuring that the measures can be implemented effectively and consider tightening up its approval practice.
- **Resolution plan:** Resolution plans must in future be aligned to faster-developing bank runs and a greater number of crisis scenarios. This will also involve conducting regular crisis exercises together with the relevant authorities.

3 Introduction

In the present report, FINMA is publishing certain facts for the first time. It is doing so in view of the general supervisory interest: all stakeholders must have the opportunity to know the sequence of events, FINMA's assessment of these events, and the various possible solution approaches that FINMA feels should be considered. In this way, FINMA wishes to contribute to an understanding of the crisis and create transparency.

The report is structured as follows:

- Section 4 contains a description of FINMA and explains the way it supervises the major banks.
- Section 5 explains the principal elements and concepts involved in implementing the "too big to fail" (TBTF) regime in Switzerland and presents the options available on 19 March 2023.
- Section 6 contains relevant facts and figures on CS and – as far as it is relevant to the crisis – summarises its development from 2008 to 2023. The more recent the events, the more detail is provided. The events as of October 2022 are dealt with in particular detail.
- Section 7 is the report's core section. It explores eight problem areas, elucidates FINMA's actions – and their impact – in each of these areas in more detail than in section 6, and infers possible solutions from them.

FINMA's findings are also being incorporated into the Federal Department of Finance's ongoing comprehensive evaluation of the TBTF rules and regulations. The report focuses on the lessons that can be learned from past events. It does not deal with the structural changes resulting from the merger of the two large Swiss banks, which are leading to new challenges. That topic is being dealt with by other working groups and expert bodies, among other things, within the framework of the evaluation of the TBTF rules.

4 FINMA's supervision of the large banks

4.1 FINMA: remit, objectives, organisation, figures

As an independent supervisory authority, FINMA's legal mandate is to protect creditors, investors, and policyholders and ensure the proper functioning of the financial markets. Its remit thus comprises authorisation, supervision, and – where necessary – the enforcement of supervisory law. In its role as supervisor, FINMA adopts a consistently risk-oriented approach designed to ensure continuity and predictability.

The legal basis for its supervisory activities is provided by the Financial Market Supervision Act (FINMASA, SR 956.1) and the financial market legislation, namely the Financial Services Act (FINSA, SR 950.1), the Banking Act (BA, SR 952.0), the Financial Institutions Act (FinIA, SR 954.1), the Collective Investment Schemes Act (CISA, SR 951.31), the Insurance Supervision Act (ISA, SR 961.01), the Financial Market Infrastructure Act (FinMIA, SR 958.1), and the Anti-Money Laundering Act (AMLA, SR 955.0) as well as the corresponding Federal Council and FINMA ordinances.

FINMA's Board of Directors is responsible for its strategy. Operational responsibility rests with its Executive Board. The Board of Directors is consulted in extraordinary situations such as the crisis of a large bank and decides on business matters of substantial importance.[1] FINMA is organised into eight divisions: the four supervisory divisions Banks, Insurance, Asset Management, and Markets as well as the four cross-divisional areas Strategic Services, Enforcement, Recovery and Resolution, and Operations. While the Banks division supervises all banks and securities firms, Recovery and Resolution ensures implementation of the "too big to fail" (TBTF) requirements. The Enforcement division is called upon to enforce financial market legislation and supports the two divisions with its legal expertise in crisis situations.

4.2 Large bank supervision (general activities, plus CS-specific aspects)

Up to summer 2023, direct large bank supervision was performed primarily by two dedicated supervisory teams. These teams comprised around six full-time equivalents per large bank and were supplemented by a further team of five full-time equivalents that focused on on-site supervisory reviews and benchmark analyses at the two large banks. Within the Banks division, these three core teams were supported by the Authorisation and Risk Management sections. There, they had access to numerous experts in the areas of risk management, capital adequacy and planning, liquidity, IT, and cyber risks as well as governance. In total, an average of about 40 of the 112.5[2] full-time positions in the Banks division were deployed to supervise UBS and CS in 2020–2022.

In supervising the large banks, FINMA regularly obtains data or requires them to submit documentation. In some cases the data is obtained together with the Swiss National Bank, in other cases FINMA obtains it directly. Data sets consist of prudential key figures (liquidity, capital) as well as ad hoc surveys regarding specific risks. The kind of internal bank reports that are requested include the risk and compliance reports, internal audit reports, as well as documents from meetings of the Executive Board or Board of Directors. In addition, FINMA takes due account of general market data (e.g. credit ratings, prices of shares, bonds, or credit default swaps) and reports by equity and bond analysts or from other external sources such as media reports (including social media). FINMA regularly holds talks with the Board of Directors or Executive Board and with other representatives of divisions, supervisory bodies, or internal auditors, subsequently informing the bank concerned in writing of its conclusions and expectations. Moreover, it conducts around 20 extensive on-site supervisory reviews per large bank each year.[3] These result in a report and a letter to the bank concerned. Implementation of the required measures is monitored

[1] Regulations on the organisation of the Swiss Financial Market Supervisory Authority FINMA.
[2] As at June 2023.
[3] Between 2018 and 2022, FINMA conducted 108 on-site supervisory reviews at CS and recorded 382 points requiring action by the bank. Of these, 113 were classified as high-risk or critical.

by FINMA. To plan its activities, the Banks division has introduced standard operating procedures. These determine the use of the various supervisory instruments as a function of the bank's size and risk assessment (risk-based supervision). The annual assessment letter is a key supervisory instrument. It sets out the rating and FINMA's principal expectations towards the bank. The assessment letter is also discussed with the large bank's Board of Directors.

FINMA's standard operating procedures specify that it should conduct annual supervisory discussions with the large banks' Boards of Directors and the Chairs of their Risk and Audit Committees, that it should meet with the Chairs of the Boards of Directors twice a year and hold supervisory discussions with the Chief Executive Officers (CEOs) every quarter. Owing to the elevated risk situation at CS as of 2020, however, these interactions took place much more frequently. Already in 2021, for example, monthly supervisory talks were held with the Chair of the Board of Directors. In 2022, FINMA met with the Chair of CS's Board of Directors as well as its CEO, Chief Financial Officer (CFO), and Chief Risk Officer (CRO) several times a month, or even several times a week depending on developments. These talks focused on strategy implementation, the current risk situation, and the action being taken by the bank. FINMA stated its expectations regarding the bank's implementation of liquidity-related measures and the development of emergency measures. There was also an intensive dialogue between other representatives of CS's Board of Directors and especially with the Chairs of the Audit, Risk and Compensation Committees and representatives of FINMA's Board of Directors and Executive Board. Given CS's risk situation, there were frequent discussions between FINMA's Board of Directors and the CS Chair and CEO in recent years.

National and international cooperation with authorities and bodies was stepped up as well. To ensure global supervision of the large international banks, FINMA works closely together with numerous foreign supervisory and resolution authorities. Since the management of a large bank is primarily oriented to a bank's divisions rather than to national boundaries, this cooperation is vital. In particular, the cooperation took place within the Core College of Supervisors, to which – in the case of the large Swiss banks – the US Federal Reserve Board, the Federal Reserve Bank of New York, and the UK Prudential Regulation Authority belong. The cooperation involved regular interactions on various supervisory aspects of CS. Joint supervisory activities were discussed and expectations with regard to the bank were formulated. This exchange took place at least once a month at non-crisis times, with the Core College meeting physically twice a year. In the event of relevant topics and significant incidents, the intensity and frequency of the interactions was always increased. As of October 2022, the Core College members were in touch almost daily. Owing to CS's significant business activities in Asia, FINMA also worked closely together with Asian partner authorities within the framework of the Asia-Pacific College of Supervisors. Furthermore, there were at least annual exchanges with all CS supervisors as part of the General College. This exchange was intensified during the crisis as well. In addition, bilateral and trilateral (Federal Reserve Bank of New York and US Federal Reserve Board – UK Prudential Regulation Authority – FINMA) contact took place, including at their Executive Board level.

Alongside FINMA's direct supervisory activities, the audit firms play an important role in large bank supervision by conducting their regulatory audits.[4] The audit firm receives a mandate from the bank itself[5] and conducts audits independently. The possibility of FINMA awarding mandates directly in order to strengthen the independence of the regulatory audit firm is to be examined as part of the ongoing work managed by the Federal Department of Finance (FDF) in accordance with Article 52 BA. Moreover, FINMA

[4] At CS, this was KPMG up to and including the 2019 financial year, and PwC from 2020.
[5] Requires approval by FINMA.

may have specific topics or problems analysed by a third-party audit mandatary unconnected with the regulatory audit firm and, in the context of enforcement proceedings, also deploys investigating agents.

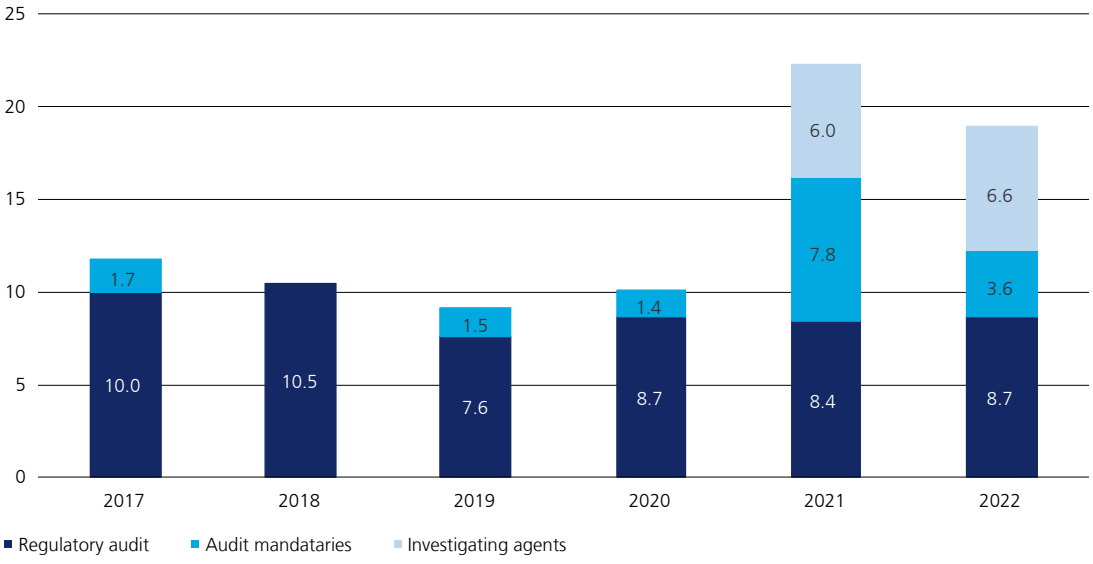
With regard specifically to CS, the total external expenditure for regulatory auditing and for audit mandataries and investigating agents developed as follows in recent years.

While in 2020 they amounted to CHF 10m, they rose in 2021 to approx. CHF 22m and remained at a high figure of approx. CHF 19m in 2022. In each year during the period 2020–2022, therefore, an average of around 67,000 hours or 37 person-years were expended on regulatory auditing and on audit/investigating agent mandates for CS. (Of this total, around 37,000 hours or 20 person-years were expended on regulatory auditing each year.) FINMA devotes considerable resources to drafting detailed audit and investigation programmes, to the selection and mandating procedures, to inducting and monitoring the agents appointed, and to invoice control.

The IMF has already examined FINMA's supervisory activities several times in the past in the context of its respective country examinations[6] and recommended, among other things, that FINMA consider awarding mandates directly to regulatory audit firms and strengthening its own on-site supervisory reviews.

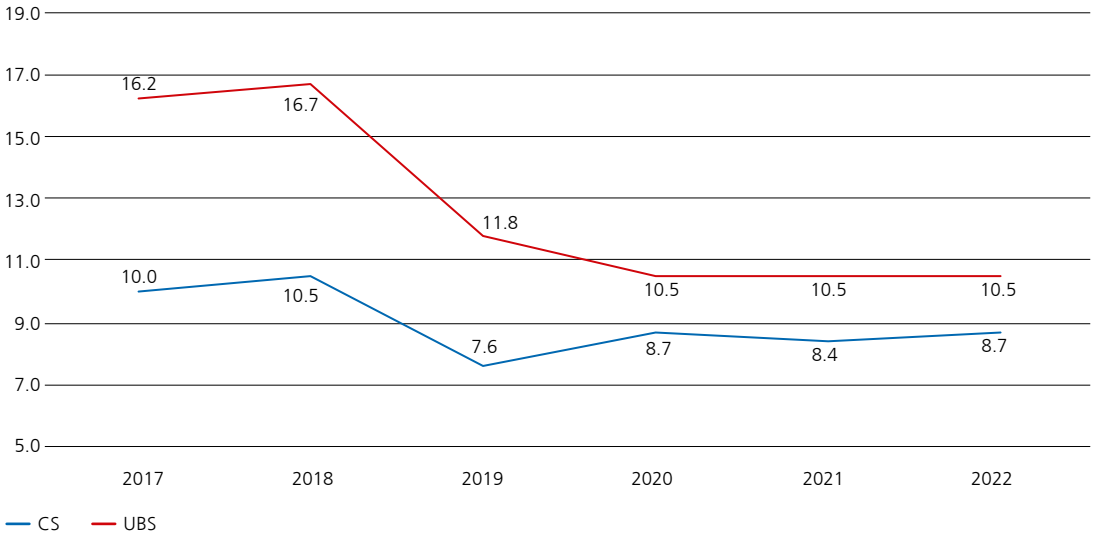
The decrease in regulatory audit expenses between 2018 and 2019 was due to a fundamental revision of Circular 2013/3 "Auditing", which was aimed at making regulatory audits more focused and risk-oriented. As a result, the cost of regulatory audits for all banks declined on average by 30%, while the audit firms' audit conclusions became more targeted and thereby enhanced the effectiveness of the audit system. Owing to FINMA's risk assessment and the deterioration of CS's FINMA rating up to the highest

CS regulatory audit, audit mandataries and investigating agents in CHF million



[6] Switzerland: Financial System Stability Assessment (imf.org).

Costs for regulatory audit CS/UBS 2017–2022 in CHF million



level (red) in 2020, the specific budget for regulatory auditing of CS was increased again. In this way, in combination with the deployment of independent third-party auditors ("mandataries"), FINMA addressed the heightened risk situation at CS.

Large bank supervision in the Banks division is also supported by specialist resources from the **Recovery and Resolution, Enforcement, Markets,** and **Asset Management** divisions.

As part of the TBTF requirements, FINMA's **Recovery and Resolution** division regularly checks and approves the recovery plan for the banks and assesses whether the (Swiss) emergency plan is ready to be implemented or not. In addition, the resolvability of the banks is assessed and a resolution plan for the two large international banks is prepared. In a crisis scenario, this serves as the basis for drafting the specific resolution plan. To coordinate work on implementing the TBTF requirements, there is regular interaction within the Crisis Management Group. This also involves representatives of the relevant US and UK authorities that would play a pivotal role in an international resolution of a large Swiss bank. As of autumn 2022, meetings of the CS Crisis Management Group were also stepped up. FINMA provided regular information on its assessment of the situation, the restructuring strategy and coordinated the joint work in numerous meetings at working and management level. In total, approximately seven full-time equivalents (FTEs) from the Recovery and Resolution division deal with large banks.

FINMA takes **enforcement** action as the most visible means of achieving its supervisory objectives. It gears its enforcement proceedings – in line with the principle of supervision at individual institution level – primarily vis-à-vis the licence holders (i.e. the banks themselves). In respect of individuals who are responsible for serious violations of supervisory law, it takes targeted action in the form of proceedings to safe-

guard proper business conduct or prohibit the individuals concerned from practising their profession. Since 2012, FINMA has conducted 43 preliminary investigations of CS for potential enforcement proceedings, issued 9 reprimands, filed 16 criminal charges, completed 11 enforcement proceedings against the institution and 3 proceedings against individuals.

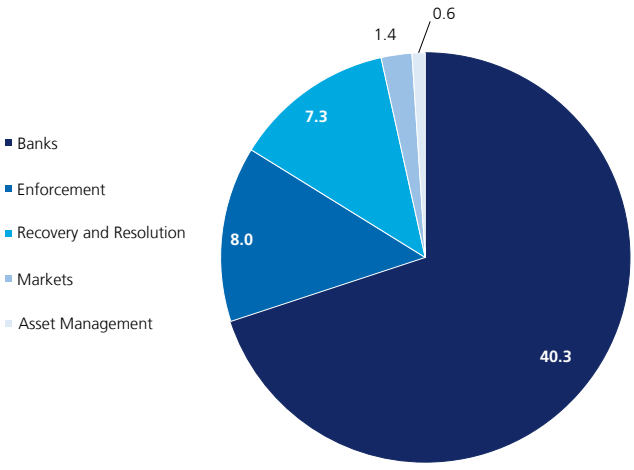
At the end of August 2023, 10 investigations and 6 proceedings (five of which against individuals) were pending in relation to CS. In total, approximately 8 FTEs from the Enforcement division deal with large banks.

The cross-divisional function for the supervision of conduct at the supervised institutions is housed with the **Markets** division, though it is closely coordinated with the supervisory teams in the Banks division. In total, approximately 1.4 FTEs from the Markets division deal with large banks. The **Asset Management** division supervises the fund management companies and the (legally separate) Swiss asset management entities. Here, too, there is close cooperation with the Banks division. In total, approximately 0.6 FTEs from the Asset Management division deal with large banks.

In 2020–2022, FINMA expended an average of around 102,000 hours per year on supervising the two large banks (equivalent to around 58 FTEs).

FINMA is currently reviewing its supervisory approach and the adequacy of human resources with respect to the supervision of systemically important banks.

Large-bank supervision: average number of FTEs by division 2020–2022



4.3 Overview of national and international stakeholders and fora

In the context of its supervision of CS, FINMA interacted with various national and international stakeholders and fora. The main ones are listed here.

National

- **Committee on Financial Crises (CFC)**
  For details of this body, see section 5.1
- **Steering Committee (SC)**
  For details of this body, see section 5.1
- **Federal Councillor or Head of the Federal Department of Finance (FDF)**
  The person who heads the FDF is a member of the SC and leads this body. There was periodic interaction between the Federal Council and FINMA on general topics, though the large banks always featured on the agenda.
- **FDF or State Secretariat for International Finance (SIF) and Federal Finance Administration (FFA)**
  The FDF (SIF and FFA) is part of the CFC. There were also regular interactions with it outside of the CFC.
- **Swiss National Bank (SNB)**
  The SNB is part of the CFC. There were also regular interactions with it outside of the CFC.

International

- **Core College**
  For details of this body, see section 4.2
- **Asia-Pacific College**
  For details of this body, see section 4.2
- **General College**
  For details of this body, see section 4.2
- **Crisis Management Group**
  For details of this body, see section 5.2

5 Implementation of "too big to fail" regulations in Switzerland

5.1 Relevant Swiss authorities in the area of financial market regulation and supervision as well as other stakeholders

The relevant authorities with regard to the Swiss financial centre are the Federal Department of Finance (FDF) (regulation), the Swiss National Bank (SNB) (financial stability) and FINMA (supervision and resolution). These three authorities are organisationally independent of each other and work on the basis of a specific Memorandum of Understanding[7] as follows.

Committee on Financial Crises (CFC)

Under the leadership of FINMA's CEO, the State Secretary for International Finance, the Director of the Federal Finance Administration and the Vice Chair of the Governing Board of the SNB meet essentially twice a year to discuss the situation regarding the Swiss financial centre. The agenda is drawn up according to current events. As a rule, it contains items on the following topics: general situation; large banks; domestic systemically important banks; other banks; financial market infrastructures; insurance companies; asset managers; international affairs; miscellaneous. Minutes are taken by FINMA.

If, due to the situation on the financial markets or at individual Swiss banks, the CFC detects an immediate threat to the Swiss economy or to the functioning of the Swiss or international financial system, it escalates to the "Red Phase" (crisis management).[8] In this phase, it increases the frequency of its meetings, steps up the risk analysis and the exchange of information between the authorities. It drafts written assessments of the situation for the attention of the Steering Committee and arranges for the preparation of decision-making documents. As described in section 6.2.4, the CFC had declared the Red Phase in October 2022, whereupon at least one meeting a week was held thereafter.

Steering Committee (SC)

The CFC also prepares business for the SC, which meets at the level of the Head of the FDF, the Chair of the SNB Governing Board and the Chair of FINMA's Board of Directors. The Head of the FDF chairs the meetings. The SC, too, meets at regular intervals and has a standard agenda structured similarly to that of the CFC. The decisions are recorded in writing. The frequency of meetings and exchange of information in the SC were also stepped up after the Red Phase was announced by the CFC.

5.2 Core elements of "too big to fail"

Various countries were forced to rescue distressed banks in the global financial crisis of 2007/2008, as a disorderly failure of these banks would have led to turmoil in the financial system and caused economic damage. It was in this context that the term "too big to fail" (TBTF) gained wide currency. It refers to banks that the government effectively cannot allow to fail owing to, among other things, their size and interconnectedness with the economy and financial system. However, government bail-outs are problematic, as they are paid for by taxpayers. Moreover, the assumption that the government will always rescue a certain size of bank in a crisis leads to market distortions and moral hazard.

As a result, efforts were made around the globe to create more potential courses of action in the event of banking crises. The principal concepts are explained briefly below. Detailed descriptions can be found in FINMA's resolution reporting.

Capital

The capital requirements were successively tightened as part of the TBTF measures. International systemically important banks have to meet more stringent requirements, and requirements regarding the structure and quality of the capital have been defined. In addition to the risk-weighted requirement, capital requirements measured against the unweighted balance sheet total were introduced (see also section 9). They must also provide loss-absorbing funds or "gone concern" capital for a crisis. The going and

[7] Memorandum of Understanding (MoU).
[8] The CFC distinguishes between the Green Phase (crisis preparation) and the Red Phase (crisis management).

gone concern capital together represent the bank's total loss-absorbing capacity (TLAC). In this context, new Tier 1 capital instruments were also created, and bonds with loss absorption potential in the event of insolvency risk or insolvency measures (going concern and gone concern instruments) were introduced.

- **Additional Tier 1 capital (AT1)**
  AT1 is the second-highest category of regulatory capital and consists mainly of contingent convertible or write-off bonds that are designed to be converted into equity or written off, in particular, if a predefined trigger is reached, if there is recourse to public sector assistance, or in the event that FINMA orders this to avoid insolvency.
- **Bail-in bonds**
  Bail-in bonds are debt instruments for loss absorption in the event of insolvency measures (additional loss-absorbing funds). They constitute debt capital and can be converted into equity via a bail-in.

Stabilisation and emergency planning

Banks must be prepared for crises and draw up plans accordingly.

- **Recovery**
  Recovery refers to actions taken by a company to stabilise itself without government intervention.
- **Recovery plan**
  In the recovery plan, the systemically important institution sets out which measures it will use to ensure its stability on a sustainable basis in the event of a crisis and be able to continue its business activities without government intervention. FINMA is responsible for reviewing and approving the recovery plan.
- **(Swiss) Emergency plan**
  Systemically important banks must demonstrate in the emergency plan that their systemically important functions can be continued without interruption in a crisis. Only functions that are critical to the Swiss economy are deemed systemically important. Such systemically important functions include in particular the domestic deposit and lending businesses as well as payment services. FINMA reviews the measures in the emergency plan with regard to their likely effectiveness if the entire banking group were to be at risk of insolvency.

Resolution

Resolution refers to the restructuring or liquidation of a company in the context of public authority intervention.

- **Resolution plan**
  The resolution plan is a plan drawn up by FINMA setting out how to restructure or liquidate a systemically important institution in its entirety (in the case of a global systemically important bank, this means the entire group, including foreign group entities, which is why the plan for such banks is referred to as a global one). In this plan, FINMA sets out how a restructuring or liquidation ordered by it can be carried out.
- **Resolvability**
  Resolvability describes a company's ability to fail in an orderly manner. A systemically important bank is deemed resolvable if conditions are in place that would allow it to be restructured or liquidated in the event of a crisis without endangering financial stability.

International coordination

For global systemically important banks, crisis preparations must be coordinated internationally among the various supervisory authorities in Crisis Management Groups.

- **Crisis Management Group**
  The Crisis Management Group set up for each global systemically important bank (G-SIB) due to the Financial Stability Board's recommendations is comprised of various supervisory authorities. Under the

direction of the home supervisory authority, it has responsibility for crisis prevention and management with regard to cross-border business.

5.3 Specific consequences of the TBTF legislation for Swiss G-SIBs

TBTF thus meant more stringent requirements in terms of capital quality as well as liquidity, risk management, and crisis preparation. The Swiss G-SIBs implemented these extended requirements. In particular, they made structural changes, if not already existent.

- **Group parent company**
  Both large banks have a group parent company which, as the group holding company, holds the shares of the parent companies. It issues the bail-in bonds and the AT1 instruments and serves as the single point of entry for recovery and resolution planning.
- **Parent companies**
  The parent companies are responsible for the banking business and hold the bank's other shareholdings, in particular the main group subsidiaries abroad and the Swiss entity.
- **Swiss entity**
  The functions deemed systemically important in Switzerland (deposits, loans with a term of under twelve months, payment services) were transferred by the parent company to a Swiss legal entity with its own separate banking licence (ex-ante separation).

The crisis preparation for G-SIBs is geared to the categories of the resolvability assessment.

- **Structural disentanglement**
  This involves the structural disentanglement of the holding company, parent company, Swiss entity, service units, etc.
- **Operational disentanglement**
  This involves the operational disentanglement of the main entities in the group to an extent that permits them independent access to financial market infrastructures and ensures the continuity of important operational services.
- **Financial disentanglement**
  The G-SIBs must ensure that intragroup financial relationships are structured in such a way as not to constitute an obstacle in the event of public authority intervention.
- **Implementation and resources**
  A G-SIB must ensure that it is in a position to implement intervention by the authorities as part of a resolution process. Thus, in the event of a crisis, it must be able to provide quantitative data on liquidity and capital and set up processes for carrying out a bail-in of gone-concern instruments and a restructuring.

5.4 Expected crisis continuum in recovery and resolution planning

It is primarily the responsibility of a bank's management and shareholders to avert a threat of insolvency through their own efforts and without public intervention. Therefore, a systemically important bank in Switzerland must draw up a recovery plan that defines measures enabling it to stabilise itself on a sustainable basis in the event of a crisis, such that it can continue its business activities without government intervention. Resolution is thus preceded by a recovery phase.

If the bank is unable to stabilise itself on a sustainable basis on its own and if there are justified concerns that it is overindebted or has serious liquidity problems, or if it cannot meet the capital requirements after expiry of a deadline set by FINMA, then the latter may, in particular, initiate restructuring proceedings (i.e. resolution measures). In doing so, it must comply with the provisions of banking law (Art. 26 ff. BA) and coordinate the resolution at the international level to ensure that any recognition proceedings in the relevant jurisdictions are successful. The resolution measures must also ensure that creditors

are not in a worse position than in the event of a liquidation.

In the case of CS, FINMA prepared the restructuring in line with the previously defined single point of entry strategy. This strategy provided for intervention by FINMA formally at the level of the Group parent company, i.e. CS Group AG. This strategy would have had the advantage of only FINMA, as the home supervisory authority, having to conduct any restructuring proceedings. Specifically, in the event of a restructuring proceeding, FINMA would have ordered capital, governance, and restructuring measures at the Group level in order to restructure the entire bank (see section 7.8).

5.5 Potential courses of action on 19 March 2023

From autumn 2022, FINMA and the other Swiss authorities involved took precautionary, in-depth steps to prepare a number of potential courses of action.

1. Merger of CS with UBS

Generally speaking, a private solution is preferable to measures imposed by the government. As a rule, this is more appropriate, more targeted, and more proportionate. For these reasons, the private-law merger option was worked on under high pressure. The authorities involved drew up an overall package of measures to enable this merger. The SNB supported the takeover with considerable liquidity assistance. A necessary part of the overall package was instructing CS to increase its capital by writing off the AT1 instruments. This option did not include a write-off of the share capital or a bail-in and could be implemented within a (very) short time because FINMA had been increasingly drawing CS's attention to the need for emergency measures since April 2022. Following the October 2022 bank run, FINMA required the bank to establish a virtual data room and sequence a sale under stress in preparation for a sale of the Group.

2. Restructuring of CS by order of FINMA

The restructuring option is a solution under the existing TBTF regime. In the event of a restructuring, FINMA would have ordered three types of measures, which were described in detail in a restructuring plan.

- **Restructuring measures,** which would have involved reorienting the bank's strategy and would subsequently have had to be implemented by the bank.
- **Capital measures** in order to be able to implement the restructuring measures within a short period of time. These measures would have increased CS Group's capital by around CHF 73 billion. Specifically, the share capital would then have been completely written off, meaning that all shareholders would have lost their invested capital. The AT1 instruments would also have been completely written off, with the result that the AT1 creditors would also have lost their entire investment with this option. Finally, the bail-in bonds of the remaining bondholders of the CS Group AG would have been converted into shares.
- **Governance measures** by means of which FINMA would have replaced the Chair of the Board of Directors with a person who would have strengthened confidence in a sustainable restructuring. The appointment of a restructuring agent and the suspension of shareholder rights for a certain period of time in order to stabilise the bank were also envisaged.

These restructuring steps taken by FINMA would not have created any additional liquidity for the bank. Owing to the substantial liquidity outflows, it was therefore clear in the case of CS that also in the event of a restructuring, substantial state liquidity assistance would have had to be granted via emergency legislation (loan from the SNB backed by a federal default guarantee including a decision by the Finance Delegation of the Federal Assembly [FinDel], i.e. a

public liquidity backstop [PLB] and emergency liquidity assistance plus [ELA+]).

The restructuring ruling, restructuring plan and ruling on commissioning a restructuring agent required for the restructuring of CS by order of FINMA option were ready for signature on 19 March 2023.

The successful implementation of a restructuring of a global systemically important bank requires that the foreign supervisory and resolution authorities act in a coordinated manner. For this purpose, the members of the CS CMG were involved in the implementation work at an early stage and had already been informed about the measures in German and English on 18 March 2023. They were ready for coordinated public communication.

It should be noted that FINMA could also have ordered the assets of the bank or parts thereof to be transferred to other legal entities or a temporary bridge bank ("merger in resolution", cf. Art. 30 BA) as part of the restructuring proceedings. However, for various reasons, this option was not the focus in the present case. Firstly, this instrument has been designed in Switzerland primarily for smaller domestic banks or banks that have concluded cooperation and solidarity agreements with each other. Secondly, such a decree would have entailed considerable legal and market uncertainty, especially since in (international and national) practice a restructuring or such a merger in resolution of a G-SIB have never been carried out. The aforementioned advantages of the first option with regard to efficiency and proportionality also exist in particular compared to a merger in resolution.

3. Nationalisation of CS by the Swiss Confederation

In the event of a nationalisation, the Federal Council would have made the Swiss Confederation the sole shareholder in CS on the basis of emergency law. The government would have therewith also assumed the management and all risks of the large bank. For regulatory and legal reasons as well as risk considerations, this option was not a priority in the preparatory work. However, in view of the critical situation around the weekend of 18/19 March 2023, this solution was also examined once again as an alternative and the necessary preparations were made. After careful consideration, however, the Federal Council found the takeover of CS by UBS to be the best overall solution for financial stability and the Swiss economy.

With this option too, the bank's liquidity would have had to be provided or guaranteed by the SNB and the government, and thus extraordinary state support would have been necessary. Likewise, the state takeover would have qualified as further extraordinary state support, which would have led to the contractual write-off of the AT1 instruments.

4. Bankruptcy of CS Group and activation of the Swiss emergency plan to maintain systemically important functions

In the event that a restructuring would not, after all, have been likely to succeed under the specific circumstances, FINMA would have had to conduct an orderly bankruptcy of the Group and activate the Swiss emergency plan to maintain systemically important functions at the Swiss entity. Therefore, a bankruptcy ruling and a ruling to engage a bankruptcy liquidator were also prepared.

The bankruptcy of the CS Group would have had a negative impact on the financial centre and on Swiss private banking. Even under the assumption of a successful triggering of the emergency plan, which aims to maintain the systemically important functions of CS in Switzerland, the damage to the economy, the financial centre, and Switzerland's reputation would have been considerable.

This is why preference was given to the merger of CS with UBS option

Following careful consideration of the pros and cons, the opportunities and risks, all involved parties agreed: In the specific situation, a merger by absorption of CS by UBS was the best available option.

- Generally speaking, a private solution is preferable to measures imposed by the government. As a rule, this is more appropriate, more targeted, and more proportionate.
- It was assumed that the merger by absorption of CS by UBS would instil immediate confidence. Conversely, a restructuring by official decree might perhaps not have achieved a complete restoration of confidence.
- A restructuring of a global systemically important bank at a time of great uncertainty on the financial markets would have been associated with greater risks. If the restructuring had proved unsuccessful, FINMA would have had to declare the Group bankrupt and open liquidation proceedings with the Swiss emergency plan being triggered at the same time. Risks were also identified in the event of a merger, but ultimately these were judged to be smaller than in the event of a restructuring.
- If stabilisation via merger by absorption had failed, CS's gone concern capital would still have been intact, which would have continued to protect the creditors' situation. If a restructuring fails, the only option left is bankruptcy.

A merger is a process that has been tried and tested in practice and is not fraught with the many uncertainties and risks that would have been associated with a first-time restructuring of a global systemically important bank accompanied by a bail-in that is untested on this scale.

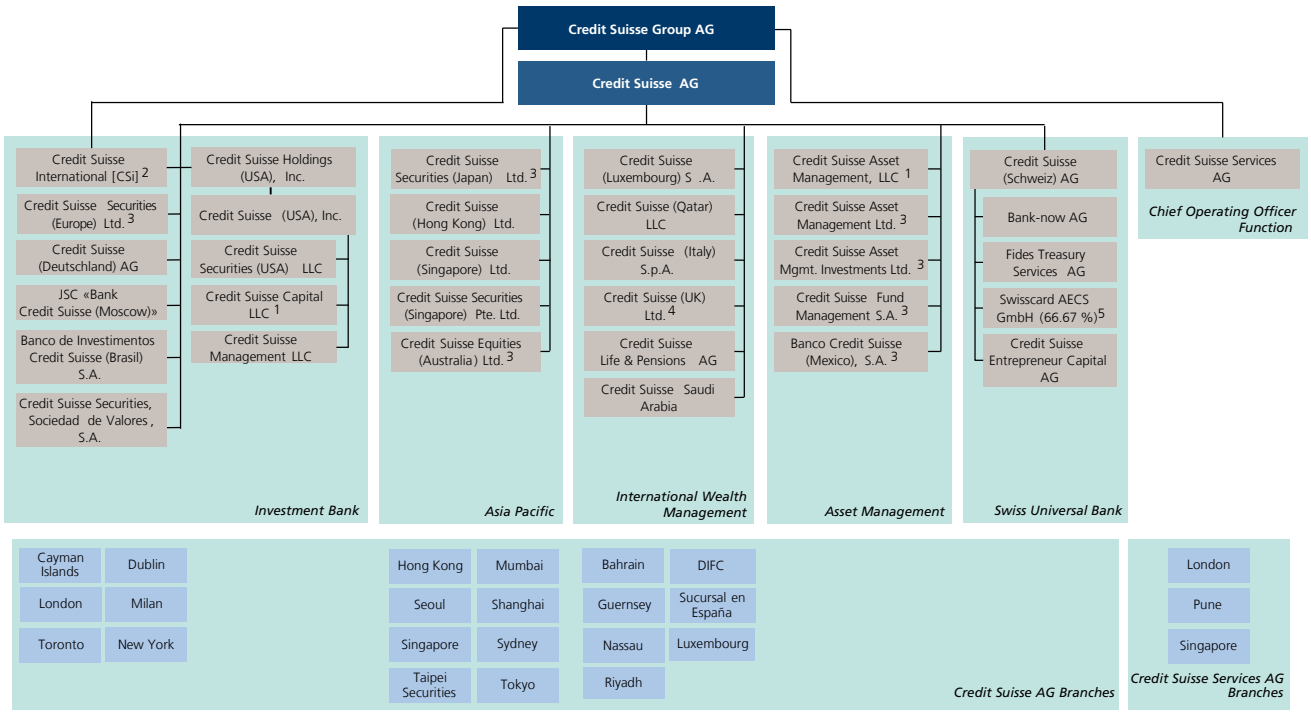
6 Credit Suisse

6.1 Facts and figures; organisational structure

The history of Credit Suisse began in 1856, when Alfred Escher joined forces with other investors to found Schweizerische Kreditanstalt. Originally a Swiss investment bank, over the years CS steadily evolved into a globally active universal bank by means of organic growth as well as a series of significant mergers and acquisitions, such as First Boston and Bank Leu in 1990, Swiss Volksbank in 1993 and the US investment bank Donaldson, Lufkin & Jenrette in 2000.

Up until the acquisition by UBS on 12 June 2023, CS was one of Switzerland's two large international banks. As the highest-level holding company with listings on the SIX Swiss Exchange and the New York Stock Exchange, Credit Suisse Group AG (CSG) held 100% of Credit Suisse AG (CS AG or parent bank), its most important subsidiary. CS AG, for its part, held equity interests in the domestic and foreign subsidiary entities – among them, the Swiss bank Credit Suisse (Schweiz) AG – and itself carried out

Principal Legal Entities Overview – Credit Suisse Group AG



Information as of June 3, 2021. This Principal Legal Entities Overview shows information for selected entities and branches only. Note: This chart reflects voting interests only. All entities are 100% owned unless indicated otherwise DIFC = Dubai International Financial Centre 1 Indirectly held by Credit Suisse (USA), Inc.
2 CSi: Credit Suisse AG [Bank] directly and indirectly owns 97.59% of total voting and Credit Suisse Group AG owns 2.41% of total voting
3 Indirectly held by Credit Suisse AG [Bank] 4 Credit Suisse AG directly owns 75.34% and indirectly owns 24.66% of total voting
5 33.33% of total voting held by third party

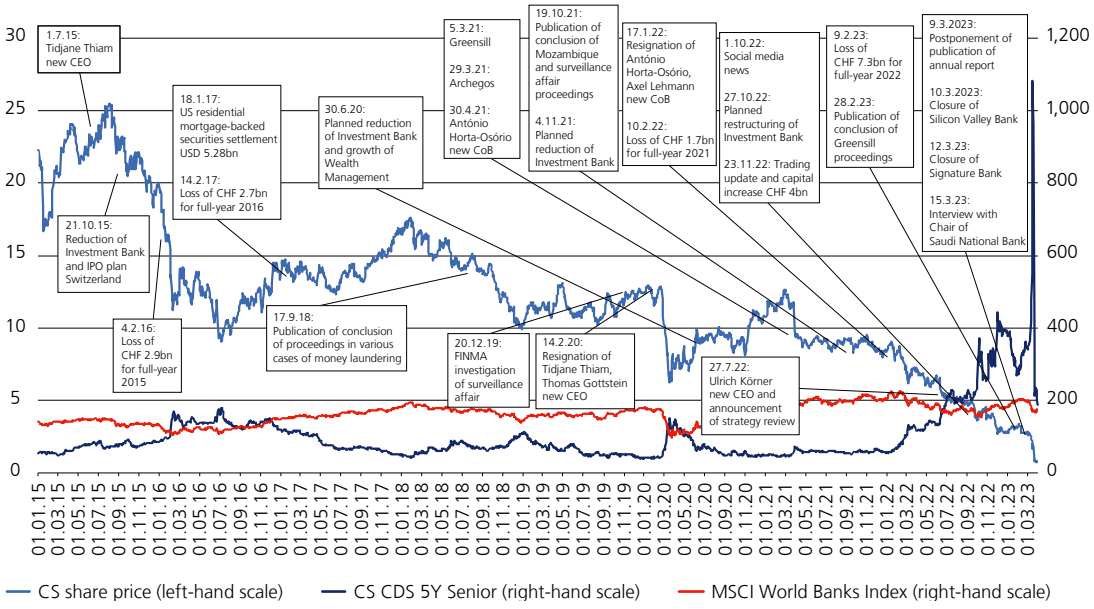
Chart source: credit-suisse.com (has since been deleted from the website).

operational activities. Due to numerous acquisitions and foundations of new companies, CS comprised over 1,100 companies at the end of 2022. From the organisational perspective, it was latterly organised into four divisions (Wealth Management; Investment Bank; Swiss Bank; Asset Management) as well as four geographic regions (Switzerland; Europe, Middle East and Africa; Asia-Pacific; Americas). Internally, two further separate divisions were added: the Corporate Center, comprising central functions and treasury activities, and the Non-Core Unit for the wind-down of discontinued operations. At the end, CS had approximately 50,000 employees and over 10,000 contractors.

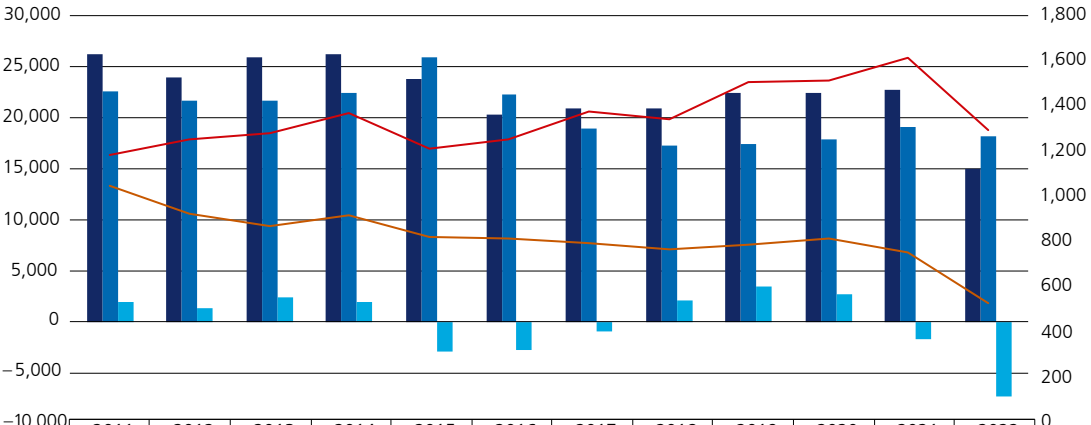
From its all-time high of CHF 96.00 in April 2007, the CS share price slumped in the aftermath of the financial crisis, amounting to just CHF 2.76 at the end of 2022 and approximately CHF 0.80 at the time of the legal acquisition by UBS in June 2023. As a result, market capitalisation had fallen well below CS's book equity. At CHF 11 billion, CS's stock market capitalisation amounted to a mere quarter of the Group's book value at the close of 2022. The costs of insuring against default for CS (the credit default swap spread [CDS spread]) shot up over the course of 2022 and, for a protracted period, were well above those of comparable banks – a clear indication that the market had lost confidence.

The following chart shows how the most important market indicators developed as well as the key events for CS since 2015. The biggest corrections in the share price are attributable in particular to the events with a negative financial impact.

Share price trend, CDS CS Group and MSCI World Banks Index



Business result, total assets and assets under management CS Group 2011–2022



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Net revenues in CHF million (left-hand scale)	26,225	23,966	25,856	26,242	23,797	20,323	20,900	20,920	22,484	22,389	22,696	14,921
Operating expenses in CHF million (left-hand scale)	22,577	21,615	21,593	22,429	25,895	22,337	18,897	17,303	17,440	17,826	19,091	18,163
Net profit in CHF million (left-hand scale)	1,953	1,349	2,326	1,875	–2,944	–2,710	– 983	2,024	3,419	2,669	–1,650	–7,293
Assets under management in CHF billion (right-hand scale)	1,185.2	1,250.8	1,282.4	1,368.7	1,214.1	1,251.1	1,376.1	1,344.9	1,507.2	1,511.9	1,614.0	1,293.6
Total assets in CHF billion (right-hand scale)	1,049.2	924.3	872.8	921.5	820.8	819.9	796.3	768.9	787.3	819.0	755.8	531.4

CS's past business results are characterised by a high degree of volatility. Among the factors responsible for the substantial variations in annual results were a high level of fluctuation in the results of the investment bank, settlements paid to, and penalties imposed by foreign regulators and criminal authorities as well as the cost effects from strategy adjustments.

In response to the pronounced volatility in business results, CS significantly reduced dividend payments over the last six years. The drop in variable compensation was limited over the same period, and in the 2019–2021 period CS decreased its loss absorption capacity with share buyback programmes. All of this meant that the organic accumulation of capital was constrained, with the result that ultimately capital increases were needed to build up capital (see sections 6.2 and 7.5).

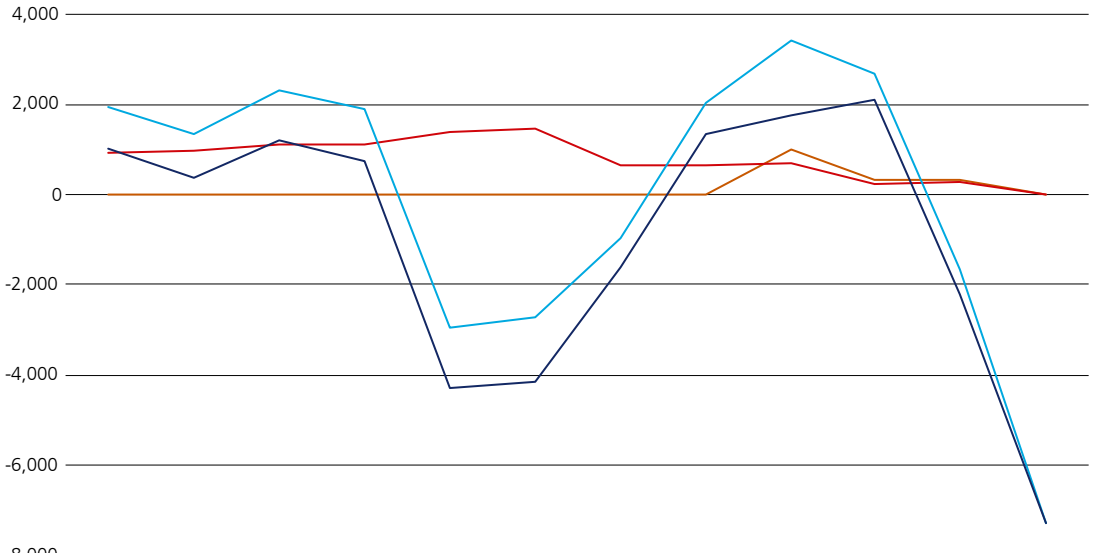
6.2 Development of the bank

This section sets out CS's development between 2008 and 2023. FINMA's supervisory and enforcement measures are mentioned on a selective basis only, primarily in relation to the actual crisis phase from autumn 2022. The detailed measures taken by FINMA and the impact thereof are set out mainly in section 7 (CS problem areas).

6.2.1 CS after the subprime mortgage crisis under Brady Dougan as CEO (2007 to June 2015)

With a loss for the year amounting to CHF 8.2 billion, CS recorded the worst results in its entire history in 2008, following a high level of write-downs and the unwinding of risk positions in the investment bank. Nevertheless, Credit Suisse emerged relatively well from the global financial crisis in comparison with

Dividends and share buybacks vs. net profit of CS Group



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Share buybacks in CHF million	0	0	0	0	0	0	0	0	1,000	325	305	0
CS Group dividend in CHF million	915	970	1,114	1,120	1,366	1,463	638	670	676	241	257	0
Net profit in CHF million	1,953	1,349	2,326	1,875	-2,944	-2,710	-983	2,024	3,419	2,669	-1,650	-7,293
Retained earnings in CHF million	1,038	379	1,212	755	-4,310	-4,173	-1,621	1,354	1,742	2,103	-2,212	-7,293

other systemically important banks and did not require any government support, unlike its main (domestic) rival UBS. In subsequent years, CS found its way back to the profit zone. Initially, its Board of Directors made no major alterations to the basic strategy, choosing to stick with an integrated business model providing clients with a broad range of products by means of a substantial investment bank franchise.

The first changes to the business model came under CEO Brady Dougan and the newly elected Chair of the Board of Directors Urs Rohner (CS Chair until 2021). The aim was mainly to act early to align business with Basel III before the revised regulatory requirements came into effect. Against this backdrop, CS announced a downsizing strategy for the investment bank. The basic idea was to focus capital increasingly on wealth management and shrink the cost base. The broad sweeps of CS's business model nevertheless remained unchanged. Its business results over this period were shaped by constant margin erosion due to the low interest rate environment as well as earnings volatility and the costs of changes to the business model.

The issues in respect of banks being accused of having helped clients to avoid US taxes escalated in

2008, causing various US authorities to begin their investigations. FINMA's investigations and procedures in relation to cross-border transactions at various banks increased in the early 2010s. These also included investigations of CS's transactions with clients in the USA, in Germany and Italy. FINMA concluded its enforcement proceedings against CS in connection with the cross-border US financial services business in 2012.[9] CS was found to have seriously violated the requirements of its licence in terms of ensuring an adequate organisation and proper business conduct, following which the bank ended its relationship with certain US clients, and those responsible for the US country desk were discharged of their duties. CS was also required to implement an adequate compliance, risk management, and risk control system for its cross-border business. Subsequent to this, the bank continued to be exposed to a high level of operational risk, not least with regard to legal disputes. In 2014, FINMA published a summary report on the enforcement proceedings conducted in relation to CS's cross-border business with US clients, and issued information in respect of the implementation of the corrective measures ordered to strengthen risk management in the cross-border segment. In the same year, the US Department of Justice imposed a penalty of USD 2.6 billion on CS.

On 16 November 2012, the Swiss National Bank (SNB) issued a decree designating CS a financial group of systemic importance for the Swiss economy and the Swiss financial system (systemically important bank).

In terms of its strategy, from 2013 the bank pursued a target of reducing the investment bank's risk-weighted assets to a level of 50% of overall risk-weighted assets by 2016, with the aim of investing the capital thus freed up in wealth management activities. It nevertheless maintained in the investment bank a broad spectrum of products and services for its clients at all times. CS set up non-strategic units (NSUs) for the purpose of winding down ceased business.

6.2.2 CS under Tidjane Thiam as CEO (July 2015 to February 2020)

After eight years in the role, in mid-2015 CEO Brady Dougan was succeeded by Tidjane Thiam. Thiam's ambition was to reposition CS's strategy for the future. He placed the main focus on an ambitious growth trajectory in wealth management and business in Asia. By downsizing some parts of the investment bank and realigning others to less capital-intensive activities, the aim was to free up regulatory capital so that it could be invested in turn in growth in wealth management and in Asia. Growth of the investment bank in Asia was also planned.

The bank was restructured in order to implement the new strategy. CS introduced two divisions with a regional focus: Swiss Universal Bank and Asia Pacific. These essentially offered all products and services. International wealth management activities outside of these divisions were grouped together in the International Wealth Management division. In addition, the investment bank was split into the divisions Global Markets (with planned reduction) and Investment Banking & Capital Markets (with planned refocusing of capital market business on less capital-intensive activities). Non-strategic business was grouped together in a separate structure, the Strategic Resolution Unit. In order to fund the implementation of this strategy, CS carried out two capital increases for a total amount of CHF 6 billion[10] and launched a comprehensive cost-cutting programme.

Control and support functions were also reorganised under Tidjane Thiam's leadership. For example, the General Counsel role was separated from the Compliance role, and a new Chief Operating Officer Division was established. A number of management changes also took place in 2015. Alongside Tidjane Thiam, six further Executive Board members were newly appointed in their roles. They included Lara Warner as Chief Compliance & Regulatory Affairs Officer, Thomas Gottstein as CEO of Swiss Universal

[9] FINMA press release dated 20 May 2014 (finma.ch).
[10] CS press release dated 19 November 2015 (credit-suisse.com).

Bank, and Iqbal Khan as CEO International Wealth Management.

CS reported a loss of CHF 2.9 billion for full-year 2015. Results were impacted in the fourth quarter in particular by a high level of goodwill impairment and losses on portfolios in the Strategic Resolution Unit. Added to this were restructuring costs and provisions for litigation issues.

Fiscal 2016 saw a further loss (CHF 2.7 billion). The investment bank in particular had to contend with difficult market conditions and a high cost base. While Asia Pacific and Investment Banking & Capital Markets fell short of projected revenues and suffered credit losses, the Global Markets unit recorded substantial losses. As a consequence, CS launched the Global Markets Accelerated Restructuring initiative aimed at the further restructuring of investment banking. Results were additionally impacted by net provisions for penalties imposed by US authorities and compensation for clients in the US market relating to mortgage-backed securities business in the United States (residential mortgage-backed securities settlement), for a total amount of CHF 2.98 billion. The CS share price fell by over 30% in 2016, and the CDS spread widened. This was partially the result of the way in which the information regarding the losses in Global Markets was communicated to the public. The bank's focus in 2016 was to continue with the cost-cutting programme and improve the control environment in Compliance.

A further development in the same year was the incorporation and licensing of Credit Suisse (Schweiz) AG. This marked a major milestone in the implementation of requirements for systemically important banks in connection with the TBTF rules and precautionary recovery and resolution measures. In 2017, CS decided not to go ahead with a planned partial initial public offering for its Swiss subsidiary Credit Suisse (Schweiz) AG. The capital base was strengthened following the losses experienced in the preceding two years, with a capital increase of approximately CHF 4 billion. Further incidents came to light at this time, highlighting weaknesses in anti-money laundering processes.

In autumn 2018, FINMA concluded investigations in connection with the Petrobras, PDVSA and FIFA affairs as well as in respect of CS's significant relationship to a politically exposed person.[11] FINMA established that CS's risk management and – in particular – its anti-money laundering processes were not suited to adequately identifying, limiting, and monitoring the inherent risks generated with such a high level of risk appetite. The incidents had materialised as early as 2015, and the bank had already addressed the situation in-house, adopting various measures. For example, already in 2015, CS had split the Legal and Compliance function into two separate divisions. The Compliance unit was given more weight through direct representation on the Executive Board and additional personnel resources. The control environment was also strengthened. As an additional measure, FINMA called on CS to implement a comprehensive global programme aimed at reinforcing processes and controls so as to allow minimum standards to be rolled out Group-wide. It also ordered CS to implement the single client view throughout the Group and bolster supervision by the Board of Directors with a view to ensuring compliance and promoting an appropriate compliance culture. To this end, the CS Board of Directors established a dedicated Board of Directors Committee in the shape of the Conduct and Financial Crime Control Committee. In addition, FINMA ordered that an independent company was to monitor the adequate implementation of the measures.

A net profit of CHF 2.1 billion was recorded for full-year 2018. The improvement versus the previous years was attributable in part to the implementation of the cost-cutting programme.

[11] FINMA press release dated 17 September 2018 (finma.ch).

In 2019, CS posted a net profit of CHF 3.9 billion. The increase here versus the previous years was driven by higher net revenues in the Global Markets, International Wealth Management and Swiss Universal Bank divisions. Financial results gradually stabilised over the years under the leadership of Tidjane Thiam, while the capital position at Group level was reinforced.

In spite of this, 2019 was dominated by a major governance scandal. As part of the surveillance incidents involving high-ranking CS executives ("spygate"), the Board of Directors attempted to bring the situation under control with an internal investigation. Shortly after the first media conference, which presented the affair as an isolated incident, further information came to light regarding yet more surveillance activities. This undermined the Board of Directors' credibility, and FINMA subsequently initiated its own investigations into the affair. In autumn 2021 it found that serious organisational shortcomings existed at CS, that CS inadequately handled legal and reputational risks and was in serious breach of its duty to provide information pursuant to Article 29 FINMASA.[12] Within the framework of its enforcement proceedings, FINMA imposed organisational and operational measures on CS in the areas of security and means of communication so as to ensure responsibility at the appropriate hierarchical level as well as clear decision-making processes and monitoring mechanisms.

6.2.3 CS under Thomas Gottstein as CEO (February 2020 to June 2022)

2020

In February 2020, Tidjane Thiam was succeeded as CEO by Thomas Gottstein. Under his leadership, the bank continued to pursue the same strategy of growth in wealth management and a reduced focus on the investment bank. Nevertheless, further organisational changes took place again. The Global Markets and Capital Markets units were once again integrated into the Investment Banking division, and the Risk and Compliance functions were combined. CS announced that the investment bank's risk-weighted assets would in future amount to a maximum of one-third of the Group's overall risk-weighted assets.[13]

Deficiencies in the Credit Suisse Supply Chain Finance Funds were made public in the first half of 2020. The subsequent investigations confirmed the existence, in particular, of problems in terms of how agreements affecting fund investors ("side letters") were handled and internally disclosed. Not least due to pressure from FINMA, CS introduced various measures to close the control gaps identified, and implemented these measures in line with the subsequent review. As part of its investigations, FINMA also concluded that the bank's behaviour towards FINMA in respect of the provision of information had been problematic. CS was formally reprimanded, and FINMA commenced an investigation into a high-ranking employee. While the bank decided to reprimand those involved and introduce individual compensation-related measures, the individuals remained with the bank.

The Covid-19 pandemic dominated 2020. With the economic uncertainty unleashed, a number of Swiss banks suspended distributions to their shareholders at FINMA's request. CS also suspended its share buyback programme in spring 2020 following pressure from FINMA, reducing the dividend so as to safeguard equity. Despite the more onerous market conditions, CS posted a net profit of CHF 2.7 billion. In response to that, it announced a new share buyback programme for 2021, worth CHF 1–1.5 billion, as early as October 2020.

The market for short-term financing dried up at the onset of the pandemic, with a noticeable increase of volatility in the markets. CS was hit harder by this market turbulence than comparable banks, and re-

[12] FINMA press release dated 19 October 2021 (finma.ch).
[13] CS press release dated 30 July 2020 (credit-suisse.com).

corded a significant decrease in the liquidity ratio. FINMA set up a project organisation[14] in order to conduct enhanced supervision during this period and worked closely with the SNB, the Committee on Financial Crises (CFC, see section 5.1), and the partner authorities in the UK and US. The latter, together with FINMA, together formed the Core College of Supervisors for CS (see also section 4.2). The main factors behind the issues affecting liquidity were that a large number of domestic and foreign investors were claiming their existing lines of credit, while CS – for its part – was to a very large extent refinanced on a short-term basis and was unable to renew financing that was coming to an end on the market. On top of this, the pronounced volatility on the financial markets led to high margin calls and collateral calls from counterparties that further weakened CS's liquidity position. FINMA significantly increased the liquidity requirements for CS as a consequence. The bank was also obliged to introduce measures aimed at strengthening liquidity management and risk identification in the area of liquidity and to reduce its dependency on short-term refinancing.

Due to the number of weaknesses in the control environment, the ongoing issues with governance, the increase in incidents requiring investigation, and the accumulation of enforcement cases, in 2020, FINMA raised CS's FINMA rating from the second-highest category – to which CS had always been assigned – to the highest of four categories ("intensive and permanent supervision").[15] This further increased the intensity of supervision and the supervisory instruments applied. Further details on the supervision of the large banks can be found in section 4.2.

2021

March 2021 brought in quick succession two incidents involving the Credit Suisse Supply Chain Finance Funds and the Archegos Capital Management hedge fund (Archegos).[16] In the former case, Credit Suisse closed four funds managed in collaboration with Greensill Capital UK at short notice. At the time of the closure, CS clients had around USD 10 billion invested in the funds; by July 2023 approximately 7 billion of this figure had been returned to investors.[17] In the Archegos affair, several investment banks suffered major losses following the collapse of the hedge fund. CS's investment bank was exposed to significant credit and market risks via derivatives, and recorded the biggest loss of all the investment banks involved (USD 5 billion).

Still in March 2021, FINMA imposed extensive immediate measures on CS aimed at stabilising the situation and reducing risks. Shortly thereafter, FINMA opened enforcement proceedings in both matters. These were concluded in December 2022[18] and July 2023.[19] Among the elements encompassed by the immediate measures were the establishment of a crisis management structure under the auspices of a Board of Directors Committee, suspension of the upcoming payment of variable remuneration components to persons potentially involved in the cases, and a ban on the inception of new products or other business activities in asset management and investment banking that would increase either the risk or the complexity of the underlying business. In Asset Management, which had been part of the Wealth Management division up to this point, FINMA urged the bank to carry out a rapid review of organisational and management structures and subjected it to a Pillar 2 capital add-on for underlying risks. In addition, FINMA called upon CS to immediately submit a revised capital plan to facilitate a review of the appropriateness of the planned distributions that were up for approval at the forthcoming Annual General Meeting of Shareholders (AGM). Lastly, FINMA demanded a far-reaching and fundamental review of the Group's appetite for risk under the leadership of the incoming Chair of the Board of Directors. As a consequence, CS reduced its dividend, halted the share buyback programme,[20] and reduced provisioning for variable compensation and various risk limits.

[14] Overall, latterly FINMA had set up a dedicated project organisation focusing on the supervision of CS in respect of three cases: the Covid-19 pandemic in 2020, Archegos in 2021, emergency measures in connection with strategy changes and liquidity stress in 2022/2023.

[15] The four categories in the rating scale are standard supervision, enhanced supervision, intensive supervision, and intensive and permanent supervision.

[16] Asset manager Archegos Capital Management was not registered as a hedge fund in the USA and described itself as a "family office".

[17] Credit Suisse Supply Chain Finance Funds (credit-suisse.com).

[18] FINMA press release dated 28 February 2023 (finma.ch).

[19] FINMA press release dated 24 July 2023 (finma.ch).

[20] At this point, CS had already repurchased shares for an amount of CHF 305 million. See CS press release (credit-suisse.com).

FINMA again set up a project organisation in March 2021 for the purposes of intensive supervision of CS and in order to assess the risks arising from business with Archegos. The CFC was informed. The reduction of the remaining market and credit risks was closely monitored by FINMA as well as by the US and UK authorities. FINMA imposed further immediate measures in April 2021 when the first indications of the gravity of the shortcomings at the investment bank emerged. The risk-weighted assets and leverage exposure of the Group and the investment bank were restricted until the analysis of the risks entered into by CS was concluded. CS was ordered to reassess all transactions involving hedge funds and hedge fund-like family offices, reduce risks in prime services business and introduce targeted measures to reinforce risk management. The bank complied with these requirements.

At the same time, CS took further measures at the level of its Executive Board. Asset management activities were split off from the Wealth Management division in March 2021. They were continued as an independent division under Ulrich Körner. In April 2021, CS announced the departures of Brian Chin, CEO of the Investment Bank, and Lara Warner, Chief Risk and Compliance Officer. Christian Meissner took over as CEO of the Investment Bank. The Risk and Compliance functions were again split up. Joachim Oechslin took over as Chief Risk Officer and Rafael López Lorenzo as Chief Compliance Officer.

Likewise in April 2021, CS decided in favour of a capital increase by means of mandatory convertible notes for a total of CHF 1.7 billion issued from conditional and authorised capital.

Chair Urs Rohner stepped down as planned at the AGM in April 2021, handing over to newly elected Chair António Horta-Osório (CS Chair until January 2022). FINMA informed the incoming Chair about its assessment of the situation and called upon him to supervise the review of the bank's risk appetite that had already been imposed. Furthermore, FINMA drew Mr Horta-Osório's attention to the numerous weaknesses in governance, the lack of "tone from the top", the front-office divisions' lack of responsibility for the risks they entered into, and the problematic risk culture, and urged him to develop and implement measures aimed at bringing about a lasting improvement together with the Board of Directors. Under the leadership of António Horta-Osório, the bank took various initiatives to strengthen corporate governance, risk management, and the internal control system as well as to improve the risk culture within the framework of a central programme (referred to as structural measures). It also envisaged a review of strategy ("Group Strategy Review").

Likewise, at the AGM in April 2021, the then Chair of the Risk Committee decided not to stand for re-election to the Board of Directors. Since CS was unable to organise any substitute candidate at such short notice, the Chair of the Audit Committee also took over as Chair of the Risk Committee on an interim basis.

The conclusion of the enforcement proceedings in connection with the Mozambique affair in September 2021 saw FINMA record yet more shortcomings, this time in terms of organisational requirements and reporting requirements under anti-money laundering legislation. It also noted weaknesses in risk management in the lending segment and ordered various measures aimed at restoring compliance with the law on top of the measures already decided on by the bank itself.[21] In particular, for the purposes of transparency and the avoidance of similar incidents, CS was required not to enter into any credit transactions with financially weak countries and countries with a high risk of corruption unless the transaction was publicly disclosed in the corresponding country.

António Horta-Osório announced the results of the strategy review in November 2021. The focus was to

[21] FINMA press release dated 19 October 2021 (finma.ch).

remain on wealth management, with a downscaling of the investment bank. The exit from the prime services business and individual lending activities in emerging markets was to reduce the investment bank's capital requirements by CHF 3 billion so as to allow this amount to then be invested in growth in wealth management instead. The aim was for the investment bank to account for no more than one third of the capital requirements of the overall CS in future.

Full-year 2021 ended with a net loss of CHF 1.7 billion due in part to the losses suffered in connection with the Archegos affair and goodwill impairment amounting to CHF 1.6 billion.

2022

Following CS's own investigation, António Horta-Osório stepped down as Chair in January 2022. FINMA was in close contact with the Board of Directors during this time, and received timely information on the outcome of the investigation and the potential scenarios. Mr Horta-Osório was succeeded as Chair by Axel Lehmann, who had only been elected to the Board of Directors in autumn 2021. With regard to the Board of Directors Committees, the Chair of the Audit Committee, Richard Meddings, took over as Chair of the Risk Committee as a result of this castling. FINMA called on the bank to take remedial action swiftly to ensure that an adequate governance structure was in place in the Board of Directors. The election of Mirko Bianchi to the Board of Directors in April 2022 put an end to this dual-mandate role of Richard Meddings, with Mr Bianchi taking over as Chair of the Audit Committee.

David Wildermuth was appointed Chief Risk Officer on a permanent basis at the beginning of 2022; this position had previously been held on an interim basis only. Further, Joanne Hannaford was appointed Chief Technology and Operations Officer and Francesco De Ferrari as CEO of Wealth Management.

CS reported a loss of CHF 428 million for the first quarter of 2022, the third consecutive quarterly loss. The investment bank revenues remained weak, with earnings in the Wealth Management and Swiss Universal Bank divisions likewise coming under pressure. This was due in part to the more challenging macroeconomic environment owing to the war in Ukraine. CS announced yet more changes at Executive Board level during this time. General Counsel Romeo Cerutti was succeeded by Markus Diethelm. Chief Financial Officer David Mathers announced his intention to step down, and he handed over to Dixit Joshi in October 2022.

On a number of occasions, FINMA drew the attention of CS's Board of Directors to the low capital base of CS AG (parent bank) and the risks in connection with its capital plan. In April 2022, FINMA called on the bank to develop a plan and set out various potential courses of action that could be put into place and implemented to strengthen the capital base in an emergency should the situation deteriorate. FINMA reiterated these concerns in May and informed the responsible parties at CS that, in the meantime, the Group too was now falling short of its medium-term capital targets of 14%, with a CET1 ratio of 13.8%.

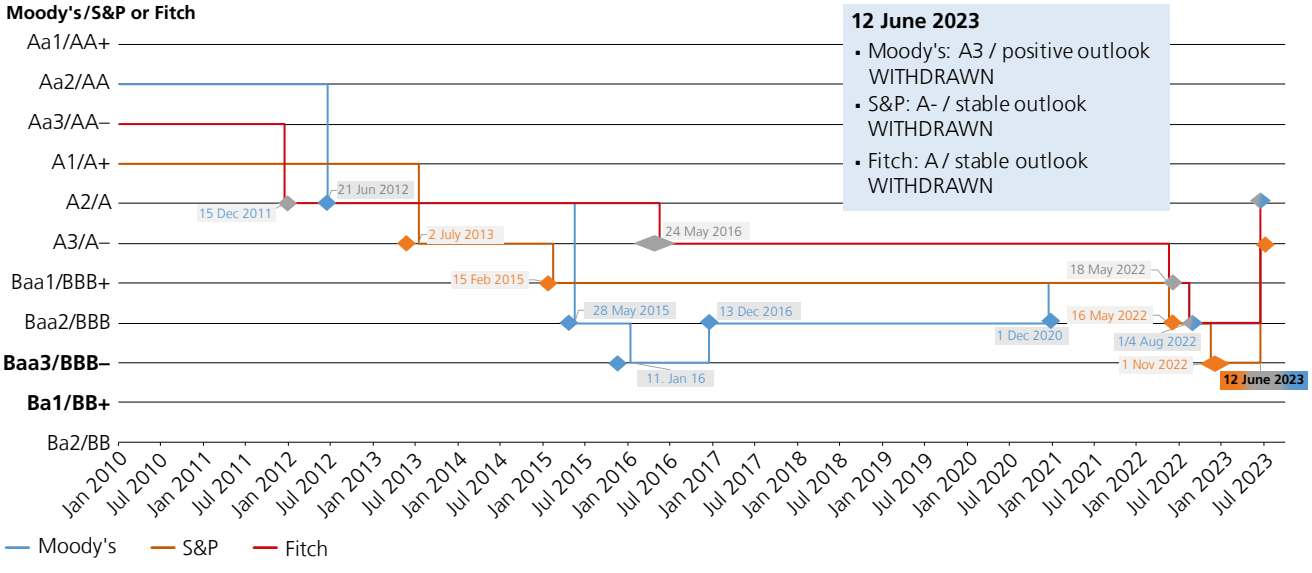
The bank's reaction to this was to submit a number of requests for regulatory relief and envisaged short- and medium-term measures such as the sale of the securitised products business or its asset management. There were no substantial measures to sustainably improve the situation through the bank's own efforts. FINMA expressed its criticism of this and again called for appropriate measures to be put in place.

CS was downgraded by one notch by a number of rating agencies in May 2022. The Standard & Poor's rating at Group level was thus BBB, just two levels above sub-investment grade. The chart below shows how the rating categories of the three big rating agencies developed since 2010.

The reasons cited for the downgrade in May 2022 were the weaknesses in the risk control framework and insufficient profitability against the backdrop of the macroeconomic uncertainties. The rating downgrades meant that it became more expensive for CS to obtain liquidity, among other things. In June 2022, it voluntarily called a USD 1.5 billion AT1 instrument for redemption on the first call date. For the purposes of compliance with capital requirements, FINMA required a substitute issuance, which CS carried out for an amount of USD 1.65 billion. This instrument was issued with a coupon of 9.75%, a much higher coupon than for CS's other AT1 instruments or for issues by comparable institutions, a risk assessment which was also reflected in the CDS spreads. Analysis of market indicators already at that time made increasingly clear that CS was becoming an outlier among its competitors.

As a result of these developments, FINMA once again intensified the discussions around emergency measures it had compelled CS to take in spring 2022. At the end of June 2022, CS informed FINMA of further strategy adjustments at the investment bank, which would also comprise the sale of parts of its business. FINMA once again stepped up supervision of CS from July 2022 in light of the ongoing loss situation, the difficult market conditions and the planned strategy changes. These involved implementation of a dedicated project organisation to ensure close monitoring of CS in the development and implementation of its strategy, as well as to prepare measures in the event that the situation deteriorated further. Section 4.2 provides details of the resources deployed in such project phases.

Credit Suisse Group AG – Senior Unsecured Debt



In mid-July, FINMA informed CS's Board of Directors and Executive Board that the emergency measures CS had set out until that point were insufficient to allow the bank to react in a timely manner to any further deterioration of the situation. It again called upon CS to submit a concrete plan outlining further potential courses of action that was ready to be implemented and effective in order to stabilise the Group. In light of the ongoing loss situation, FINMA further called upon CS to hold an increased level of liquidity, with a view to potential negative reactions to the upcoming presentation of quarterly results.

CS published its second-quarter results on 27 July 2022. Pressure on CS's profitability had increased significantly. The investment bank reported substantial losses on the back of lower business volumes. The core wealth management business likewise reported an operating loss in the second quarter, with the Swiss Universal Bank making only a limited contribution to earnings. The capital buffer was impaired by the negative course of business. Net losses of CHF 1.9 billion had already built up in the first two quarters of 2022, with some CHF 1.6 billion of this figure being incurred in the second quarter alone. The outlook for the third and fourth quarters was similarly negative. As at mid-2022, the capital ratio at Group level amounted to 13.5%, down from 14.4% at the end of 2021.

6.2.4 CS under Ulrich Körner as CEO (July 2022 to March 2023)

Within the framework of Q2 2022 reporting, CEO Thomas Gottstein was replaced as CEO by Ulrich Körner with immediate effect. CS announced another strategy review in July 2022. The purpose of this review was to assess alternatives that would go beyond the conclusions of the 2021 strategy review, given the changed economic and market environment. The focus on the core activities of wealth management, asset management and on the Swiss business remained unchanged. The investment bank was to be transformed into a less capital-intensive business more closely aligned with the core activities. In addition, strategic options were to be considered for part of the investment bank's business – the securitised products business – that could potentially also comprise third-party capital. These were to be accompanied by a cost-reduction programme. CS announced that it would communicate the results of the strategic review on 27 October 2022 at the presentation of the third-quarter results.[22] Following the negative course of business and the uncertainties surrounding the specific thrust of the new strategy, two rating agencies further downgraded CS's rating at both Group and bank level at the beginning of August 2022 (Moody's to Baa2 and A2; Fitch to BBB and BBB+). This further increased the pressure on financing costs and the liquidity situation. It became clear in early August that CS would need additional capital to fund a deeper-reaching transformation. This would be necessary to comply with the Group's capital objectives that had been communicated to investors and clients and in order to cushion the anticipated value adjustment of the CS AG subsidiaries. FINMA informed the bank of this expectation in good time.

[22] CS press release dated 27 July 2022 (credit-suisse.com).

This matter was discussed by the CFC in early August 2022. The situation was also discussed by the SC at the end of the month. Within the framework of these discussions, FINMA informed the other authorities and the Head of the FDF that, due to the critical situation, it would be shortening its preparation time for restructuring and recovery measures by the bank. In addition, it increased the intensity of its supervision of the liquidity situation together with its partner authorities from the Core College, and called upon CS to regularly update the authorities on the status of strategy considerations.

A tweet citing suspected problems at an unnamed international investment bank started to circulate on 1 October 2022, sparking considerable speculation. Given the scope of the problems, its negative reporting and its ongoing loss situation, it became widely

assumed that the investment bank concerned must be CS. This speculation and the spread of the news further fuelled the crisis of confidence CS was already facing, triggering a wave of withdrawals of client assets. The basis of client deposits at CS was approximately CHF 370 billion as at the end of the third quarter of 2022. Clients withdrew CHF 138 billion in deposits in the last quarter of the year, with a large part being withdrawn in October. The increased liquidity buffer that had been put in place in 2020 in the wake of the Covid crisis was able to absorb this high level of withdrawals. The regulatory requirements regarding the liquidity to be held were complied with.

In light of the ongoing loss situation, the uncertainties surrounding the further change in strategy for the investment bank and the first wave of withdrawals of client deposits, FINMA transferred the existing project organisation into a crisis unit from early October 2022. From this point on there was daily interaction between FINMA, the other partner authorities in the Core College, and the bank. In order to coordinate the preparations for a potential restructuring, collaboration was broadened to include the resolution authorities in the USA and UK (convening of the Crisis Management College). At the national level, the CFC formally established the Red Phase, and the situation was subsequently discussed on a weekly basis. FINMA worked closely with the SNB in monitoring CS's liquidity and equity capital situation. Together with the aforementioned domestic and foreign authorities, it issued CS with repeated requests that concrete measures be taken to improve the liquidity situation. In addition, FINMA demanded that CS's Executive Board and Board of Directors formulate emergency measures that went beyond the scope of the existing recovery plan. Alongside partial divestitures, these also comprised the sale of the entire Group. Parallel to this, from autumn 2022 FINMA stepped up its own processes (confirmation of solvency) with regard to the potential granting of emergency liquidity by the SNB (emergency liquidity assistance [ELA]).

In the meetings of October and November 2022, the CFC focused mainly on analysing the situation and defining the potential courses of action should CS fail to stabilise itself. One challenge faced in preparing for a potential restructuring was that the basis for public liquidity backstop legislation was still in the development stage in Switzerland. Over these months, the SC decided that there would be no active external communication on the CS crisis from the authorities involved.

On 27 October 2022, CS revealed the strategy adjustment for the investment bank it had announced in July. The idea behind this was to calm the concerns of clients and the markets. CS envisaged reducing costs and risks at an accelerated pace by 2025. It announced the partial divestment of the securitised product business and set out its plans for focusing capital market business more heavily on advisory activities. The goal was to lower capital requirements and to sell the business at a later date or, at the least, go public with parts thereof. Another non-core unit (NCU) was to be set up to continue the reduction of risk in the investment bank, and further investment bank positions were to be transferred to this NCU. As a consequence of these changes, there was an impairment of deferred tax assets of CHF 3.7 billion, which also partially reduced the core capital. Combined with yet another quarterly loss from operating activities, CS presented a net loss of approximately CHF 4 billion for the third quarter of 2022. In order to finance the planned restructuring measures, on 27 October 2022 CS announced a capital increase of CHF 4 billion, which was then approved at the Extraordinary General Meeting of 23 November 2022. The Saudi National Bank acquired a shareholding of 9.9% and thus became CS's biggest shareholder.

Due to the uncertainty surrounding the success of the implementation of the revised strategy and future profitability, early November saw further rating downgrades (S&P by one notch to BBB- for CS Group

and A-/A-2 for CS AG; Moody's likewise by one notch to A3/Prime-2 for CS AG). These downgrades increased CS's funding costs even further and severely curtailed its ability to renew short-term financing that was coming up for renewal.

FINMA and other authorities feared that these fresh downgradings not only limited CS's access to the market for short-term financing, but would also be interpreted as a further signal for clients, sparking yet another significant increase in client outflows. To be prepared for this scenario and be able to initiate a restructuring if necessary, the bank was requested to produce a "valuation in resolution" and assess the impact of a concrete restructuring plan on its balance sheet and income statement. The results were analysed by the domestic and foreign resolution authorities in the CMG, and discussed in greater depth with the bank over the weekend of 5 November 2022. Approximately 70 people from the CMG authorities were involved. As part of this process, FINMA ensured that preparations for a restructuring in the event of a drastic deterioration in the situation were continued as far as possible. Contrary to fears, however, there was no drastic increase in outflows of client funds after the announcement of the rating downgrade. This period saw an extremely intensive level of interaction between FINMA and CS, during which the bank's potential courses of action in the event of any drastic deterioration were discussed. CS regarded the sale of the entire Group as the best option, and FINMA called on the bank to make concrete headway in moving ahead with preparations for this scenario.

In an ad hoc press release on 23 November 2022, CS reported that, as at 11 November 2022, net outflows at Group level were around 6% of assets under management at the end of the third quarter of 2023. It further stated that these outflows meant that some CS legal entities had to partially utilise their liquidity buffers. It went on to say that while the bank had fallen below certain legal entity-level regulatory requirements, the core requirements of the regulatory liquidity requirements and the net stable funding ratio at the Group level were maintained at all times.

The Chair of the Board of Directors, Axel Lehmann, made public statements in connection with the outflows of client funds in early December 2022. FINMA investigated whether these statements constituted infringements of financial market law. While it reached the conclusion that these grounds were insufficient for proceedings to be instituted, FINMA left the bank in no doubt as to its expectations with regard to any future communication.[23]

The liquidity situation worsened towards the end of 2022 owing to further withdrawals of client funds. The refinancing situation was extremely precarious with instruments coming to an end and limited capacity for new funding. Nevertheless, CS Group met the regulatory requirements in terms of liquidity. Parallel to this, both FINMA and the SNB intensified the pressure on CS to make headway on the work relating to a potential sale of the Group. CS formulated two scenarios. The first scenario explored a sale which would have to be carried out in a very short space of time due to the continued outflows of liquidity. Numerous regulatory and antitrust issues and uncertainties arose in connection with this scenario. Therefore, UBS was regarded as the only realistic domestic buyer if client and market confidence was to be restored immediately. The second scenario allowed more time for the sales process, which would make negotiations with several potential buyers and a potentially better sales price possible. At the end of the year, FINMA made it clear to CS that it had to make concrete progress on the first scenario – the emergency sale –, and already set up a data room. CS only complied with this request following repeated intervention by FINMA.

CS was able to issue long-term bonds for an amount of close to CHF 4 billion in early January 2023. A degree of stabilisation ensued in January and February

[23] FINMA press release dated 10 March 2023 (finma.ch).

2023, allowing the bank to rebuild its liquidity buffers to a certain extent. But a rapid destabilisation due to rating downgrades and further outflows could not be ruled out. This prompted FINMA to update its own preparations in the area of restructuring and emergency liquidity assistance. CS published its full-year 2022 results on 9 February 2023. Following the strategy adjustment which impacted on client activities, deferred tax assets, and goodwill as well as due to the elevated withdrawals of client funds and the ongoing unfavourable market environment, CS posted a net loss of CHF 7.3 billion (after a net loss of CHF 1.7 billion for fiscal 2022). CHF 3.7 billion of this figure consisted of impairments of deferred tax assets related to the strategic review. In respect of assets under management, net outflows of funds amounted to CHF 123 billion, with CHF 111 billion of this figure attributable to the fourth quarter alone. There were no negative client reactions of any real significance.

FINMA published its conclusion of enforcement proceedings in the Greensill case at the end of February 2023.[24] In this context, CS had seriously breached its supervisory obligations with regard to risk management and appropriate organisational structures. One of the measures imposed was that CS periodically review the most important business relationships and record the responsibilities of its highest-ranking managers in statements of responsibility.

March 2023

After a slight easing of the liquidity situation at CS in January and February 2023, uncertainties increased again in the global financial markets in early March 2023.

On 8 March 2023, Silicon Valley Bank (SVB) in the USA announced it was restructuring its balance sheet. This comprised the sale of USD 21 billion worth of securities at a USD 1.8 billion loss. SVB reported its intent to offset these losses by raising USD 2.25 billion in capital.[25]

On 9 March 2023 – one day before the planned publication date –, CS announced that it was delaying publication of its 2022 annual report following intervention by the US Securities and Exchange Commission in connection with the quality of controls for the bank's financial statements for the years 2019 and 2020.

After SVB's failure to raise capital, the California Department of Financial Protection and Innovation stepped in on 10 March 2023 and closed the bank. Further institutions were affected by the increased uncertainty in the market. The next closure came as early as 12 March 2023, when the US Signature Bank was closed by the New York State Department of Financial Services.[26]

CS's annual accounts were ultimately published on 14 March 2023. The statutory auditors were required to qualify their audit opinion regarding the control environment, whereas CS was obliged to mention "material weaknesses in internal control over financial reporting as of December 31, 2021 and, consequently, December 31, 2022"[27] in its annual report. This amplified the uncertainty among clients and investors, exacerbating the loss of confidence.

On 15 March 2023, various media reported that CS's biggest shareholder (Saudi National Bank) was categorically ruling out any further capital injections.[28] On the same day, the CS share price fell by 30%, while the CDS spreads rose above the 1000 basis-point mark (=10%) and the market value of particularly risky debt securities was hit hard by market reactions. For example, certain AT1 instruments were trading at just 23% of their nominal value. This reinforced the crisis of confidence and thus had a direct impact on the bank's liquidity situation by once again sharply accelerating deposit outflows (from CHF 1.6 billion on 13 March and CHF 2.7 billion on 14 March to CHF 13.2 billion on 15 March) and causing counterparties to demand additional collateral.

[24] FINMA press release dated 28 February 2023 (finma.ch).
[25] Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank (federalreserve.gov).
[26] FDIC 's Supervision of Signature Bank (fdic.gov).
[27] p. 50 ff. CS Annual Report 2022.
[28] Credit Suisse's biggest backer says can't put up more cash; share down by a fifth (reuters.com).

On the same Wednesday, 15 March 2023, FINMA and the SNB issued a joint press release.[29] In it, FINMA confirmed, on the basis of the key figures available to it on 15 March 2023, that Credit Suisse satisfied the special capital and liquidity requirements imposed on systemically important banks. At the same time, the SNB announced that it would provide the global systemically important bank with liquidity if necessary. This would be done within the framework provided to the SNB by law for issuing (extraordinary) liquidity support (ELA). CS communicated in the night of 15–16 March 2023 that it would access this liquidity support. On 16 March 2023, the SNB provided CHF 38 billion in liquidity under ELA and CHF 10 billion via the liquidity-shortage financing facility (LSFF) (providing a total of CHF 48 billion).[30] In the process, CS confirmed to the SNB that it was currently not in a position to procure sufficient liquidity either via the money or capital markets or in any other way to cover the liquidity requirements in place, that it was confronted with withdrawals of cash deposits and that its ongoing attempts to secure funding would probably not be sufficient.

Despite the joint statement from FINMA and the SNB and the aforementioned liquidity support provided by the SNB, withdrawals of client funds continued unabated on Thursday, 16 March 2023. On this day alone, the bank recorded further outflows of around CHF 17.1 billion, with an additional CHF 10.1 billion being withdrawn on Friday, 17 March 2023. The crisis of confidence was now increasingly spreading to Credit Suisse (Schweiz) AG too. In light of the high level of outflows on these two days, and affecting the Swiss entity in particular, there was a danger at the weekend of immediate insolvency not only at CS AG but also at Credit Suisse (Schweiz) AG.

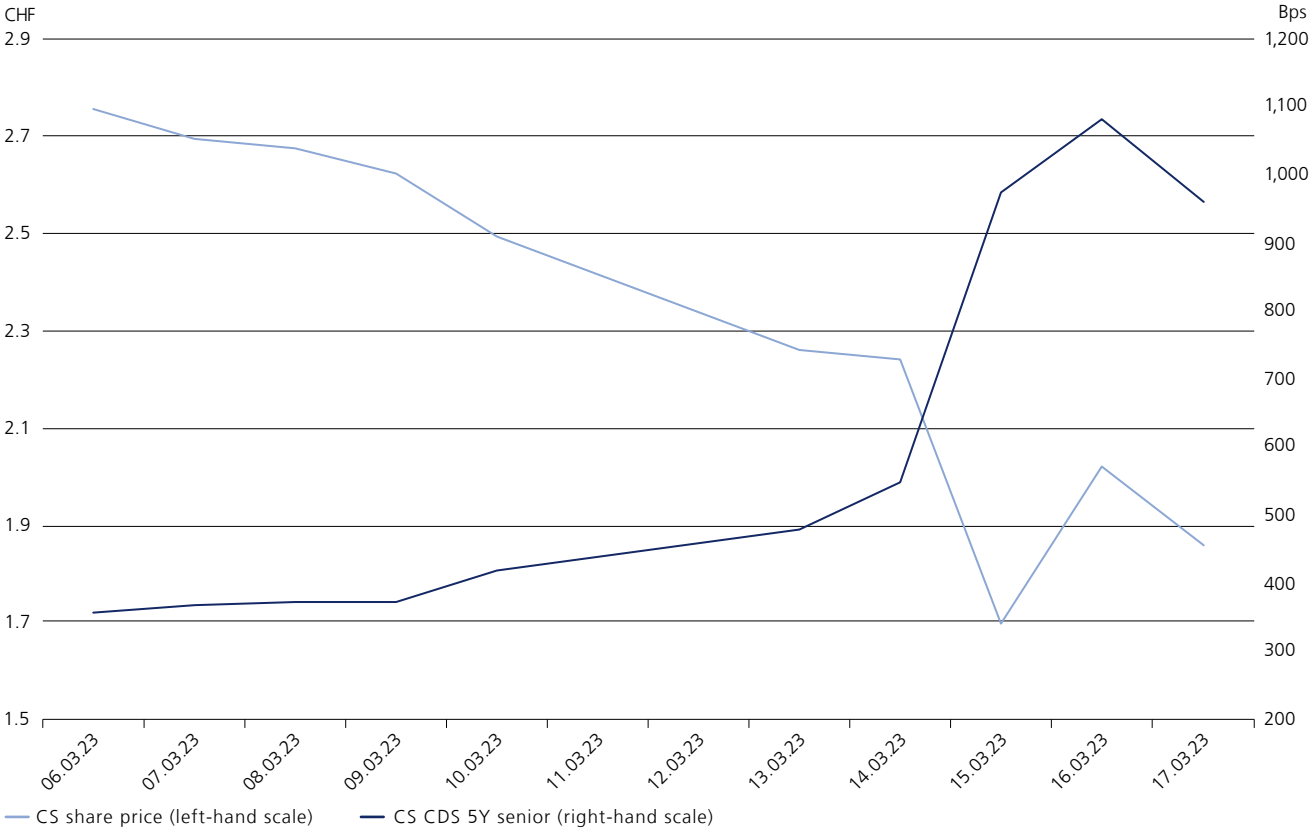
On Thursday, 16 March 2023, based on Article 184 para. 3 and Article 185 para. 3 of the Federal Constitution of the Swiss Confederation[31] the Federal Council issued the Ordinance on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the Swiss National Bank to Systemically Important Banks (Public Liquidity Backstop Emergency Ordinance) (PLB-EO, SR 952.3).[32] This sets outs the possibility of liquidity measures in the form of additional liquidity support loans from the SNB (ELA+) as well as default guarantees from the federal government to the SNB for further liquidity support loans from the SNB (PLB) in exchange for privileged creditor status in the event of bankruptcy. ELA+ and PLB can only be disbursed once the borrower has exhausted all possible sources of financing using its own means, a fact that FINMA must confirm to the Federal Department of Finance. The SNB must also confirm to the Federal Department of Finance on the first disbursement of PLB that the bank has no suitable collateral left to secure ELA and ELA+ has been exhausted.[33]

In the meantime, the further deterioration of the bank's liquidity situation had become unstoppable.[34] As early as Friday, 17 March 2023, CS had to once again apply for liquidity assistance, for an amount of CHF 20 billion (ELA+). In its application for further liquidity support from the SNB, CS confirmed that the bank was unable to procure sufficient liquidity either via the money or capital markets or in any other way to cover the liquidity requirements in place. It argued it required further assistance so as to increase its liquidity holdings with immediate effect to allow it to continue to make payments without creating any further alarm among its various agent banks, settlement and clearing bodies, and – first and foremost – its clients. Following this, the SNB granted further liquidity (ELA+) for a total of CHF 20 billion.[35] Without this further support, CS would have become immediately insolvent by midday on Friday, 17 March 2023.

In addition to the bank's acute liquidity problems, professional counterparties and financial market infrastructures were not only demanding higher collateral from CS, they were also reducing their limits further and restricting overall or ending entirely their

[29] Press releases of FINMA and the SNB dated 15 March 2023 (finma.ch).
[30] SNB's Financial Stability Report 2023 (snb.ch), p. 25.
[31] Swiss Federal Constitution; SR 101.
[32] Entered into force on 16 March 2023 (AS 2023 135); amended version entered into force on 19 March 2023 (AS 2023 136).
[33] Art. 3 para. 4 and Art. 4 para. 4 PLB-EO (in German).
[34] Special dispatch on guarantee credits (admin.ch), p. 6 (in German).
[35] SNB's Financial Stability Report 2023 (snb.ch), p. 25.

CS Group: share price and CDS spreads



business activities with CS.[36] On Friday afternoon, 17 March 2023, Euroclear informed its members that it had deactivated CS as a cash correspondent bank for the Swiss franc with immediate effect. Although the bank was still solvent based on a going concern valuation – i.e. satisfied the regulatory capital requirements – there was an imminent threat of insolvency,[37] which would then have led to a massive reduction in equity, in particular as a result of the accounting based on realisable values that would have become necessary. A further prolonged loss of confidence in the bank resulted in sustained deposit outflows and the bank having to furnish additional collateral in the market or otherwise business partners terminating their business relationships with CS. CS thus found itself in a situation threatening its mere existence, meaning that the competent authorities needed to step in. It was clear that CS could no longer restore the confidence of the markets and its clients on its own and that either bankruptcy or restructuring (resolution measure) had become inevitable.[38]

As it became apparent that CS would no longer be able to emerge from the crisis of confidence on its

[36] Special dispatch on guarantee credits (admin.ch), p. 11 (in German); Reuters article dated 17 March 2023.
[37] FINMA press release of 19 March 2023 (finma.ch).
[38] Special dispatch on guarantee credits (admin.ch) (in German).

own, the authorities involved began an intensive search for other solutions as alternatives to the measures (protective measures, restructuring or bankruptcy) provided by law (see section 5.5). A merger by absorption of CSG by UBS emerged as the most expedient and proportionate solution to safeguard the bank's creditors, the Swiss economy and Switzerland's financial system as well as to overcome the crisis of confidence. A merger with UBS, a bank that had a successful track record and the confidence of the markets, appeared to deliver the greatest likelihood of successfully solving CS's global problem of confidence. This solution was ultimately given preference over the others.[39]

On Sunday morning, 19 March 2023, CS informed FINMA of its estimate of the cash it would require in order to be able to start the week ahead without problems. The CS Treasury department had estimated a figure of around CHF 100 billion (in various currencies). This figure was based on prepayments to correspondent banks and other counterparties, local regulators' expectations in terms of sufficient cash holdings, and potential outflows of client funds for Monday, Tuesday, and Wednesday.

The Federal Council amended the PLB-EO on 19 March 2023 and added measures in connection with the merger by absorption of CSG and UBS.[40] Based on the PLB-EO, the federal government also took steps to put in place measures to shore up CS's solvency in order to safeguard financial stability and the Swiss economy as well as to facilitate the merger with UBS within the framework of an overall package.[41]

On Sunday evening, 19 March 2023, the two large banks reached agreement on a merger by absorption with the aid of extraordinary state support measures in the form of an overall package based, among other things, on the PLB-EO in the amended version of 19 March 2023. At 7.30 p.m. UBS and CS stated at a press conference together with representatives of the federal government, the SNB and FINMA that UBS was to take over CS. The federal government explicitly supported the merger and approved the necessary emergency ordinance.[42] This encompassed the following measures, which were instrumental in allowing the merger solution to be reached and were mutually dependent.

The extraordinary state support measures introduced by means of emergency law comprised additional liquidity assistance loans (ELA+) and liquidity assistance with federal default guarantee (PLB). The SNB thus granted two further lines of credit each of a maximum of CHF 100 billion with privileged creditor status in the event of bankruptcy (ELA+ and PLB) and for an amount of up to CHF 100 billion via a federal default guarantee (PLB). In total, the SNB made liquidity assistance of up to CHF 250 billion available (ELA and EFF: CHF 50 billion; ELA+: CHF 100 billion [of which CHF 50 billion for CS]; PLB: CHF 100 billion). On Sunday, 19 March 2023, CS again applied for further liquidity assistance, with essentially the same reasoning as with the ELA+.

Special focus: treatment of AT1 instruments

Following the last financial crisis and in the context of TBTF legislation, in 2011 the regulatory foundation was laid for capital instruments under private law in the Additional Tier 1 [AT1] segment. The purpose of AT1 was to provide banks with a debt instrument which in a crisis would enable them to create liable equity capital more readily and more rapidly through write-downs. Such capital instruments are characterised by a feature allowing them to be written off, in particular in the event of extraordinary state assistance or to head off insolvency, so that taxpayers do not carry the entire risk. The mechanism of AT1 instruments as going concern instruments results in AT1 creditors having to bear losses before and independently of the opening of formal restructuring proceedings, i.e. even before a bank's shareholders.

[39] Special dispatch on guarantee credits (admin.ch) (in German).
[40] PLB-EO (in German).
[41] Special dispatch on guarantee credits (admin.ch), p. 6, p. 13 ff. (in German).
[42] Press releases of CS, UBS, FINMA, SNB and the Federal Council dated 19 March 2023; Special dispatch on guarantee credits (admin.ch), p. 13 ff. (in German).

Vast extraordinary state support measures were necessary to stabilise CS via a merger of CSG with UBS Group AG in March 2023. Part of the overall package therefore comprised a forced write-off of CHF 16.5 billion (nominal value) in AT1 instruments in accordance with the provisions laid down and as contractually agreed. The AT1 instruments thus performed the function for which they were designed.

The write-off was effected by CSG by means of a contractual statement issued to AT1 bondholders. CSG was ordered to issue such a statement following a decree from FINMA. This decree was based on FINMA's authority to impose protective measures under existing law and the emergency ordinance issued by the Federal Council. Around 2,500 AT1 bondholders have filed a total of 230 appeals against this decree. The corresponding appeals are currently before the Federal Administrative Court.

In order to make the merger between CS and UBS possible, the overall package also set out, in the form of loss insurance for UBS, a federal guarantee of a maximum of CHF 9 billion on a specific portfolio of difficult-to-value CS assets (hereinafter: "loss protection guarantee"). This would only have applied if UBS had actually suffered losses on the sale of these assets and the losses had exceeded CHF 5 billion.[43]

During an extraordinary meeting on 19 March 2023, the FinDel reviewed the urgent guarantee credits for a total of CHF 109 billion for the default guarantee (PLB) and the loss protection guarantee, approving them on the same day.[44] The approval from the FinDel thus substituted approval from the Federal Assembly, and the Federal Council and administrative authorities were able to enter into financial commitments immediately up to the approved amounts.[45]

The Cartel Act states that based on the Banking Act, FINMA may in case of a merger give priority to the interests of creditors for reasons related to creditor protection. FINMA acted in this way and approved the merger of the two large banks early on 19 March 2023. Creditor protection required such a decision by FINMA. The solution that was found allowed business continuity for the bank, and the clients of CS were protected.

Following the public press conference, FINMA presented the solution in detail to the foreign authorities in the CMG and General College and answered questions from the involved foreign supervisory community. Various authorities decided to publish a press release in their countries outlining the solution found and its impact on CS's banking operations in order to have a stabilising effect. This was particularly important in Asia, as markets in these time zones open earlier than in Europe.

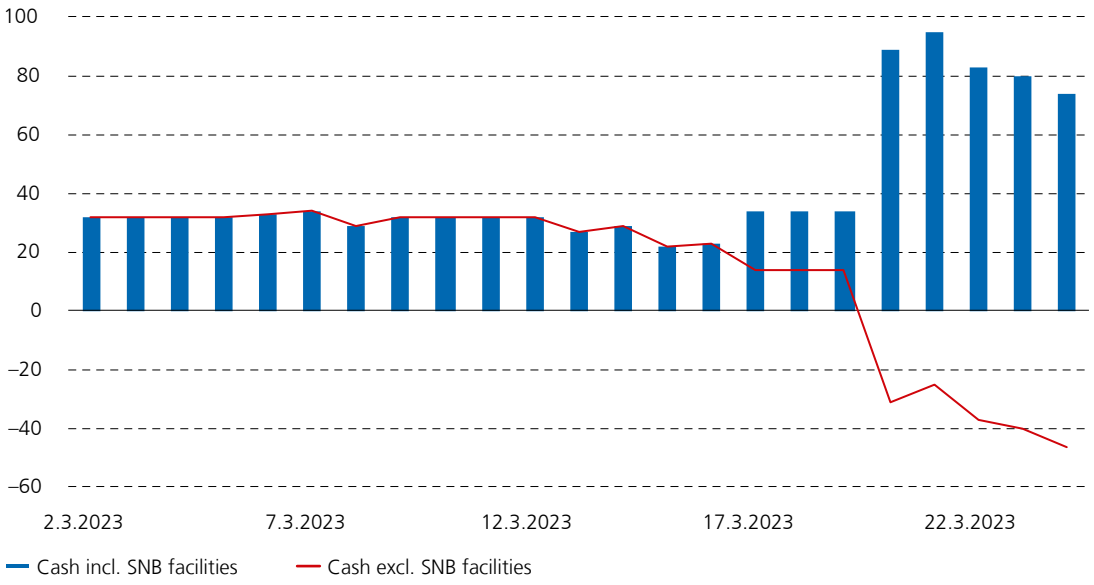
On 20 March 2023, CS received liquidity assistance in the amount of an additional CHF 30 billion (ELA+) as well as a further CHF 70 billion (PLB). By the end of March 2023, the bank had effectively received liquidity support from the SNB worth a total of CHF 168 billion. By 31 May 2023, it had fully repaid the liquidity support in the form of the PLB and by the end of August 2023, the ELA+ had also been fully repaid. This currently leaves only CHF 38 billion of the ELA outstanding.

CS's situation stabilised to a considerable degree following the approval by FINMA on 19 March 2023 of the merger between CS and UBS. This is reflected, in particular, in the sharp decline in CDS costs and the equally significant decline in outflows of client funds. After approval was issued by a number of other authorities, the merger was already legally completed by 12 June 2023.[46] This marked the end of a protracted phase of great uncertainty.

A review of the position of the merged company in the market and the impact of the merger on overall competition is still feasible despite the approval by

[43] Special dispatch on guarantee credits (admin.ch), p. 15 f. (in German).
[44] See with regard to overall details: press release issued by the FinDel at 9 p.m. on 19 March 2023.
[45] Notice of the Secretariat of the Finance Committee on the legal options open to the committees and councillors in respect of the subsequent approval of the FinDel's emergency commitments in the matter of CS/UBS, dated 24 March 2023, p. 1 (in German).
[46] FINMA press release dated 12 June 2023 (finma.ch).

Development of parent bank cash holdings (CS AG) in CHF billion between 2 and 24 March 2023



FINMA and the subsequent completion stages; conditions addressing these issues can be imposed post-approval and post-consummation. FINMA will make an independent assessment based on the position statement of the Swiss Competition Commission as provided for by the respective legislation.

7 CS problem areas, actions taken by FINMA and possible solutions

In this section, FINMA presents what it sees as the main problem areas that led to the destabilisation of CS, and ultimately to its takeover by UBS. For each area it describes the measures taken by FINMA and the impact they had. It also explains where FINMA's measures – in retrospect – were not sufficiently effective, or where FINMA reached its (regulatory) limits. The findings are then used as a basis for lessons learned and possible solutions. A distinction is made between:

- lessons learned for FINMA's future supervisory work,
- potential courses of action that FINMA can take in future,
- possible regulatory changes that would generally improve the banks' resilience to crises and would increase FINMA's opportunities to implement measures.

It must be stated again that it will never be possible to subject financial institutions to supervision that is 100% watertight. Even with greater regulation and extended supervision as described above, there is no guarantee that a financial institution will not fail. However, the solutions described here should help to further reduce the probability and impact of a failure.

7.1 Strategy / viable business model

Key statements

- *The repeated attempts by CS over the years to reduce the size of the investment bank in order to generate more stable returns were incomplete, insufficiently effective, and ultimately unable to impress the markets and clients.*
- *It is the responsibility of the Board of Directors to define, implement and monitor the bank's strategy. FINMA will take measures if the strategy, its planned implementation, or the bank's risk appetite lead to increased risks, and the minimum capital requirement and capital buffer do not provide enough safety for creditors, or the control environment is not sufficient to manage and monitor the risks entered into (see also section 7.4).*
- *Based on its loss potential analysis (LPA), FINMA identified increased risks from the business model at CS and imposed additional capital charges on the bank. It will improve its supervisory practice in future by assessing the specific risks arising from the business models more systematically. This can take place, for example, as part of an extension of the existing LPA and can also result in additional capital charges.*
- *Whereas in Switzerland, additional capital charges can be imposed for increased risks in individual cases, other jurisdictions have more systematic approaches. FINMA intends to use additional capital adequacy requirements even more systematically in future. A review must be conducted as to whether implementation in Switzerland would require a change to the regulation, particularly at ordinance level, or whether a revision of supervisory practice, which is set out in FINMA Circular 2011/2 "Capital buffer and capital planning – banks", would suffice.*
- *FINMA is basing its supervisory approach and its considerations on the work of the Basel Committee on Banking Supervision.*

Background

Under various Chairs of the Board of Directors and CEOs, CS has repeatedly attempted to reduce its earnings volatility by downsizing its investment bank and increasing its focus on the wealth management business. Each time, numerous positions were transferred to a separate department, which ultimately reported the losses from the reduction of these positions (e. g. Strategic Resolution Unit, Asset Resolution Unit or Non-Core Unit). However, CS's earnings remained volatile. This was also apparent in the course of 2022. The rising inflation and resulting increase in interest rates, together with the war in Ukraine, worsened the macroeconomic environment

for CS, with a loss of income in the investment bank and, to a lesser extent, in wealth management, while costs remained high.

In July 2022, CS announced another change of strategy and replaced CEO Thomas Gottstein with Ulrich Körner. The bank came under so much pressure due to its lack of profitability and uncertain prospects that it wanted to announce a solution as soon as possible – another downsizing of the investment bank – in order to win back the market's confidence. Whereas a significant change of strategy usually takes several months, CS felt it had no choice but to present specific details to the market in October 2022.

Even before CS had had a chance to announce its strategy, the rumours on social media had led to huge outflows of client funds. At that time, the bank was suffering from a pronounced loss of confidence and was in a phase of high strategic uncertainty. Although the further details of the strategic reorientation of the investment bank communicated at the end of October 2022 were generally welcomed by investors, analysts, and other stakeholders, they pointed out the very high implementation risks and the low profitability. Ultimately, the bank's strategy was no longer able to convince investors and clients. CS had made too few far-reaching changes over the years, and the measures and strategy adjustments presented by CS in October 2022 came too late ("too little, too late").

FINMA's actions and impact

The approval and periodic revision of the business strategy and risk policy are among the non-transferable tasks of the Board of Directors as a bank's senior management body. Likewise, it is the task of the bank's Board of Directors to examine a business model to see if it is well received by investors or clients. This is not FINMA's responsibility. The bank itself must be in a position to manage the risks arising from its business model by means of a suitable risk management system, and to ensure adequate capitalisation and compliance with the relevant code of conduct. The Swiss and international financial market legislation does not envisage any direct influence by FINMA on the strategy, or even approval of the strategy. This type of legal power of intervention would in fact create moral hazards. FINMA's primary task is to protect the clients of financial market participants and the stability of the financial market, as well as to enforce compliance with the supervisory provisions.

In the context of its supervisory work, FINMA has always focused on evaluating how the chosen strategy is implemented, and what risks and capital requirements arise from the strategy and the bank's risk appetite. The main tool used to do this is the loss potential analysis (LPA). Financial and capital planning are among the other tools used by FINMA to analyse the effects of the strategy on the bank's capital adequacy.

The LPA includes a projection of baseline and stress assumptions over several years, which shows the effects of the strategy on the earnings situation and prudential indicators. The design and calibration of the underlying FINMA scenarios are even stricter than those of the UK and US supervisory authorities. The LPA is complemented by discussions with the bank on capital planning and management as well as risk management. Based on this, FINMA identified increased risks at CS from its strategic orientation and high risk appetite. From the end of 2020, it imposed a target of 18.2% on CS for the Tier 1 capital ratio with regard to risk-weighted assets (previously 14.3%).[47] This was to ensure that CS remained sufficiently capitalised even in a difficult economic environment. The additional capital requirements resulted in an increase in CS's loss-absorbing capacity.

Lessons learned and possible solutions

FINMA identified increased risks from the bank's strategy and risk appetite based on the LPA and re-

[47] The measure was defined as a capital target rather than a strict limit. It was noted that FINMA expected a capital plan in order to achieve the figure of 18.2% and would not tolerate any active measures by the bank in contravention of this target. From the first implementation, it was deemed acceptable to fall below the target due to factors outside of the bank's control. The target was increased to 20% owing to the poorer results in the LPA in 2021.

sponded proactively. It must also be noted in hindsight that the LPA had paid too little regard to the CS management's misjudgements in relation to the influence of strategy adjustments on earnings volatility. The LPA analyses the effects of negative macroeconomic scenarios on the financial situation of the banks, but does not highlight the business risks of the individual divisions in detail, and is still limited to too few scenarios.

FINMA can implement the following options in future:

- FINMA will incorporate the work and analyses of the Basel Committee on Banking Supervision and the Financial Stability Institute[48] on the use of systematic business model analyses into its supervisory practice and will further strengthen this. These business model analyses can support FINMA in its work and in taking early measures (e. g. in the area of capital). However, this cannot prevent the strategy from failing either. Furthermore, they are not intended to enable FINMA to directly influence the strategy of a bank based on the results. Responsibility for defining the strategy is and remains one of the central tasks of the bank's Board of Directors.
- Under Article 4 para. 3 of the Banking Act (BA) and Article 45 of the Capital Adequacy Ordinance – Banks (CAO) or Article 131b CAO (in the case of systemically important banks), FINMA is able to define individual additional capital charges to cover increased risks (Pillar 2 charges). According to Article 45 CAO, this is provided for "in special circumstances", particularly for risks in relation to: a) their business activities; b) their risk exposures; c) their business strategy; d) the quality of risk management; or e) the state of the art of the techniques used. This option was also used in the present case. However, compared to other jurisdictions, FINMA has less detailed implementing provisions relating to evaluation of these aspects by the supervisory authority and the effect on individual additional capital charges. In addition, these Pillar 2 measures in foreign jurisdictions usually have to be disclosed, which increases the pressure on the bank. While CS did disclose the Pillar 2 additional capital charge from Greensill, it did not do so for the 20% target from the LPA. FINMA's supervisory practice is only specified in a rudimentary form in its Circular 2011/2 "Capital buffers and capital planning – banks". FINMA intends to use additional capital adequacy charges even more systematically in future and also to order disclosure of such additional capital charges in more cases.
- In this regard, FINMA has commissioned a comparison of international supervisory approaches for determining stricter capital adequacy requirements. It is thus aiming to further develop its supervisory practice. In parallel, it wishes to ascertain whether any regulatory changes are also necessary at ordinance level in order to establish the more systematic use of this measure. The question also arises as to whether the banks' creditors could be better protected from increased risks by a legally prescribed lifting of the suspensive effect when such measures are ordered, with the result that the measures would take effect immediately, i.e. even during any appeal proceedings. In this regard, a comparison with the laws of other jurisdictions will also be made.

7.2 Corporate governance

Key statements

- *The Board of Directors of the bank is responsible for choosing the Executive Board and submitting proposals for the election of members of the Board of Directors by the Annual General Meeting. FINMA is responsible for verifying that the requirements for irreproachable business conduct are met. The banking licence and the associated fitness and propriety assessment constitute a "police authorisation", i.e. if the licensing re-*

[48] Supervisory practices for assessing the sustainability of banks' business models (bis.org).

quirements are met and there are no indications to the contrary, the bank is entitled to be granted a licence by FINMA. Any shortcomings in the exercise of their functions by the members of the Board of Directors and Executive Board, particularly with regard to an appropriate risk and corporate culture, can only be identified after taking office. Despite the major hurdles to later interventions, FINMA raised these shortcomings with CS's Board of Directors, ordered measures, and started enforcement proceedings against the bank's top managers.

- *CS's corporate governance was deficient in several respects: Responsibilities were not clearly defined and were often not enforced. The flawed management culture and the weak "tone from the top" over a longer period of time led to a poor risk culture. This was also characterised by deficiencies in the area of conflicts of interests and a lack of transparency towards FINMA. Over the years, the governing bodies of CS were unable to remedy the repeatedly identified shortcomings in the bank's organisation in a sustainable way.*
- *FINMA raised the absence of an adequate risk and corporate culture and the business divisions' lack of responsibility for their actions with CS's Board of Directors, and ordered measures to improve the situation.*
- *Despite these interventions, it was not possible to make a sufficient impact. A Senior Managers Regime or statement of responsibilities, powers to impose fines, and the ability to regularly publish enforcement proceedings would all be ways of increasing the impact of supervision in the area of corporate governance in the future.*

Background

a) Numerous unplanned changes in the Board of Directors and Executive Board

The Board of Directors and Executive Board of CS had to contend with a large number of staff changes over a long period of time, but especially from 2021 onwards.

This also affected the roles of Chair of the Board of Directors and CEO, each of which underwent two changes in the period from 2020 to 2022. The top managers were therefore only in office for a short period during this time. There were also numerous changes among the other members of the Board of Directors and the Executive Board, particularly in the aftermath of the surveillance affair and the Greensill and Archegos cases. This led to a loss of know-how at times on both boards, as well as to temporary multiple roles at the level of the Board of Directors' committees, with the Chair of the Audit Committee also assuming interim leadership of the Risk Committee.

b) Shortcomings in the management and risk culture

Over the years, the governing bodies of CS were unable to find long-term solutions to the shortcomings in the bank's organisation repeatedly addressed by FINMA. From 2011 onwards, FINMA therefore conducted numerous enforcement proceedings against CS, some of which also involved higher management levels. From 2018 alone, FINMA completed nine proceedings. The enforcement proceedings involved multiple serious cases in the areas of combating money laundering and US cross-border business. In addition to this there were high-profile proceedings regarding the surveillance affair and the Mozambique, Greensill and Archegos cases. A lack of transparency vis-à-vis the supervisory authority was repeatedly identified and reprimanded.

The identified deficiencies included a lack of awareness of problems and risks, a weak "tone from the top" and an inappropriate corporate culture in parts of the organisation. Both the limits (risk appetite) and the responsibilities for risks taken were often not clear enough, namely in the allocation between the

front-office units and the control functions. With regard to the escalation of high-risk business cases, the design did include interfaces. However, the organisation with numerous committees at operational level prevented the clear allocation of responsibilities and thus rigorous decision-making. Escalated cases were sometimes hampered by the complex corporate structure of CS.

The senior management bodies were unable to reinforce the risk culture throughout the bank in a significant and sustainable manner. Neither did the staffing changes lead to a long-term improvement in the corporate and management culture. For example, although the successor to the long-serving Chair of the Board of Directors, Urs Rohner, did communicate clear expectations with regard to the bank's internal risk culture, the circumstances that led to an internal bank investigation and ultimately to his resignation led to further uncertainty in the public perception of CS.

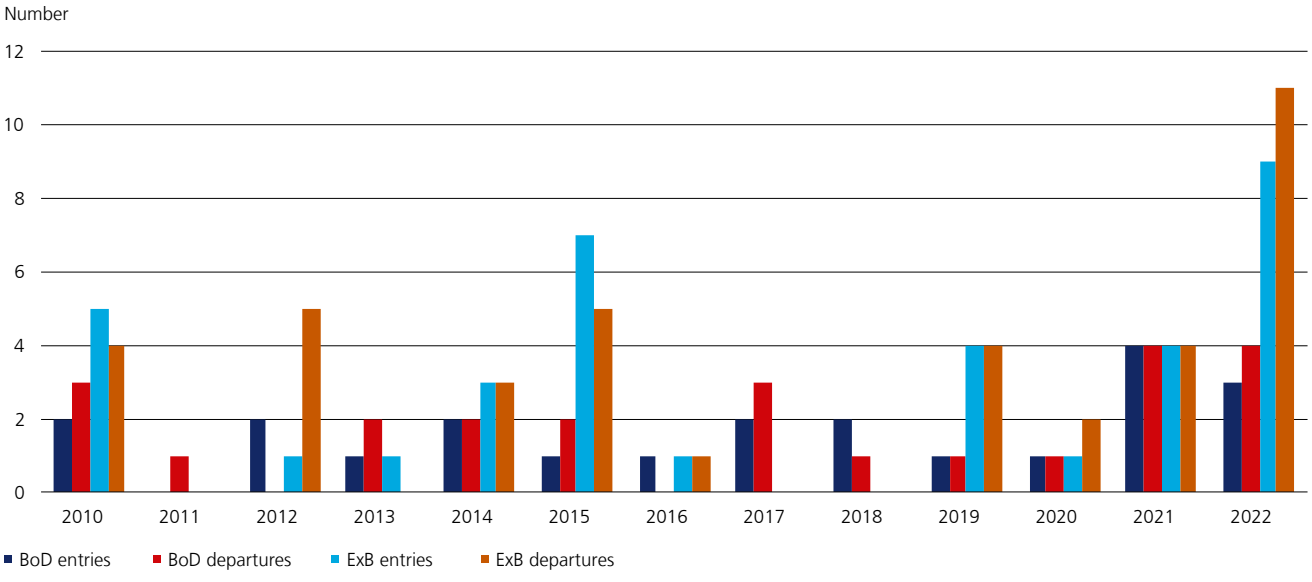
FINMA's actions and impact

a) Measures taken by FINMA in connection with the bank's top management bodies

The selection of the Executive Board and submission of proposals for the election of members of the Board of Directors by the Annual General Meeting are among the non-transferable duties of the Board of Directors.[49] It is not the supervisory authority's role to get actively involved in this selection process. Instead, FINMA's involvement begins in the second step, during the authorisation process for changes to governing bodies.[50] As part of the authorisation process, FINMA examines the professional suitability (fitness) and integrity (properness) of the proposed candidates. Whereas it carries out independent and

[49] See Article 716a para. 1 section 4 CO and margin nos. 13 and 27 of FINMA Circ. 2017/1 Corporate governance – banks.
[50] See Article 3 para. 2 BA and Article 8a para. 2 BO.

Board of Directors (BoD) and Executive Board (ExB)



detailed investigations in the case of properness, the relevant selection processes and information from the respective bank form the basis of its assessment in the case of fitness.[51] As part of its ongoing supervisory work, FINMA monitors compliance with the requirements of appropriate corporate governance and of the governing bodies' guarantee of irreproachable business conduct.

The question of the involvement and responsibility of individuals in incidents has always been part of FINMA's decision-making process. In proceedings against an individual, it must be proven within the limits of individual accountability that they are culpable of causing a serious breach of supervisory law through their individual conduct. In the case of an omission, the supervisory provision from which the duty to act arises, and the extent to which the person failed to perform this specific action must be demonstrated in detail.

FINMA initiated eight enforcement proceedings against CS managers in total. Members of the CS Executive Board were involved in five cases. Five proceedings are still pending. Enforcement proceedings were discontinued in three cases as the persons concerned withdrew from positions of responsibility and management positions in the regulated financial market for life by means of a declaration of resignation.[52] In other cases, CS managers had already left their positions of responsibility during or in the wake of enforcement activities by FINMA against the institution.

In addition to the enforcement proceedings against CS managers, FINMA addressed the fundamental deficiencies in management. For example, after the incidents involving Greensill and Archegos it issued an extraordinary assessment letter to the bank's Chair expressing its doubt that the management in its current composition would be able to manage the bank in difficult situations and achieve an appropriate balance between risk and return in the long term. This was followed by successive changes to the Executive Board. By the fourth quarter of 2022, 11 of the 13 Executive Board members had been newly appointed.

b) FINMA measures regarding the lack of risk awareness and management culture

The conduct and values of the managers dictate the "tone from the top", which runs as a common thread throughout the corporate hierarchy. As the most senior management body, the Board of Directors defines the bank's business strategy and issues guiding principles for the corporate culture.[53] FINMA raised the lack of an adequate risk and corporate culture, the excessive risk appetite in relation to the control environment, the bank's internal moral hazards, and the business divisions' lack of responsibility for their actions with CS's Board of Directors. It also addressed these issues during joining interviews with new holders of positions of responsibility, and ordered measures to improve the situation. FINMA expressed its concerns regarding the management at the time and the prevailing risk culture to the incoming Chair of the Board of Directors, António Horta-Osório, in the course of the annual assessment process in 2021. He took this into account and expressed a clear expectation by stating that every employee is primarily a risk manager. In addition, he specifically encouraged measures to establish a "speak-up culture" for identifying weaknesses or cases with higher risks. Since he himself resigned after an internal investigation, these measures did not achieve their full desired effect.

FINMA's enforcement rulings also had a direct impact on the management bodies in some cases, with measures such as: a) the permanent transfer of a specific topic (proper compliance, promotion of an appropriate compliance culture and compliance organisation) to an independent committee of the

[51] See no. I of FINMA's Guidance on changes to governing bodies (in German).
[52] If an individual who has already left a management position undertakes, credibly, permanently, unconditionally, and irrevocably to refrain from taking up a management position or a position of responsibility at a supervised institution in future, FINMA can waive any enforcement proceedings (possibly resulting in an industry ban) and write off any proceedings already initiated as having become irrelevant.
[53] See margin no. 10 of FINMA Circular 2017/1 "Corporate governance – banks".

Board of Directors; b) the establishment of internal reporting to enable the Executive Board to inform the Board of Directors or one of its committees about important governance issues; c) requirements regarding the composition of the Board of Directors of a group company so that people with the relevant experience and knowledge are represented; and d) the introduction of a statement of responsibilities that records the areas of responsibility of the (approximately 600) most senior managers of the bank. FINMA ensures the implementation of its rulings and also enforces them.

With regard to the handling of conflicts of interests, FINMA called for the systematic identification, recording and assessment of potential conflicts of interests. CS subsequently established an internal register for conflicts of interests. CS was also asked to examine the multiple mandates at the uppermost management levels. CS followed this request and terminated a number of dual mandates.

c) Measures taken by FINMA regarding the inadequate information behaviour

FINMA repeatedly intervened at CS due to the lack of transparency and inadequate information behaviour towards FINMA,[54] with the intensity of the interventions increasing progressively. Between 2014 and 2019 alone, FINMA reprimanded CS multiple times for inadequate information and reporting. It opened enforcement proceedings against the institution where there were violations of the duty to inform under supervisory law. FINMA responded towards individuals in connection with the provision of information with formal reprimands or even by initiating individual enforcement proceedings. It also brought multiple charges for the possible violation of Article 45 FINMASA (provision of false information). These led to enforcement cases, not only in the context of the provision of information, but also in connection with properness reviews of people.

[54] In accordance with Article 29 para. 1 FINMASA, the supervised persons and entities must provide FINMA with all information and documents that it requires to carry out its tasks. The supervised persons and entities must also immediately report to FINMA any incident that is of substantial importance to the supervision (Art. 29 para. 2 FINMASA).

Lessons learned and possible solutions

It became apparent that, despite the various interventions by FINMA at CS, the responsibilities were frequently inadequately defined and delimited. FINMA's rulings initially related to the areas at fault. In the wake of the accumulation of serious breaches, FINMA began to deploy more extensive and intrusive measures such as ordering a bank-wide statement of responsibilities (see Greensill case).

The following possible solutions require a review and possibly an amendment of the existing regulatory principles.

- To strengthen the corporate governance of banks and ensure the clear allocation of responsibilities, FINMA is in favour of introducing a Senior Managers Regime in Switzerland, and already announced this publicly in April 2023. It is necessary to ensure that the business-generating departments are responsible for the risks entered into, that the biggest risks and clients are known to the bank's top management, and that the members of the Executive Board in charge of the front-office divisions are responsible for the control environment in their areas. The clear allocation of responsibilities must also be reflected in performance appraisals and when setting variable remuneration. In addition, it should be possible to attribute any violations to the individuals responsible, and to update this in the event of a successive staffing change. This is intended as a deterrent, and to make it possible for the supervisory authority to address questions of individual responsibility quickly and directly. It also aims to improve the starting point in order to identify misconduct and impose sanctions in a more targeted manner.
- In addition to the interventions at the organisational and operational levels, FINMA lacked a repressive tool with which to sanction CS based on fault for the increasing violations and thus send a signal to the bank's management as well as its

employees and shareholders. As early as April 2023, FINMA announced that it was thus in favour of the introduction by the legislator of the power to impose fines, and the expansion of its competences to inform the public about issues within a financial institution.

– At present, the key requirements for the appropriateness of corporate governance, risk management, and internal controls at banks are set out in a FINMA circular. The principles of the Banking Act and Banking Ordinance in this area are very principle-based. Given the outstanding importance of this issue in supervision, and for the purpose of increasing enforceability, it should be examined whether certain requirements could be raised to federal law or ordinance level or specified in more detail.
– FINMA was also bound by legal restrictions regarding the provision of information to the public. The possibility of providing more transparent information regarding its enforcement proceedings should be examined. In line with the current regulations in EU countries, a rule could be introduced enabling FINMA to provide information on completed enforcement proceedings in general, not only in exceptional cases. The legislator could also grant FINMA greater discretion to provide public information about any investigations and proceedings opened. The expansion of its powers to provide information would increase the transparency, predictability, and visibility of FINMA's activities as well as help to improve the reputation of Switzerland's financial centre both nationally and internationally, and increase the deterrent effect.

7.3 Remuneration

Key statements

– *The development of variable remuneration at CS primarily followed the developments in the market, with business performance only playing a secondary role – in contrast to the pay-for-performance culture constantly propagated by it.*
– *Although the CS remuneration scheme included the consideration of risk behaviour on paper, in practice the assumption of high risks and/or misconduct (risk-adjusted performance) had very little effect on remuneration.*
– *The high variable remuneration in loss-making years, the sometimes inadequate influence of misconduct and risk behaviour on individual remuneration, and the exclusion of what the bank deemed to be extraordinary events when setting the variable remuneration encouraged an inappropriate risk culture over the past decade.*
– *Due to its regulatory basis, FINMA's influence on the remuneration scheme and the level of variable remuneration is limited. Principle 10 of the corresponding FINMA Circular therefore also permits deviations from the principles if these are justified and disclosed (comply or explain approach). In earlier years, the pressure from FINMA did have an effect, however, as CS reduced the total variable remuneration. No sufficiently restrictive countermeasures were taken by the shareholders in terms of their voting behaviour at the Annual General Meeting or through the Compensation Committee or the bank's Board of Directors to significantly influence CS's remuneration practices.*
– *There is a need to review solutions and existing regulatory principles in order to better anchor requirements for remuneration systems in law and to establish effective powers for FINMA.*

Background

CS paid out very high variable compensation, even in years when it made huge losses. It generated a cumulative net loss of CHF 2.1 billion over the last ten financial years, while the total variable remuneration came to over CHF 33 billion in the same period according to the Compensation Reports. Therefore, even in the loss-making years 2015–2017, variable remuneration of over CHF 3 billion was awarded each year. Even in 2021, with the substantial losses as a

result of the Archegos case, the variable remuneration still came to over CHF 2 billion.[55] When setting the total variable remuneration, CS was mainly looking to its competitors for guidance. The shareholders accepted this approach at each Annual General Meeting and approved the Compensation Report as well as the respective remuneration of the Board of Directors and the Executive Board.

FINMA noted that the Board of Directors and the management of CS attached very little importance to the assumption of higher risks and/or existing misconduct. This type of conduct only had a minor effect on remuneration, deferred bonus components (malus) or remuneration already paid out (clawbacks). As a consequence, CS did too little to counteract the inappropriate risk culture.

FINMA's actions and impact

Overall, the development of variable remuneration at CS primarily followed the developments in the market, with the bank's business performance only playing a secondary role – in contrast to the pay-for-performance culture constantly propagated by it. The fact that CS paid out high variable remuneration even in years in which it made large losses is contrary to Principle 5 of the FINMA Circular on remuneration schemes. This states that the size of the total pool is dependent on long-term success, and that if the business performs poorly the total pool is to be significantly reduced or omitted completely. However, Principle 10 of the Circular allows for a deviation to be justified and disclosed (comply or explain). In the area of banks, FINMA Circular 2010/1 "Remuneration systems" is only based on the general provisions of the Banking Act regarding appropriate organisation and risk management. FINMA pointed out in various discussions and communications that the total amount of variable remuneration should be reduced more sharply in bad years. From a regulatory perspective, however, there is no sufficiently robust legal basis for the enforcement of far-reaching measures being confirmed by the courts, particularly in the case of justified and disclosed deviations.

In its communication of February 2017, FINMA was already working with the Board of Directors of CS towards reducing the variable remuneration in view of the negative business result. In its Compensation Report, CS explained its decisions by stating that the result had been impaired by the restructuring costs and fines from older cases, and that the bank had made significant progress in implementing the strategy and had appointed a number of new people.[56] In the absence of a legal basis, FINMA had to accept this but insisted that the variable remuneration could not rise in line with business success in the subsequent years, but ought to be smoothed out.

As of the 2021 financial year, FINMA again intensified its pressure on CS with regard to compensation due to the Archegos and Greensill cases and the resulting negative business results (net profit CHF –1.7 billion). CS reduced the total variable remuneration from the originally planned CHF 2.5 billion to CHF 2.0 billion. FINMA also called on CS to monitor the reduction in individual remuneration and the use of malus and clawback mechanisms at the level of the Board of Directors. CS consequently introduced the incident and consequences process to ensure at Board level that both the people directly involved and the responsible managers were held accountable.

The 2022 financial year saw another loss (net profit CHF –7.3 billion). As this was foreseeable based on the forecasts, FINMA initiated a dialogue regarding the maximum possible variable remuneration in the summer of 2022. Under pressure from FINMA, CS reduced the variable remuneration from the originally planned CHF 1.75 billion to CHF 1.0 billion, which the bank considered to be the absolute minimum in order to protect the business franchise. This was accompanied by the Strategic Delivery Plan, under

[55] In addition to the actual variable remuneration of CHF 2.0 billion, there were further compensation instruments amounting to around CHF 0.5 billion in 2021; source: CS Compensation Report 2021.

[56] Corporate Governance and Compensation (credit-suisse.com).

which a total of CHF 0.5 billion would be paid out if certain strategic targets were met in the future. The Board of Directors also believed that targeted retention awards in the amount of CHF 350 million were essential in order to stabilise the bank. Even taking these programmes into account, a reduction in the variable remuneration was achieved compared with the previous year.

In all these years with the high variable remuneration, which came close to becoming a fixed sum over time, CS created moral hazards that essentially encouraged short-term monetary success at the expense of developing a healthy risk culture. FINMA only had limited influence on the level of the variable remuneration. It should be noted in this regard that the shareholders of CS approved each of the Compensation Reports at the Annual General Meetings and never took any corrective action.[57]

In the context of on-site supervisory reviews and in connection with the Greensill and Archegos cases, FINMA noted that violations of rules or disciplinary cases were given too little consideration in employees' performance appraisals and the setting of variable remuneration. Although line managers had to assess the achievement of both financial targets ("contribution") and non-financial targets ("behaviour"), FINMA noted on several occasions that the non-financial targets were clearly underweighted. A pattern emerged in which primarily high-ranking employees benefited disproportionately from variable remuneration, even if they were involved in disciplinary cases or were only averagely rated in general. Based on this observation, CS introduced a process that included the classification of the severity of rule violations and a mandatory effect on performance appraisals and remuneration. This defined the seniority of the employee concerned as a reinforcing factor in the use of malus.

During on-site supervisory reviews, FINMA repeatedly asked CS to make further adjustments to the processes for performance appraisal and the remuneration scheme. CS did not have an effective monitoring process for appropriate performance appraisal and the allocation of variable remuneration. This particularly applied to effective controls and a robust mechanism for justifying and documenting high bonuses. CS subsequently improved the processes.

All these weaknesses and the disproportionate total amount of variable remuneration in relation to the business results enabled a remuneration scheme and a culture to become established in which rule violations by employees were insufficiently sanctioned. Whereas FINMA repeatedly worked towards the necessary adjustments in the performance appraisal processes and the remuneration system, the implementation of the measures progressed slowly due to the lack of action by the senior management body. FINMA intensified the dialogue and escalated the issue of promoting an appropriate incentive system and healthy risk culture to the Compensation Committee of the Board of Directors of CS several times.

Lessons learned and possible solutions

Banks' remuneration schemes include strong incentives that influence the risk behaviour within the institution. Over the years, FINMA repeatedly used its influence at CS to bring its remuneration in line with the long-term business results. This was only partially successful, where the interventions were accepted by the bank. More invasive interventions by FINMA through judicial enforcement were not sought by FINMA in the matter of remuneration. This is because it believed the chances of success in court to be low given the weak regulatory basis for intervention.

The following possible solutions require a review and possibly an amendment of the existing regulatory principles.

[57] However, the advisory vote on the 2022 Compensation Report only just resulted in a modest approval of 50.6%.

- In future, the requirements for remuneration systems should be anchored in federal law, which could be achieved by transferring the principles contained in the existing Circular. However, the Banking Act and the Banking Ordinance would also have to contain principles that promote risk awareness among employees and allow FINMA to impose specific measures on institutions in the area of remuneration.
- To structure FINMA's new powers effectively, these could be linked to the employees' personal responsibility or to a statement of responsibilities (see possible solutions in section 7.2). This would act as a deterrent for the decision-makers at the supervised institutions, as entering into inappropriate risks or improper behaviour would have direct financial consequences.

How these adjustments could be implemented in detail, and their prospects of success, are currently being examined by the Federal Department of Finance (FDF), together with FINMA, in the context of the report on Article 52 of the Banking Act. The FDF also plans to obtain an expert opinion in this regard. FINMA will analyse the results and then adjust or supplement its position if necessary.

7.4 Risk management and internal control environment

Key statements

- *The repeated scandals and losses severely damaged CS's reputation and undermined confidence in the bank and its management.*
- *FINMA repeatedly imposed measures on CS to reinforce its control environment and incentives system, and always responded immediately to serious shortcomings and incidents. It ordered further targeted measures that increased in severity over time, and exhausted the tools available to it to influence the bank (on-site supervisory reviews, assessment letters, investigations, ad hoc measures, enforcement proceedings, and restrictions on business activities). However, new shortcomings continually emerged in other areas involving various issues and occurring in different regions.*
- *Over the years, CS was unable to implement the measures requested by FINMA to reinforce the internal control system and risk management in a timely, effective, and sustainable manner. It took numerous measures to rectify the weaknesses, although these often did not go far enough. To ensure a functioning risk management system, it is essential that the governance within the institution is working, and that the responsibilities are clear and lived up to.*
- *Since the topics of corporate governance as well as risk management and the internal control environment are closely related, the approaches described in section 7.2 as well as the approach set out in section 7.1 for a more systematic use of additional capital charges are also relevant.*

Background

Over the past few years, CS was repeatedly involved in cases that led to huge losses, fines, and settlements. Altogether, the bank has had to pay fines and settlements amounting to around CHF 15 billion since 2010. Numerous bank-internal and supervisory audits and bank-internal and FINMA investigations showed that in addition to weak governance (see section 7.2), the moral hazards arising from the remuneration system (see section 7.3), the weak control environment and a questionable risk culture contributed to Credit Suisse's involvement in these cases and scandals.

Overall, CS demonstrated an excessive risk appetite. The insufficiently strict requirements of the Board of Directors and the Executive Board allowed the business divisions a great deal of autonomy. The internal control system was not sufficiently sophisticated or effective to adequately identify and address the inherent risks arising from the risk appetite. The complex group structure of CS also made it more difficult

to systematically implement measures. It led to challenges with regard to the effective management and control of group companies, and ultimately in the global implementation of measures to reinforce the internal control system and risk management.

Although CS did always formally address the weaknesses in the internal control system – whether these were identified by the bank itself or revealed by audits or investigations – and initiated programmes to rectify the weaknesses, the focus was merely on specific modifications to the design of processes and controls. Subsequent interactions with the bank or follow-up audits in some cases revealed that the desired improvements were not sufficiently effective in operational terms or did not systematically rectify the causes of the problems. Similar or even the same risks or control weaknesses in other departments were not identified by CS, and these weaknesses were thus not adequately eliminated. In addition, the constant adjustments to the basic strategic direction, the increasing pressure on profitability, and cases such as Archegos and Greensill distracted the CS management from effectively implementing the programmes aimed at improving the control environment and risk management.

FINMA's actions and impact

CS's risk management and internal control environment were regularly assessed by its internal auditors, the regulatory audit firm, and FINMA itself or evaluated during FINMA's on-site supervisory reviews. FINMA also appointed independent and appropriately qualified audit mandataries to carry out independent reviews in many cases, and conducted various enforcement proceedings. All of these interventions revealed the need for measures in various areas to reinforce risk control, risk management, and the internal control system.

FINMA carried out around 170 on-site supervisory reviews at CS from 2013. Given the bank's global presence, these were often performed in close cooperation with foreign supervisory authorities. The on-site supervisory reviews focused on general risk management, specifically in the areas of conduct obligations (including money laundering), credit and market risks from investment bank activities, liquidity, remuneration systems, and internal audit. The number of on-site supervisory reviews was only slightly higher at CS compared to UBS, as the reviews often involved the same areas in order to allow comparisons. As regards the risk weighting of findings and recommendations, on the other hand, CS had around 50% more on-site supervisory reviews with at least one finding rated as high.

The regulatory audit firm identified around 100 findings and recommendations each year. In certain audit fields, it also imposed qualifications when confirming compliance with regulatory requirements. However, the bank's compliance with the licensing requirements was always confirmed by the regulatory audit firm until just before the announcement of the merger by absorption of CS and UBS on 19 March 2023.

FINMA also appointed a total of 23 mandataries from 2015 with a total fee volume of CHF 26 million as a supervisory tool.[58] These mandataries were appointed either to investigate specific matters in connection with the internal control system and risk management requiring specific specialist knowledge, or in areas with significant control shortcomings that were not identified by the regulatory audit firm beforehand. These were often cases in which FINMA had also initiated enforcement measures.

FINMA also influenced the risk management and internal control environment of CS by means of its enforcement rulings. When concluding proceedings, FINMA ordered targeted, sometimes far-reaching measures to restore compliance with the law. As a result of the recurrent weaknesses, FINMA again in-

[58] Six mandates involving mandataries have not yet been completed at present.

itiated increasingly strict measures over time, and even intervened in the bank's operational business in individual cases. It did so by imposing conditions for specific activities (temporary requirements for new loans business with certain countries) or ordering temporary restrictions on business activities (temporary limitation on outsourcing certain activities). For example, the bank was obliged to:

- restrict its business activities (e.g. instructed to cease business with clients with unclear tax situations;[59] temporarily restrict the outsourcing of certain activities;[60] ban new business initiatives that would increase the risk profile or complexity of CS in the investment bank[61] or asset management[62]; restrict the business activity in question with regard to risk-weighted assets and leverage exposure until the significant weaknesses had been rectified;
- reduce the variable remuneration and the distributions to shareholders;
- introduce a single client view of business and client relationships including corresponding internal access, in order to obtain a global logic and view of individual clients, particularly for the purpose of monitoring risks in the area of combating money laundering;[63]
- implement organisational measures to take sufficient account of the inherent conflict of interests between the business line and risk function, strengthen the structure of the control environment and individual control functions (e.g. compliance function), or expand specific reporting obligations;[64]
- implement a sufficiently clear and understandable definition of responsibilities and competencies (process) in the individual lines of defence and within committees;[65]
- ensure an independent, enforceable monitoring process (control, reporting, decision-making/disciplining, escalation, documentation) with regard to the first line of defence;[66]
- promote an appropriate compliance and risk culture, particularly by means of a training concept;[67]
- temporarily only conduct new lending business with financially weak countries and countries prone to corruption subject to certain conditions, namely subject to the condition that the public is informed of the loan;[68]
- escalate high-risk lending business to Group level and carry out regular global reviews of the bank's main client relationships at Executive Board level.[69]

The facts and topics established in the enforcement proceedings were very heterogeneous. They took place in various areas and business divisions of the bank (Investment Bank, Wealth Management, Asset Management, Swiss Bank), related to different legal issues, and in different geographical regions (jurisdictions). The measures ordered by FINMA and those initiated in addition by the bank's managers did lead to improvements in the design of processes and controls in the areas concerned. However, recurring events and other supervisory controls revealed that the weaknesses identified were not rectified in a sustainable way or were only rectified in one part of the Group.

In its annual assessment letters and the periodic supervisory dialogue, FINMA escalated the inadequate implementation of measures to the bank's senior management and criticised the repeatedly poor results in the implementation of control improvements. Among other things, FINMA called for CS to introduce global minimum standards and to check when control deficiencies were identified whether they also occurred in other areas of the Group. In response, CS strengthened its central control functions and took various measures. Under pressure from FINMA, it created a central role with clear responsibility at Executive Board level and close monitoring by the Board of Directors. This role was intended to monitor the implementation of key projects to improve the control environment.

[59] US cross-border case, 2012.
[60] Greensill case, 2022.
[61] Archegos case, 2023.
[62] Greensill case, 2022.
[63] Petrobras/PDVSA/FIFA case, 2018.
[64] PDVSA/FIFA/Petrobras case, 2018; Mozambique case, 2021; surveillance case 2021.
[65] DINO case, 2018. Archegos case.
[66] DINO case, 2018.
[67] DINO case, 2018.
[68] Mozambique case, 2021.
[69] Mozambique case, 2021; Greensill case, 2022.

With regard to the very high risk appetite in the divisions, FINMA called on the CS Board of Directors to carry out a fundamental review of risk appetite in the wake of the Greensill and Archegos cases. The CS Board of Directors consequently reduced various internal limits with immediate effect and ensured that high-risk transactions could only be approved at a higher level of the Group. The bank's internal auditors were also tasked with searching specifically for risks that had not previously been identified, monitored, and limited by the internal control system. This identified sporadic cases of risks that, although they were known to the front-office units, had not been recorded by the risk control process.

Subsequent to its ad hoc measures, CS's Board of Directors carried out an in-depth examination of the risks arising from the bank's main business activities. In particular, it took a closer look at risk clusters in individual areas and limited these, introduced further risk metrics and limits, and restricted the risk appetite for certain portfolios. The 100 most high-risk clients were also analysed in detail, and numerous business relationships were terminated as their risks could no longer be tolerated.

Lessons learned and possible solutions

Assuming risks is a fundamental part of banking business. They can also materialise at banks with an appropriate control environment and an effective governance system. At CS, however, FINMA repeatedly noted that the risks entered into were not sufficiently identified, controlled, and limited. With the increasing accumulation of problems at CS, FINMA intensified its measures and exhausted the means available to it to exert influence. However, this was not enough to prevent further incidents at CS. Ensuring an adequate risk management system takes more than just improvements to processes and controls. It is essential for the governance within the institution to be working well, and for the responsibilities to be clear and lived up to. Without these basic preconditions, it is not possible for a control system to function effectively. The solutions considered, as described in sections 7.1 and 7.2 – namely, a) measures to improve the allocation of personal responsibility similar to the UK's Senior Managers and Certification Regime (e.g. "statement of responsibilities"); b) powers to impose fines; c) proactive communication regarding enforcement proceedings; and d) the more systematic use of additional capital charges –, are thus vital to ensuring a functioning risk management system.

7.5 Capital

Key statements

- *At CS Group (consolidated) level, capitalisation met the regulatory requirements at over 14% CET 1 at the end of 2022. The regulatory Pillar 1 capital requirements were complied with by all legal entities. However, from 2011, CS had to raise over CHF 20 billion in additional equity capital on the market on no fewer than six occasions in order to cover losses and costs resulting from strategy adjustments. This diminished confidence in the bank's prosperity.*
- *CS AG (at the level of the single entity or parent bank) reported lower capital figures than the consolidated Group.*
- *Upon the entry into force of the "too big to fail" (TBTF) regime, the legislation provided for lower requirements applying for the parent bank under certain circumstances than for the Group as a whole. FINMA was obliged to grant relaxations to this legal entity. FINMA advocated the abolition of these provisions. The effects of the regime introduced instead involving the application of the portfolio valuation of shareholdings for regulatory purposes (regulatory filter) had to be disclosed by CS on a quarterly basis and were thus known to the investors.*
- *During the crisis, the financial reporting rules and capital requirements had a procyclical effect, as losses and reductions in the scope of business diminished the value of the parent's participations*

in subsidiaries and – as a consequence – its capital adequacy. In addition, due to the phase-in regime for the risk weighting of participations, the parent bank had to build up capital in annual increments and was dependent on the repatriation of capital and dividends from the subsidiary entities. This also restricted the strategic options of CS in terms of restructuring.

– *FINMA has imposed additional capital add-ons on CS. It intends to use this option even more systematically in the future. A review must also be conducted as to whether implementation in Switzerland would require a change to the regulatory principles, particularly at ordinance level, or whether a revision of supervisory practice, which is set out in FINMA Circular 2011/2 "Capital buffer and capital planning – banks", would suffice (see section 7.1 for further details).*

Background

Capital situation of Credit Suisse Group AG

At the end of 2022, CS reported a capital ratio of 14.1% CET1, a going concern capital ratio of 19.9%, and a going concern leverage ratio of 7.7%. It thus clearly met the regulatory requirements for capital adequacy in CET1 quality that applied to it as a consolidated group. The capital ratios did not deteriorate significantly from the beginning of 2023 to mid-March 2023. The accrued losses were offset by lower business volumes and, consequently, by lower capital requirements.

In the supervisory context, the capital ratios of CS were a permanent and hotly debated topic. The Group's volatile results contrasted with comparatively high variable remuneration payments, whereas the distributions to shareholders were greatly reduced already as of 2020. In many years there was therefore no retention and constant accumulation of capital from undistributed earnings. In the case of extraordinary events, such as high penalties or extraordinary losses or for restructuring purposes, the capital frequently had to be strengthened by means of raising capital on the market. From 2011, CS thus raised capital on the market no fewer than six times either via equity capital increase or mandatory convertibles (2011, 2013, 2015, 2017, 2021, 2022). The bank thus raised over CHF 20 billion in additional equity. Both the capital increases and the dividend payments were approved by the CS shareholders in each case. The Compensation Reports and the proposed compensation were approved.

As of 2021, the capital of CS started to erode owing to the ongoing losses. The CET1 capital ratio fell in the third quarter of 2022 to a low of 12.6%. Although the bank was thereby still well above the regulatory requirements, it fell below the capital target communicated to investors at the end of July 2022: over the year, the CET1 capital ratio was supposed to be held at between 13 and 14%. The restructuring of the bank announced in October 2022 anticipated several further loss-making quarters which, as in previous years, could only be cushioned by a capital increase in the amount of CHF 4.0 billion executed in the fourth quarter of 2022.

Shown below are the requirements and actual capital ratios on a look-through basis (i.e. full implementation of Basel III provisions).[70] FINMA expressed increased expectations for the Tier 1 ratio in 2020 and 2021, due to the results of the loss potential analysis (see section 7.1). While the CET1 capital ratio was adhered to at all times, CSG was below the Tier 1 ratio target of 20% in 2022. FINMA requested a plan to achieve the capital target as part of its supervisory activities.

Intra-group capital allocation / parent bank

Various specific factors at the CS subsidiaries resulted in the capital allocation within the Group taking on special significance.

Key business activities of the Group are handled by subsidiaries under CS AG in the USA and the UK,

[70] The regulatory Tier 1 minimum requirement in respect of the capital ratio for risk-weighted assets (RWA) at Group level was lowered in 2016 with the Swiss introduction of the total loss-absorbing capacity requirements (i.e. the introduction of separate gone concern requirements) when considered in isolation.

including in particular the investment banking business. The repatriation of capital sourced from profits and surplus capital from these subsidiaries proved difficult – due in part to an increase in local regulatory requirements abroad. Profits accrued and factored in by the Group in consolidation could thus not be easily forwarded in good time to CS AG.

The valuation of the subsidiaries in the USA and the UK in the balance sheet of the CS AG parent bank was based on the lower of cost or market principle (LCM), in line with the financial reporting rules. As a matter of fact, the original costs of the US and UK entities were much higher than their market values, partly due to the very high acquisition costs and high exchange rates at the time of the acquisition (e. g. upon the acquisition of US investment bank Donaldson, Lufkin & Jenrette in 2000). Changes in the earnings outlook, e. g. owing to amended business activities or restructurings, had a major impact on the market values and thus – in the event of value corrections – directly on the capital of the parent bank. The restructuring in 2022 showed that the businesses to be sold were a long way from achieving the expected proceeds based on the market value model. This also limited the bank's strategic options. Overall, both the financial reporting rules and the capital requirement rules of the parent bank had a procyclical effect. Operating losses and the consequences of the imminent restructuring in the individual legal entities diminished the value of the participations and of the capital adequacy to a disproportionately high degree. The strategic options were thus restricted precisely at a time when the bank wanted to make extensive adjustments. It had missed the opportunity to retain more capital in years with a good performance in order to have the necessary scope for strategic options.

Already with the implementation of the first TBTF rules in 2013, FINMA was obliged to grant the two large banks regulatory relaxations relating to the participations in subsidiaries as part of the capital requirements for the parent bank.[71] The legislator took account of the special characteristics of the legal structure and the relevance of the large banks' international business when it introduced the rules (see box on Art. 125 CAO). As a consequence, they were still able to refinance part of their subsidiaries' capital via debt. Precisely in situations with a high need for write-downs on those participation values as a result of restructurings, this leverage led to additional pressure on the capital ratios of the CS AG parent bank.

Capital easing for parent banks is not unusual in an international comparison and, in 2013, constituted a continuation of international practice. In the context of its involvement and consultation on the TBTF rules, FINMA was always critical of this easing in the Capital Adequacy Ordinance. As a result of the amendments of the "too big to fail" rulings in 2017, it increased the requirements. The applicable risk weightings to be used for participations were raised substantially. During the ten-year introductory phase, this required a substantial, continuous accumulation of capital at the parent bank. The long introductory phase (phase-in) was necessary in order to avoid massive, one-off effects in the capital ratios during the initial implementation and to give the bank time to accumulate capital under its own steam. As of 2021, the parent bank CS AG was no longer able to generate the income needed for the capital accumulation required by FINMA. The risks relating to debt financing of the subsidiaries were reduced but continued to exist under the new regime. Ultimately, this meant that CS AG was, for years, the legal entity within the Group with the weakest capitalisation in terms of equity. Its capital ratio was consistently lower than that of the Group at consolidated level. However, the rules of the Capital Adequacy Ordinance were always adhered to, as a result of the easing and the transitional regime. The CET1 capital ratio of CS AG was reported at 12.7% at the end of 2022 (after the capital increase), after having fallen to 9.7% in the third

[71] See statements on Art. 125 CAO in the box on page 60.

quarter of 2022 and climbing over 10% again after the capital increase in November 2022. The regulatory Pillar 1 requirement was 9.4% at the end of 2022.

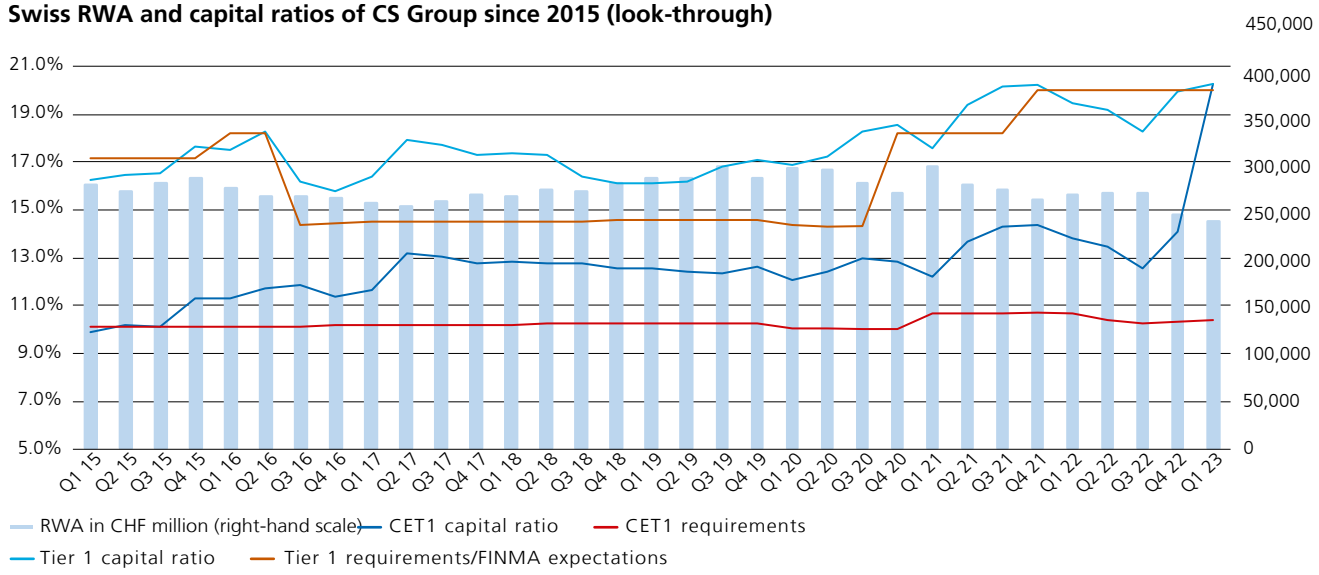
AT1 instruments

The AT1 instruments – eligible as Additional Tier 1 Capital – were a key equity component for CS. The individual instruments had a comparatively high face value. In particular in previous years, issuance was via private placements to key investors. The placement of substitute issuances for called instruments in the market was sometimes challenging, especially as of the time when market sentiment became less positive towards the bank.

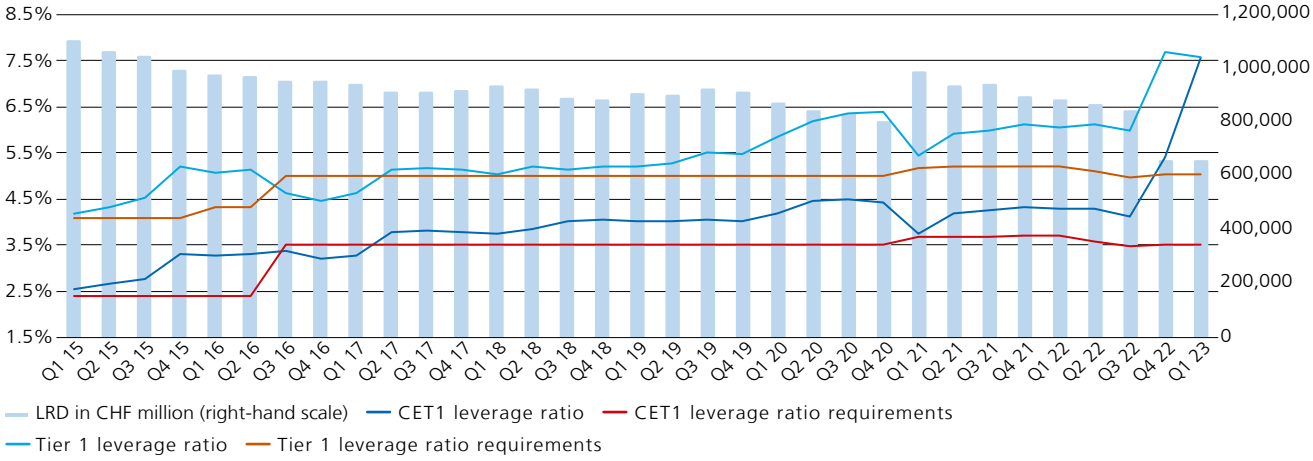
AT1 instruments, like shares, do not have a final maturity date. However, they can be called contractually after five years at the earliest by the bank and repaid (just like shares can be bought back via a buyback programme and cancelled). Moreover, the interest paid on AT1 instruments is voluntary and is paid at the discretion of the bank without the creditor being able to assert a corresponding claim. These characteristics of AT1 instruments are largely harmonised internationally.

Although the CAO forbids banks from raising expectations at the time of issue of a call being exercised, the market expects AT1 instruments to always be repaid at the first possible contractual call date (i.e. often after a term of five years) and to be replaced by a newly issued AT1 instrument. In Europe, there have only been a very low number of cases in which AT1 instruments were not repaid at the first available call date. The market also firmly expects (voluntary) interest payments. There has only been one case at European banks when interest was not paid. The fear of a negative market signal and its impact on the bank's standing in the capital market and client confidence meant that CS always called its AT1 instruments at the earliest possible opportunity and replaced them with new issuances. In June 2022, one

Swiss RWA and capital ratios of CS Group since 2015 (look-through)



Swiss leverage exposure and capital ratios of CS Group since 2015 (look-through)



new replacement issuance actually featured much higher interest rates than would have been provided for if the previous instrument had continued to exist. And, even in loss-making years, the interest payments on AT1 instruments were always made. This was despite CSG having reduced its dividend to shareholders over the years to virtually nothing.

FINMA's actions and impact

CS Group

Although CS's (consolidated) capital situation fulfilled the regulatory requirements, on several occasions FINMA took proactive, forward-looking steps early on as part of its supervisory work in order to ward off adverse developments.

The FINMA stress tests revealed the bank's vulnerability under adverse market conditions. Based on the results of the stress test conducted in 2020, FINMA requested that the bank target a going concern capital ratio of 18.2% in its capital planning. This target was reviewed every six months on the basis of the stress test results and later raised to 20%.

During the Covid-19 pandemic, FINMA halted CS's share buybacks owing to significant uncertainty regarding the economic outlook. Furthermore, in the context of the Greensill and Archegos cases, it insisted on the dividend being reduced and fresh equity being raised and made the requirements more stringent through individual additional capital add-ons. In addition, the bank's variable remuneration payouts were scaled back.

Parent bank

The legislator obliged FINMA to grant easing on the capital requirements for the operational parent bank within a systemically important financial group which, in addition to exercising the Group's central treasury function, also holds stakes in subsidiaries. This was a reaction to the fear expressed by the large banks during the parliamentary discussion that consolidated compliance at the top of the group would "overshoot the stipulated TBTF target" without such easing (see box on Art. 125 CAO). This led to a situation in which FINMA had to grant relief to the parent bank in response to the applicable local capital requirements at the subsidiary level.

Article 125 Capital Adequacy Ordinance

In the context of the implementation of the TBTF rules, the Capital Adequacy Ordinance (CAO) was subjected to a complete revision. In addition to a revision of the general capital requirements in line with the revised requirements of the Basel Framework, a separate part, "Title 5: Provisions for Systemically Important Banks", was introduced in the CAO. In it, the TBTF requirements in accordance with the Banking Act in the area of capital adequacy and risk diversification were implemented; the drafting was inspired by the legislation, the dispatch from the time when the legislation was drafted as well as by the final report of the TBTF group of experts. Further, the first-time implementation of these changes to the CAO was subject to approval by Parliament.

Article 125 was introduced as an element of this revision of the CAO.

Article 125 Relaxations for a financial group and single entity

1 FINMA may grant relief at the single entity level if:
- *a. as a result of the requirements at the single entity level the requirements at the financial group level increase; and*
- *b. the bank has taken the steps deemed feasible at the level of the financial group to avoid any increase in the requirements.*

2 Measures that prescribe the implementation of a specific group structure or organisation are deemed to be unreasonable.

3 Changes in its group structure or organisation entitle the bank to relief only if the requirements in paragraph 1 are met at the same time.

4 In particular, the following relief pursuant to paragraph 1 can be granted, either as a single measure or in combination:
- *a. the capital requirements are set for individual entities under the requirements for the financial group. For systemically important individual entities, the capital must reach at least 14% of the risk-weighted positions in any case;*
- *b. the deductions for participations are reduced;*
- *c. the capital adequacy requirements for intra-group exposures are reduced;*
- *d. financing of group companies can be subject to relief.*

5 The specific requirements at the financial group level and the systemically important single entity level as well as the kind of relief granted must be disclosed by:
- *a. FINMA as regards the fundamentals; and by*
- *b. the respective bank or financial group as part of its ordinary reporting, including an indication of the capital ratio.*

Comprehensive explanations of the ordinance article are set out in section 7.1.2 of the FDF's comments on the total revision of the CAO published on 20 June 2012 (in German). The basis for this article was defined, not least of all, in the discussions of the Economic Affairs Committees of the National Council and Council of States (see the NZZ articles [in German] of 12 May 2011 and 6 July 2011).

With its revision of the applicable TBTF requirements, FINMA introduced a new regime in 2017 within its supervisory remit and in recognition of what was tolerable for CS, aimed at gradually increasing the parent bank's capital situation and, at the same time, increasing transparency as regards the relevant applicable requirements for analysts and investors. The new approach replaced the provisions defined in 2013, which had addressed the issue of the single entity level requirements affecting compliance at the financial group level. In addition to a gradual increase of the risk weights for participations in subsidiaries, FINMA required increased transparency with regard to current and future capital requirements for the

parent bank in order to subject the latter to market pressure. For analysts it was clear that the dividend capacity of CS was limited, owing to the parent bank's capital situation.[72]

Yet before Article 125 CAO was formally abrogated in 2019, FINMA had to grant CS special regulatory treatment in connection with a change in the accounting requirements pursuant to the Swiss Code of Obligations (CO): As part of the amendment in the CO, the Banking Ordinance provided for a switch to individual valuation of participations for the purpose of financial accounting by no later than January 2020. This did not apply to CS insofar as it was permitted to continue the previously permitted portfolio valuation method for the purpose of calculating its capital adequacy (regulatory filter). As a result, this relief allowed the parent bank to delay write-downs on its participations if and to the extent that the market value of other subsidiaries exceeded their book values. With this special rule, FINMA took account not only of the special legal structure of CS but also supported the restructuring of the investment bank, which was underway at that time.

FINMA repeatedly and continuously called for the necessary increase of capital at the parent bank during the periodic capital planning dialogue and thus indirectly also at consolidated level as well as for a reduction of distributions. As of 2020, when the portfolio valuation of shareholdings started to deviate from the principle of individual valuation in the context of accounting requirements, the valuations of the key subsidiaries were also scrutinised. For this purpose, FINMA mandated third parties to check the plausibility of the bank's valuations. Based on the results of this review, FINMA reduced the eligibility of the subsidiaries' values in terms of the regulatory core capital of the parent bank several times. It thus ensured that the relief granted via the regulatory filter was based on less optimistic valuations, thus preserving the value.

Owing to the loss situation, CS AG was no longer able to generate the earnings required for the build-up of capital. The losses and strategy adjustments towards the end of 2021 also led to a reduction in the valuation of the subsidiaries, and the capital situation of CS AG deteriorated. FINMA pointed out this fact in April 2022 and asked the bank's managers to take the appropriate steps. During the restructuring and strategy discussion in autumn 2022, the parent bank's lack of capital became evident. Due to insufficient revenues from the investment banking business and unfavourable exchange rate trends, the subsidiaries' investment book value declined. This greatly restricted the parent bank's financial scope for manoeuvre. CS's Board of Directors wanted to reduce the previously high volatility of the results by scaling back the investment bank more rigorously. Considering its low valuation, the bank viewed a more substantial capital increase as not feasible and approached FINMA with numerous requests for regulatory relief. This was intended to ease the affordability of the restructuring. FINMA in turn repeatedly pointed out the need for the Group to have an adequate capital buffer as well as the high transformation costs involved. As a consequence, it requested that the bank take steps on its own to finance the transformation. It ruled out significant further relief for CS. Ultimately, CS agreed to undertake a capital increase of CHF 4 billion and a cost-cutting drive as well as a significant reduction in the bonus pool. FINMA granted CS specific temporary relief in the context of the treatment of subsidiaries at the parent bank level. FINMA also allowed CS to temporarily fall below the capital requirements due to the restructuring. However, CS did not want to make use of this option.

Lessons learned and possible solutions

Due to Article 125 CAO, the capitalisation of the parent bank was the weak point of CS Group. In addition, the valuation of the subsidiaries using market value models revealed a procyclical effect in the event of restructurings and business downsizings.

[72] CS disclosures (credit-suisse.com).

Overall, this restricted CS's scope for manoeuvre even if it was not the cause of the confidence crisis.

As explained in section 7.1, FINMA has made use of its competence to impose capital add-ons at CS and intends to use this tool more systematically in the future. A review must be conducted as to whether implementation in Switzerland would require a change to the regulation, particularly at ordinance level, or whether a revision of supervisory practice, which is set out in FINMA Circular 2011/2 "Capital buffer and capital planning – banks", would suffice.

The following possible solutions require a review and possibly an amendment of the existing regulatory principles:

- Greater capitalisation of the parent bank increases the resilience of the entire group and offers better capital protection in the event of incidents at the subsidiaries. However, at the same time this also indirectly increases the capital requirements at consolidated level. An in-depth analysis must be conducted to determine which measures can be implemented to adapt the valuation, risk weighting, and/or capital treatment of subsidiaries as well as intra-group positions in the parent bank in general in a targeted and proportional manner. A comparison with other international jurisdictions that host global systemically important banks will be sought.
- As part of the investigation into the banking sector turbulence in spring 2023, the functioning of AT1 instruments will also be reviewed by international bodies. In this context, FINMA clearly favours reinforcing the ability to absorb losses in the going concern. In particular, the criteria for calling the instrument should be made more stringent, and the possibilities for suspending interest payments should be simplified. However, it is very important that the AT1 instruments of Swiss banks remain compatible with international standards.

7.6 Liquidity

Key statements

- *As a result of the market upheavals during the Covid-19 pandemic, FINMA imposed higher supervisory requirements on CS in terms of its liquidity holdings. Thanks to the corresponding liquidity risk management measures, CS had built up a comfortable liquidity buffer by summer 2022 that was able to cushion the first major wave of client deposit outflows in October 2022.*
- *With the introduction of the new liquidity requirements for systemically important banks as of January 2024, liquidity add-ons for systemically important banks will be regulated in the Liquidity Ordinance. This will also eliminate certain weaknesses in the liquidity coverage ratio (LCR). The new requirements cover, among other things, higher or lengthier outflows of deposits and risks not covered by LCR such as operating cash requirements for intraday liquidity or the execution of a liquidation/restructuring.*
- *Simpler access to central bank facilities with adequate preparation by the bank can quickly provide relief in a crisis. The use of central bank facilities may, however, send out a negative signal to investors as well as clients regarding the bank's situation if this is made public. FINMA welcomes relevant proposals in the context of the expert report on banking stability.*
- *In order to better anticipate the impact of market-related or idiosyncratic stress, banks must safeguard the system- and process-related prerequisites so that they can quickly make forecasts regarding the liquidity situation including cash management that are as accurate and meaningful as possible. FINMA will take even greater account of this aspect in future.*
- *In its supervisory activity at banks, FINMA will also focus more on scenario analyses and cluster risks, as well as the timely implementation of liquidity-generating and liquidity-saving measures planned by the banks.*

– *The international regulation (Basel III) and the liquidity regulation in Switzerland should be reviewed in terms of the identified aspects of the digital bank run and the related outflow rates in the LCR. The outflow rates of large-volume deposits at CS were much higher than foreseen in the LCR.*

Background

CS is subject to the Ordinance on the Liquidity of Banks and is required to meet the regulatory minimum requirements, including the liquidity coverage ratio (LCR). This states that in a stress scenario defined by assumed outflows and inflows with a time horizon of 30 calendar days the (modelled) net outflows of funds must be covered by sufficient high-quality liquid assets (HQLA).

As at 31 December 2021, CS had total assets of CHF 755.8 billion and HQLA amounting to CHF 227 billion and reported an LCR of 203%.[73] It thus met the supervisory requirement of 150% LCR imposed on CS by FINMA in connection with problems in the area of liquidity during the market upheavals at the beginning of the Covid-19 pandemic. As CS came under pressure regarding its liquidity situation in October 2022, FINMA granted the bank tolerance to fall short of previous requirements. Specifically, it accepted the regulatory limit of 100% at CS (consolidated) level plus an absolute liquidity buffer of CHF 25 billion. These FINMA supervisory requirements were adhered to.[74]

Several downgradings of CS by the rating agencies in the course of 2022 led to a widening of CDS spreads and made refinancing more expensive. Consequently, some money market funds reduced their limits in respect of CS. Owing to the high FINMA supervisory requirements and the liquidity buffer built up as a result, CS held average HQLA of CHF 227 billion in the third quarter of 2022, despite these more difficult conditions, and CS had an LCR of 192%.

On 1 October 2022 there were widespread comments on social media claiming that a large international investment bank was on the verge of collapse. Speculation was rife as to whether CS was meant. These rumours spread quickly, particularly in Asia, and led to an unprecedented withdrawal of client deposits. The confidence of investors, which had already been weakened for some time, was further impacted as a result. On 3 October 2022, CS triggered the Contingency Funding Plan (CFP) Level 1; two days later it triggered Level 2 and finally on 1 November Level 3.[75] In October, high-net-worth wealth management clients withdrew significant assets. The outflows amounted to around CHF 92 billion, which corresponded roughly to the deposit outflows modelled by the LCR (CHF 91 billion). The total deposit outflows in Q4 2022 ultimately amounted to CHF 138 billion. It also became clear that the outflows were much greater for certain depositor groups than provided for in the LCR, e. g. large-volume deposits of wealthy clients. On the other hand, 51% of all term deposits were withdrawn in Q4 2022. With a total outflow of 81% of all deposits, the investment bank suffered the most from the outflows in the fourth quarter of 2022. On a regional basis, the Q4 2022 outflows in Switzerland at 24% were considerably lower than in other regions (Americas 81%; Asia-Pacific 51%; Europe, Middle East and Africa 47%). The CS case also showed that a significant outflow of deposits can take place digitally without any groups of people gathering in front of bank branches (digital bank run), as payment instructions issued by clients to their bank now take place virtually exclusively via electronic channels or by telephone.

Only to a limited extent was CS able to anticipate the outflows and assess the impact of risks (e. g. rating downgrades) in good time and realistically. It took several weeks before the bank was able to calculate the corresponding ad hoc scenarios. It also estimated the effect and the timing of planned measures to strengthen its liquidity incorrectly. Fur-

[73] HQLA and LCR each relate to the quarterly average of the daily values (see CS: Pillar 3 and regulatory disclosures 4Q21, p. 79.
[74] Due to the requirement regarding an absolute liquidity buffer, the FINMA requirement is dynamic from October 2022.
[75] Level 3 was the highest level of the CFP. Thus, responsibility for the measures taken at this level rested with the CEO of CS.

thermore, CS was only able to a limited extent to verify – precisely and promptly – which of the planned measures were actually implemented and how high the actual liquidity inflow generated was.

On the one hand, necessary measures aimed at strengthening liquidity were only partially implemented on account of uncertainty and the lack of transparency with regard to future developments. On the other hand, the bank's management was initially slow to take steps as they wished to avoid diminishing the bank's earnings power, as this would in turn have increased the risk of further rating downgrades. Moreover, borrowing additional liquidity was only possible to a limited extent given the loss of confidence among clients and investors. Owing to the high outflow of client deposits, foreign authorities also stepped up their supervisory measures.

In addition to its own liquidity measures, the bank regularly examined – as of Q4 2022 – the possibility of drawing on existing central bank facilities, for which the bank had prepared assets of up to approximately CHF 50 billion (emergency liquidity assistance and liquidity-shortage financing facility). The approval process and the operational settlement of an ELA drawdown were tested annually and were prepared. The bank was, in particular in December 2022, very close on several occasions to deciding to make use of this facility in order to strengthen both the operating cash position and its liquidity key figures (e. g. the LCR). However, it decided against it, in particular because of the feared negative signal.

At the beginning of 2023, CS succeeded in slightly increasing the HQLA by issuing long-term bonds and via secured financing transactions. The liquidity situation improved slightly but remained tense. The bank was no longer able – by a long way – to restore the HQLA to the level prior to the wave of client outflows in Q4 2022.

As outlined in section 6.2.4, the liquidity outflows accelerated from 15 March 2023 following the delay of the publication of the CS 2022 Annual Report, the collapse of US regional banks, and the communication by the chair of the Saudi National Bank that it would not make any further investments in CS. On this occasion, the funds were not withdrawn only by wealth management clients but now – and to a greater extent – by Swiss retail and corporate clients. The following chart shows the outflows of deposits between July 2022 and March 2023.

Market players and professional counterparties now posed more stringent requirements for continuing to provide their services to CS. On account of the increasing outflows of client deposits, in the night of 15–16 March 2023 CS requested that it be allowed to make use of the emergency facilities provided by the Swiss National Bank (SNB). According to the daily information available up to 15 March 2023, CS complied at all times with all regulatory liquidity requirements. Likewise, no breach of the FINMA supervisory requirements was ascertained. FINMA confirmed this in its press release dated 15 March 2023.

As already stated in section 6.2.4, it was not possible to stabilise the liquidity situation of CS in the following days. In addition to the fund outflows, CS also lost access to the forex market on Friday, 17 March 2023. This meant that the SNB – besides providing the emergency facilities – also had to provide CS with the foreign exchange it needed. Without the emergency facilities of the SNB, CS would have fallen short of the requirements on the following Monday, as shown in the following chart on the trend in deposits and liquidity buffers above the 100% LCR requirement (excluding SNB emergency facilities).

Ultimately, it is not the LCR that is relevant for maintaining solvency but the forex holdings of the parent bank CS AG as these are required for the settlement of payments and securities transactions. Owing to

the reduction and elimination of limits and additional security measures (e. g. delivery vs. payment) by other market players, CS would have become insolvent without liquidity assistance from the SNB even before the weekend.

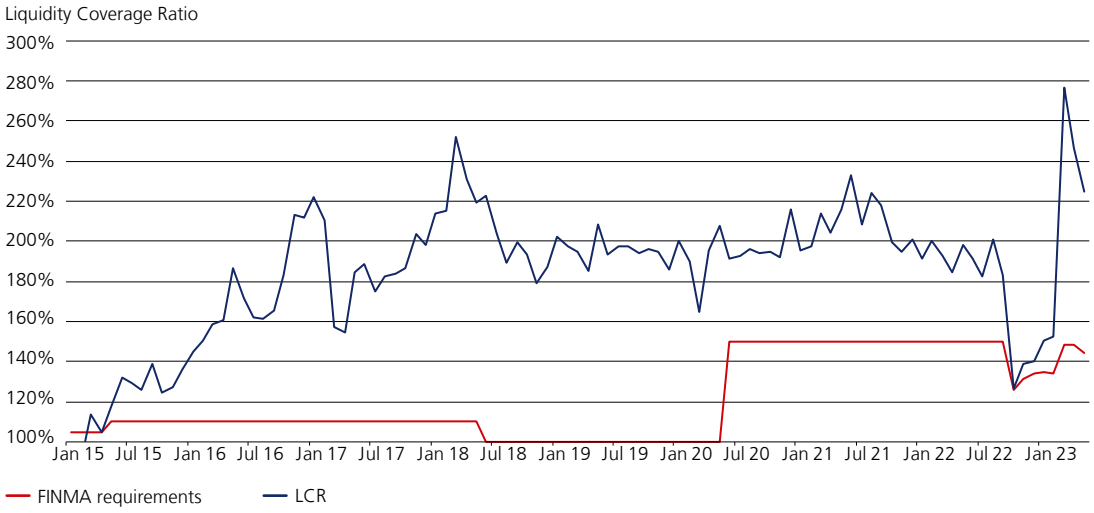
As a result of the imminent insolvency of a global systemically important bank, intervention by the authorities was essential in order to guarantee the financial stability and protection of the Swiss economy and to avert a potential global financial crisis.

FINMA's actions and impact

In the wake of the Covid-19 crisis, FINMA had already requested that CS implement far-reaching measures in spring 2020 to strengthen its liquidity management and identify risks in the area of liquidity. In addition to more stringent requirements in terms of liquidity holdings, this also included reducing cluster risks in refinancing (notably the maturities structure of market refinancing) and improving models for margin requirements in the derivatives segment. In addition, the bank was tasked with taking steps to deposit further collateral with central banks in the event of a crisis. Until September 2022, CS was able to accumulate HQLA holdings at the Group level that amounted to around CHF 100 billion above the regulatory minimum requirements.

In July 2022, FINMA – together with foreign authorities in the Core College – stepped up its supervisory activities in the area of liquidity with a view to the imminent publication of a further quarter of significant losses. From this point on, it demanded that CS hold more liquidity in order to cushion any negative developments. As of the end of July 2022, CS provided FINMA with information and key figures on a daily basis regarding the liquidity trend, but was only partially able

CS Group LCR and FINMA requirements



to forecast future payment streams in a timely and reliable manner and to then perform corresponding ad hoc stress test analyses. For example, it needed several weeks to estimate what the consequences of a possible rating downgrade on its liquidity might be. Moreover, CS regularly underestimated the client outflows and overestimated the effects of its measures, in some cases by a large margin. Only under repeated pressure from FINMA did CS finally set up a reporting system that enabled its management to check implementation of the planned measures.

CS adhered to the regulatory requirements, despite the substantial outflows of client assets, especially given that – at the end of Q3 2022 and as a result of the liquidity buffer built up since the Covid-19 crisis – it had substantially higher HQLA holdings than were called for by the Liquidity Ordinance.

Shortly after the first large outflows of client assets in October 2022, FINMA requested that CS include additional information in the form of the liquidity crisis template (LCT) in its daily liquidity reports. This LCT was developed by FINMA together with the Core College authorities prior to the Covid-19 crisis. Furthermore, FINMA, together with the Core College authorities and the SNB, held daily discussions with the units responsible for liquidity at Credit Suisse. In this context, further expectations and requirements pertaining to liquidity risk management at CS were addressed too.

Precisely with regard to CFP Level 3 (see above), FINMA repeatedly called for far-reaching measures to improve the liquidity situation, including the sale of assets of the divisions and especially at the investment bank. The effect was only seen after a delay, however, as CS reacted very defensively and did not want to implement far-reaching measures in its business units before the strategy and its specific implementation plans were defined. At this time, it was not possible or only possible to an inadequate degree to generate (new) funding or to recoup client deposits even with higher prices.

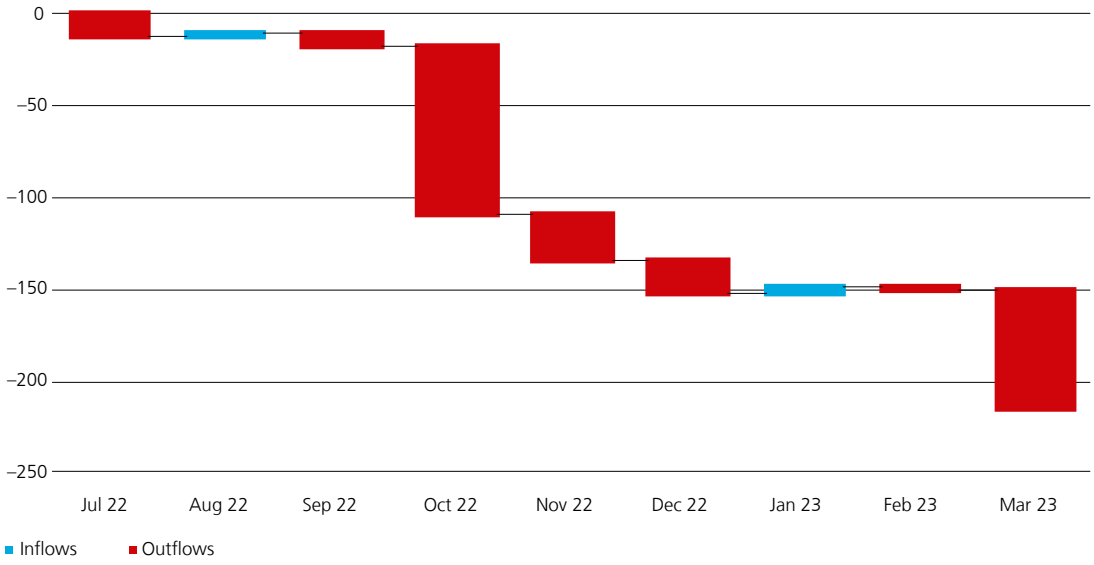
FINMA also repeatedly demanded plausible, conservative forecasts, including a consideration of possible negative events, such as further rating downgrades. Unfortunately, these forecasts were only made available in sufficient quality after a considerable delay. As regards the monitoring of the liquidity situation by the CS College, FINMA collaborated closely with international supervisory authorities at all times. It was able to convince the main international supervisory authorities that CS was permitted to undershoot some of the existing supervisory expectations in terms of liquidity. In this way, CS was at least partially able to reallocate liquid resources within the Group to where they were needed.

During the events before the weekend of 19 March 2023, FINMA reacted promptly to CS's request for SNB liquidity assistance and issued the necessary confirmation of solvency regarding adherence to the regulatory minimum capital requirements according to Articles 130 and 131 CAO to the SNB.

Lessons learned and possible solutions

Before the client outflows started in October 2022, CS had very high liquidity – on account of FINMA's expectations – and was thus able to meet its obligations for a long time. This gave the bank and the authorities time to prepare for a further deterioration of the situation. The bank was unable to survive the second wave of liquidity outflows in March 2023 without external assistance. With regard to liquidity risk management, FINMA had already ascertained considerable room for improvement at CS during the Covid-19 crisis and expressed its expectations. In the context of the outflows in October 2022 and March 2023, further weaknesses were identified. However, FINMA's measures in terms of liquidity were unable to avert the imminent failure of the bank in mid-March 2023.

Change in net deposits of CS Group in CHF billion



FINMA can implement the following options in future:

- In order to prepare for and deal with (idiosyncratic) liquidity crises, appropriate stress-testing processes must be available. These require the banks to be able to draw up reliable forecasts of payment streams in a stress situation and their impact on the liquidity situation including cash management within a short time. CS had only limited ability to do this in the crisis. FINMA already uses stress analyses in the area of liquidity and assesses the results of these analyses. It will take even greater account of this aspect in future.
- FINMA already carries out concentration analyses with regard to the refinancing of banks (e. g. regarding maturity structure). It will supplement these based on new bank run scenarios and with a focus on outflows from high-net-worth clients with significant and concentrated deposits. This will enable it to identify banks with corresponding (funding) concentrations and test the banks' ability to quickly make reliable forecasts of payment flows.
- FINMA supervises and checks that banks have taken the necessary steps so that different liquidity-generating and liquidity-saving measures are available – including, in particular, a rapid reduction of assets or preparation for the pledging of assets with central banks –, depending on the event. As it became apparent at CS that the implementation of certain measures could not be realised in practice in a timely and effective manner, FINMA will increasingly focus on the bank's plans and their feasibility in terms of liquidity-generating and liquidity-saving measures.

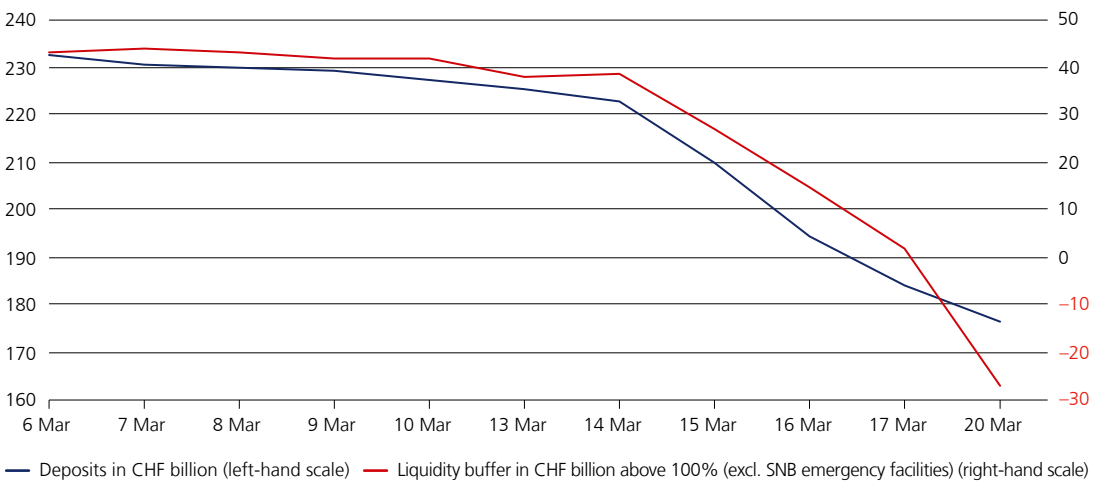
The following approach, derived from the CS crisis, will enter into force with the existing Liquidity Ordinance:

– In the revised Liquidity Ordinance, the special provisions for systemically important banks (SIBs) include key aspects that were relevant in the CS crisis. These provisions will enter into force in January 2024 and will oblige SIBs to hold HQLA for various risks not included in the LCR. This relates, among other things, to risks such as intraday liquidity risks (e. g. prefinancing of CS in March 2023), margin requirements vis-à-vis counterparties, and the guarantee of liquidity needed for a restructuring or liquidation.

The following possible solutions require international coordination and review, and possibly the amendment of existing regulatory principles:

– The international regulation (Basel III) should be reviewed in terms of the identified aspects of the digital bank run and the related outflow rates in the LCR. The outflow rates of large-volume deposits (over CHF 1.5 million) at CS were much higher than in the LCR model. Similar or even more extreme outflow rates were seen at US banks. In parallel to the work in the international working groups, a review of specific amendments to Swiss implementation of the LCR, particularly with regard to large-volume deposits, should be conducted as part of the review of the TBTF liquidity regulations.
– Banks and regulators (possibly coordinated at the international level) should work to ensure that available HQLA buffers can be effectively implemented in a crisis. In the current situation, the use of buffers and any public announcement thereof may even exacerbate the crisis. As a result, counterparties and clients are particularly sensitised and withdraw their assets to an even greater extent. Moreover, the handling of trapped liquidity before and during the crisis should be reviewed in regulatory and internal bank models.

CS Group: deposits and liquidity buffers above 100% LCR



– The internationally standardised funding ratio (NSFR)[76] did not adequately guarantee a stable funding structure and did not prevent risks in the funding structure. This was particularly so as the parameters drawn up at the time focused heavily on possible problems in refinancing by institutional and generally large-scale investors and not on the fact that client deposits are not always stable. ASF factors for client deposits – especially in the field of large-volume deposits – should undergo an international and national review.

7.7 Recovery plan

Key statements

– *The obligation to draw up a recovery plan forces a bank's management to think in depth about crisis situations and to define measures to be implemented at the operational level.*
– *FINMA has approved CS's recovery plan in the past as it met the statutory requirements. The identified deficiencies were discussed with the bank and their rectification was requested.*
– *It became apparent in the specific course of the crisis at CS that not all stabilisation measures could be implemented promptly as envisaged by the recovery plan.*
– *As soon as there were indications that the measures envisaged in the recovery plan might not be sufficient to remedy the crisis that was manifesting itself, FINMA required the bank to develop alternatives and measures going beyond its recovery plan at an early stage and with increasing vigour, such as preparing for a sale of the entire Group – both in a normal state and in an emergency situation.*
– *FINMA has discretionary powers when assessing the recovery plans of systemically important banks. In future, the focus will be increasingly on the feasibility of the planned measures.*

Background

Systemically important banks are required to draw up a recovery plan that shows how they would stabilise themselves on a sustainable basis in the event of a crisis to enable their business activities to continue without government intervention. The bank's recovery plan is intended to be forward-looking and to identify possible actions that could be taken in various crisis scenarios and prepare their implementation. The measures are intended to strengthen capital and/or secure liquidity. To strengthen capital, provision can be made, for example, for a capital increase, the issue of subordinated debt instruments, the suspension of dividend payments, or the sale of individual business units. To secure liquidity, the bank can, for example, raise debt capital on the capital markets, issue covered bonds, or cut back areas of business that tie up liquidity. In implementing the stabilisation measures, their room for manoeuvre is significantly influenced by the actual crisis scenario.

FINMA reviewed and approved CS's recovery plans as they met the statutory requirements. Following the experience of the Covid-19 crisis, the bank was instructed at the end of 2021 that the recovery plan should take better account of time-related aspects. FINMA also criticised the fact that the recovery plan only described the effects of the individual measures at consolidated level and did not contain an overview of how these would affect material group companies – in particular the parent bank.

Already at the beginning of Q2 2022, due to the structural loss situation at CS, FINMA demanded that the bank draw up specific emergency measures based on the recovery plan so that it would be able to react to unforeseeable events. Further interactions followed over the summer of 2022, as well as a request to the bank to prepare for an adverse scenario should the strategic reorientation not be viewed as credible by the market, the capital increase fail or another significant event occur. Only after several requests from FINMA did CS finally initiate the preparation and implementation of individual measures from its recovery plan.

[76] Net stable funding ratio (NSFR); cf. Liquidity Ordinance Art. 17f (in German).

Some of these measures, such as cost savings, the sale of individual parts of the investment bank, or a capital increase, were also part of CS's strategic reorientation in 2022. During the implementation phase, however, it became clear that the sale prices in stress situations anticipated by the recovery plan were far from achievable in the current market environment. Other measures considered by the bank could not be implemented as it was not possible to find buyers promptly or because of operational hurdles. Furthermore, the bank's managers were not willing to implement specific measures that would have affected their core strategy (e. g. selling off parts of the Wealth Management division or a [partial] IPO of the Swiss Universal Bank). It has to be stated, therefore, that the measures contained in the CS recovery plan were ultimately not sufficient under the given circumstances to stabilise the bank in this specific crisis situation.

In the wake of the intensified liquidity outflows as of October 2022, the question also arose of measures needed in the area of liquidity. Although reductions on the assets side (sales, ban on new business) were provided for in the recovery plan, they were implemented only to a very limited extent, if at all. The management team focused on the sales set out in the amended strategy. The management rejected further-reaching measures and pointed out the negative publicity impact and consequences for the strategy implementation; it emphasised that these measures would also impact negatively on the bank's future earnings power. Drawing ELA was also rejected in October 2022, owing to concerns about the stigmatising effect this would have. As the situation became more critical in October 2022, FINMA increased pressure on CS to review further-reaching measures beyond the existing recovery plan. The bank then developed scenarios for the regular sale of the entire Group and – only after several interventions by FINMA – also prepared for an emergency sale scenario.

FINMA's actions and impact

A recovery plan basically helps to stabilise a bank if a crisis is looming and to avoid a resolution. Due to the ongoing loss situation, FINMA instructed the bank's Board of Directors already in April 2022 to develop concrete emergency measures.

Over the next few months, FINMA engaged in increasingly intensive and urgent communication with CS and urged it to substantially improve its stabilisation measures and to shorten the implementation times for the measures.

As of autumn 2022, several requests were made to review additional measures that were not set out in the bank's recovery plan. These also included a sale of the entire Group. Two scenarios were drawn up. One scenario involved giving the bank sufficient time to negotiate with various buyers over a period of several weeks, while another meant the bank having to find a solution within a very short period of time in order to ease the situation.

The implementation work at CS progressed only slowly. Several escalations were required until the bank established comprehensive documentation for the due diligence by a potential buyer for the Group, so that it would not waste any time in case of need, thus streamlining the sales process. Specifically, FINMA also asked the bank to draw up a list of prospective buyers, to set up a data room, and to prepare documents aimed at shortening the time required for an emergency sale.

The shortcomings ascertained by FINMA in autumn 2022 in the planning for a takeover or a sale of the Group as an alternative scenario were resolved by March 2023 under pressure from FINMA, such that it was possible in mid-March 2023 to implement the takeover by UBS within five days. Without this preparation, UBS would hardly have been able to conduct due diligence within the time available, which would

have called a sale by the end of the weekend into question.

FINMA repeatedly pointed out to CS that its existing contingency plans would not be sufficient if the situation deteriorated. In response to the repeated demands, CS developed scenarios for selling the entire Group. However, a sale of the entire Group did not appear to be considered a priority within CS. CS thus only presented alternative third parties on Saturday, 18 March 2023, which – allegedly – were in fact interested in a partial purchase of CS.

Lessons learned and possible solutions

The obligation to draw up a recovery plan forces a bank's management to engage in fundamental, in-depth deliberations about crisis situations and to define measures to be implemented at the operational level. The CS recovery plan was subjected to a thorough analysis based on the usual criteria in an international comparison. FINMA had communicated critical feedback and suggestions for improvement to the bank on numerous instances over the years. These concerned elements such as the feasibility of the measures from a time perspective or their impact on significant Group companies.

A recovery plan is based on abstract, strategic considerations, while an actual crisis develops in a very specific way. However, the concrete implementation of some stabilisation measures revealed operational hurdles that prevented or delayed implementation. In addition, it became evident that CS had been overly optimistic in its assessment of the impact of many stabilisation options.

FINMA can implement the following options in future:

– FINMA will incorporate these findings into its work and take them into account when assessing the recovery plans submitted. For example, when assessing recovery plans, time-related aspects will be given a greater weighting, and the feasibility of the measures in different crisis scenarios will be reviewed. In addition, the banks must describe the impact of the stabilisation measures on the individual group companies. FINMA will also require the banks to develop further-reaching measures taking into account liquidity scenarios and the possibility of digital bank runs.

7.8 Resolution plan

Key statements

– *The resolution plan pursuant to the TBTF rules played a decisive role in finding a solution. On the one hand, it provided the responsible authorities with a choice when the situation of CS deteriorated massively within an extremely short time. On the other hand, it can be assumed that the prepared restructuring ruling and the measures provided for therein (the integral write-off of the share capital of all shareholders and the claims of all AT1 bond holders, the conversion of bail-in bonds into shares, the replacement of the Chair of the Board of Directors, the engagement of a restructuring agent, and the liquidity support from the SNB and the federal government) were a strong incentive for the bank.*
– *Resolution[77] is an ultima ratio intervention by the authorities.*
– *The resolution planning of systemically important banks focuses strongly on scenarios in which a crisis impacts primarily on the bank's capital (loss absorption). The massive liquidity outflows in autumn 2022 called on FINMA to develop the available options further.*
– *The resolution planning had to be adapted to the new reality of potential accelerated bank runs, which was achieved with increased crisis readiness as of autumn 2022 and will be consolidated in future.*
– *FINMA started preparing for a specific restructuring in good time and closely involved the national and international authorities.*

[77] The German term "Abwicklung" is only an incomplete and partially imprecise rendition of the English term "resolution", as a "resolution" cannot necessarily be a winding down in the narrower sense (a wind-down or an ordinary discontinuation of business activities). A restructuring (in terms of CS the preferred strategy) or the initiation of bankruptcy proceedings for the group, including retention of systemically important functions (emergency plan, known as a break-up scenario as regards CS), may also amount to a resolution. In the German version of this report, the terms "Abwicklung" and "Resolution" are used interchangeably.

– *The close collaboration with the partner authorities within the CS Crisis Management Group (CMG) before and during the crisis strengthened confidence in the operational feasibility of the restructuring on and as of 19 March 2023 if this were to be implemented.*

Background

The resolution planning and its specific operationalisation is primarily within the remit of FINMA, assuming that the bank provides it with the necessary information (Art. 64 para. 2 BA). As shown in sections 4 and 5, FINMA engaged in intensive, specific resolution planning as of summer 2022 that went well beyond the regular planning in this area. In this context, the following elements are to be noted.

From October 2022, with regard to the restructuring strategy, FINMA prepared the restructuring ruling, restructuring plan, and ruling on commissioning a restructuring agent. As an alternative to restructuring, FINMA also began preparing implementation of the emergency plan (bankruptcy ruling, appointment of a bankruptcy liquidator, and activation of the emergency plan).

The restructuring plan covered the following specific points:

1. **Capital measures:** In the present case, the restructuring plan provided for the complete write-down of the CSG equity, the complete write-off of the AT1 instruments (bonds subject to debt waiver), and the complete conversion of the bail-in bonds into new share capital for CSG. This process would have resulted in a capital structure immediately after the restructuring that would have involved a total loss-absorbing capacity of CHF 111.2 billion, entirely of CET1 quality.[78] These measures taken by FINMA would not have created any additional liquidity for the bank.
2. **Restructuring measures:** Redimensioning of the bank via spin-off (sale, discontinuation, resolution) of the major part of the investment bank and clear focus on the Swiss Bank and Wealth Management divisions.
3. **Measures relating to governance:** Removal of the current and appointment of a new Chair of the Board of Directors of CSG and temporary retention of the Executive Board and other members of the Board of Directors.

After the CFC had activated the Red Phase, FINMA began to involve the international CMG in the preparatory work for a resolution. In particular, the resolution strategy was explained in detail to the CMG so that all authorities would have the same level of understanding of the situation. The CMG normally comprises the Bank of England, the Federal Reserve Bank of New York, the US Federal Reserve Board, and the Federal Deposit Insurance Corporation. In November 2022, the CMG was expanded to include the New York State Department of Financial Services and the US Securities and Exchange Commission. This was deemed necessary as the New York State Department of Financial Services is the authority responsible for the New York branch of CS and thus has supervisory sovereignty over its liquidity holdings. The US Securities and Exchange Commission was involved as a possible bail-in, i.e. the conversion of bail-in bonds into new CSG shares, would have affected US investors, and US securities law would have come into play.

Owing to the massive outflows within a very short time in October 2022, it was decided during that month that FINMA's operational crisis readiness for an intervention should be set at seven to ten days. Hence the runway period, comprising the final preparations for a resolution, was shortened in order to take account of the circumstances of the (still) ongoing bank run. FINMA requested the weekly submission of the "funding in resolution" reports from the bank – which show the liquidity requirement in the event of a PONV.

[78] The bank's assets are unchanged immediately after the bail-in; a change results from the adjustment of the business model. The bank's liabilities consist of share capital, other equity and existing debt (disregarding no longer existing liabilities related to the former AT1 instruments and the bail-in bonds).

In November and December 2022, several video conferences were held by the CMG on the progress of the preparations for a possible restructuring of CS with a bail-in. The United Kingdom has very specific rules for recognising international insolvency proceedings. For this reason, a separate channel of communication was opened with the Bank of England as of November 2022. FINMA and the Bank of England held several bilateral telephone conferences on legal matters, clarified the basic legal framework of the Swiss provisions and their equivalence with those of the United Kingdom and answered specific legal questions.

In November 2022, an initial real-time exercise took place with regard to the quantitative parts of the restructuring plan. Here, the bank prepared an ad hoc balance sheet for the Group and the main Group companies (valuation in resolution). This provides the basis for calculating if and to what extent a restructuring of the Group is possible and if recapitalisation via a bail-in would provide sufficient capacity to absorb future losses too.

The November 2022 exercise involved 70 persons in the CMG in addition to the bank. This exercise was a key factor in the international recognition proceedings. The quality of the data provided by CS was good. This is clear evidence that the technical TBTF work, in particular valuation in resolution, funding in resolution, and bail-in execution, were fit for purpose.

In January 2023, when the liquidity situation at CS had eased somewhat, the restructuring and, with a lower priority, the bankruptcy documents were updated to prepare them for signature. Among other things, it involved legal clarifications, e. g. of questions relating to a possible stay of contracts. In early February 2023, this work had been completed. According to FINMA's estimates, the restructuring documents were 90% ready for signature, in line with the assumed runway period of seven to ten days. The remaining 10% involved measures and preparations that could only be completed shortly before restructuring or bankruptcy was ordered.

In the course of its preparations for a potential resolution of CS, FINMA also relied on external expertise, where deemed appropriate or required. In early 2023, based on the data provided by the bank and the analysis of reports from rating agencies and market information, FINMA also started to review and refine the restructuring measures. As part of these considerations, FINMA also investigated alternative measures such as a break-up of the bank via partial sales of individual legal entities and portfolios as well as the liquidation of a rump bank in terms of their operational and legal feasibility. However, these alternative scenarios were dropped on account of significant economic uncertainties and poor feasibility.

Between October 2022 and January 2023, trials for a possible receipt of ELA by CS took place. The internal FINMA process and the data to be provided by CS were defined in order to confirm the bank's solvency to the SNB as swiftly as possible. In this way, FINMA ensured that at the time of an actual receipt of ELA, only the information provided by the bank would have to be reviewed.

When the CS crisis worsened again in mid-March 2023, FINMA started to complete the restructuring documents.

– On the afternoon of Wednesday, 15 March 2023, CS was instructed to check and further develop the restructuring plan prepared by FINMA by Thursday evening in order to improve the likelihood of success of such an undertaking. Only under increased pressure from FINMA did CS submit its comments and suggestions for improvements to the prepared restructuring plan on Friday morning.

– With regard to the numbers in the restructuring plan, FINMA was dependent on the bank providing accurate data from the valuation in resolution. As time was running out, FINMA submitted the restructuring plan to the bank on the evening of Thursday, 16 March 2023, asking it to complete it with the data from the valuation in resolution and to ensure that the plan and the bail-in could be implemented in a legally compliant manner.

The CMG interactions resumed as of 15 March 2023, sometimes several times a day, on all levels. Early on Saturday morning, 18 March 2023, the CMG authorities were provided with English translations of the restructuring plan and the restructuring ruling, which they would have needed as a basis for their recognition proceedings. After a technical exchange with the involved authorities, the latter gave FINMA their verbal assurance late in the evening of Saturday, 18 March 2023, that they did not see any obstacles standing in the way of an implementation of a possible restructuring ordered by FINMA in their jurisdictions (however, see the note regarding the US Securities and Exchange Commission concerning the bail-in above).

In parallel, FINMA finalised the governance measures. It was decided that under a restructuring ruling only the Chair of the Board of Directors should be replaced. An executive search agency had been tasked with this in advance. In this way it was ensured that the identified person could have taken up the role of Chair of the Board of Directors of CSG on the weekend of 18–19 March 2023. Based on the Federal Council's decisions regarding liquidity (introduction of the PLB and ELA+) under emergency law on Thursday, 16 March 2023, it was no longer necessary to pursue the option of a bankruptcy ruling for CSG and CS AG with parallel activation of the emergency plan for CS Switzerland. This was because there was the prospect of sufficient liquidity support from the SNB and the government and a restructuring of CS was possible.

The restructuring ruling, including the restructuring plan and ruling on the appointment of a restructuring agent, were ready for signature and had been agreed on at the international level on 19 March 2023. This was also confirmed by the Financial Stability Board in its "Preliminary lessons learnt for resolution" report published on 10 October 2023. Furthermore, the corresponding communication concept, including press releases and speaking notes for the press conference, had been prepared within FINMA.

Lessons learned and possible solutions

FINMA worked together closely and well with the national and international authorities in preparing the steps for a possible resolution. Ultimately, on 19 March 2023, the restructuring as prepared by the authorities constituted a valid alternative to a merger between the two large banks. The measures on the basis of the TBTF framework and the associated institutionalised colleges thus made a significant contribution to overcoming the acute crisis. There was a basis of trust among the authorities involved, such that broad-based decisions could be made quickly.

If CS and UBS had not come to an agreement in the late afternoon of Sunday, 19 March 2023, FINMA would alternatively have been able to order that the above-mentioned resolution plan be implemented via a restructuring ruling, and to mandate a restructuring agent to supervise the restructuring. The liquidity support provided by the SNB and the related federal guarantees to the SNB (for the PLB) would also have been a key element in a restructuring.

The following elements can be noted:

– Resolution measures are ultima ratio measures, even at the PONV. They should be used only if no better solution is available, which – ideally – leaves a partial element of control with the bank concerned.

– Resolution measures can only be drawn up in close collaboration and cooperation with international partner authorities in order to ensure legal recognition of the measures in the main jurisdictions.
– A restructuring requires appropriate liquidity measures, in particular in the event of a crisis of confidence. In this context, the TBTF regulations were still incomplete in mid-March 2023, consequently the application of emergency law would have equally been necessary for a restructuring of CS.
– Another working assumption was that the time between the realisation that a PONV could occur and its onset is about two to four weeks. In this so-called runway period, FINMA finalises the resolution documents and coordinates the restructuring measures with its domestic and foreign partner authorities. In this case, the runway period lasted a few days. The CS case shows that a shorter runway period has to be assumed.

FINMA can implement the following options in future:

– Institution-specific, regular and crisis-related exercises on the part of the authorities are necessary in order to allow for a timely preparation and implementation of a restructuring as quickly as possible in the event of a crisis. It must be ensured, with the involvement of the authorities, that various scenarios including digital bank runs are considered.

The following possible solution requires an amendment of the legislation:

– In order to cover the liquidity requirements of a restructuring, a PLB is required in the ordinary legislation.[79] Securing liquidity is an essential requirement in a restructuring when assessing the prospect of success of restructuring measures.

[79] The consultation by the Federal Council on a corresponding amendment to the Banking Act ended on 21 June 2023.

8 Glossary

Term	Description
Additional capital charge / Pillar 2 add-on	Referred to as additional capital in the CAO. This refers to the capital required by FINMA in individual cases in excess of the minimum capital requirement and capital buffer. The requirement for additional equity is justified by the institution's specific risk situation, which is not sufficiently reflected by the existing regulation. These additional requirements are known internationally as Pillar 2 add-ons.
Additional Tier 1 Capital (AT1)	See Going concern capital
APAC College of Supervisors	See International cooperation
Assessment letter	A formalised annual evaluation of the strengths and weaknesses of an institution by FINMA in its interactions with the banks. This assessment also includes communication of FINMA's internal rating for the institution, and states how an institution can improve its rating.
Bail-in bonds	See Gone concern capital
Basel Committee (Basel Committee on Banking Supervision [BCBS]) and Basel III	The Basel Committee on Banking Supervision (BCBS) is the authoritative body for the international co-ordination of banking regulation and serves as a forum for cooperation on banking supervision issues. Switzerland is a member of this committee of central banks and banking supervisory authorities and is represented by the SNB and FINMA. The applicable international standards of the BCBS are developed over time. The international standards currently in force are designated Basel III.
Break-up scenario	The break-up scenario is a part of the resolution plan for the Swiss G-SIBs (now only UBS). In this scenario, the restructuring has either failed or has no chance of success. The focus of effort shifts to maintaining the Swiss entity. The remaining parts of the group will be liquidated.
Capital requirements	Capital requirements for banks are calculated in two ways, whereby the higher requirement is binding. Risk-weighted assets (RWA) are assets or off-balance-sheet commitments of a bank that are multiplied by various factors that reflect the bank's risk of loss corresponding to the counterparty. These capital requirements of the bank are expressed in relation to the RWA in order to calculate the capital ratio. The leverage ratio (LR), on the other hand, is calculated according to unweighted assets, which are described altogether as the total exposure. The default risk of the individual assets is unimportant here.
Central bank facilities	Standing facilities allow authorised business partners to obtain liquidity from the Swiss National Bank. Standing facilities include the intraday facility, the liquidity shortage financing facility (LSFF) and the SNB COVID-19 refinancing facility (CRF). The SNB also acts as a lender of last resort on the basis of Article 9 para. 1 let. e NBA. Within the framework of this emergency liquidity assistance (ELA) it can make liquidity available to one or more domestic banks that are relevant to the stability of the financial system, if these institutions are no longer able to refinance themselves on the market. The liquidity assistance must be fully covered by sufficient collateral at all times. The SNB decides what collateral is sufficient (see Guidelines of the Swiss National Bank on monetary policy instruments, section 6; available at https://www.snb.ch/en/mmr/reference/snb_legal_geldpol_instr/source/snb_legal_geldpol_instr.en.pdf). In addition to these instruments, the Federal Council has created the necessary legal basis for the SNB to grant CS additional liquidity assistance. Specifically, the Federal Council has created a privileged creditor status for this additional liquidity assistance. This means that the SNB has the necessary security to enable it to provide CS with substantial additional liquidity. This facility is known as ELA+. The Federal Council has also decided to grant the SNB a default guarantee for liquidity loans. This default guarantee is called a public liquidity backstop (PLB) (see separate description).
Central treasury function	An organisational unit that offers services in the area of financial markets, global financing and liquidity for the companies in a group.

Term	Description
Clawback	Clawback refers to a clause in an employment contract whereby salary or bonus payments already made to employees subsequently have to be paid back to the employer by the employee.
Committee on Financial Crises (CFC)	See Cooperation with regard to financial crises
Common Equity Tier 1 (CET1)	See Going concern capital
Contingency funding plan	CS referred to its emergency liquidity plan as a contingency funding plan (CFP). This comprised several levels that also provided for increasingly far-reaching measures depending on the severity of the crisis situation.
Contingency plan	A contingency plan is intended to ensure that an organisation can respond effectively to a significant incident, event or situation that may or may not occur in the future. A contingency plan is sometimes also referred to as a Plan B or back-up plan, as it can also serve as an alternative measure if the expected results are not achieved.
Cooperation with regard to financial crises	The FDF, FINMA and the SNB work closely together with regard to the prevention and handling of crises that threaten the stability of the financial system. The Steering Committee (SC) is responsible for the strategic coordination of the crisis organisations and any interventions. The SC is comprised of the Head of the FDF, who leads the committee, the Chair of the Governing Board of the SNB, and the Chair of FINMA. The SC meets as required, usually together with members of the Committee on Financial Crises (CFC). The Committee on Financial Crises (CFC) is responsible for the coordination of preparatory measures and for crisis management. It initiates the preparation of decision-making materials. The CFC is comprised of the CEO of FINMA, who leads the committee, the State Secretary of the FDF, the Vice Chair of the Governing Board of the SNB, and the Director of the Federal Finance Administration (FFA).
Core College of Supervisors	Refers to the international cooperation between supervisory authorities with regard to a bank or financial group under the leadership of the authority with overall responsibility. The supervisory authorities in the most important foreign locations of a bank or financial group are represented.
Credit default swaps	A credit default swap (CDS) is a credit derivative that offers investors the option of swapping the default risk of bonds, loans or debt instruments. In a CDS, two parties enter into a contract that relates to a reference debt (underlying asset). The greater the probability of default, the higher the hedging costs.
Credit Suisse Supply Chain Finance Funds / Greensill	Supply chain finance funds of CS, domiciled in Luxembourg, for which the selection of the supply chain receivables was delegated to Greensill Ltd. UK
Crisis Management Group	See International cooperation
Cross-border business	Refers to the business relationships of a bank for which the client and the business unit in contact with them are not located in the same jurisdiction. Such relationships generally require compliance with particular due diligence obligations within the bank.
Deferred tax assets (DTA)	A deferred tax asset is an asset on a company's balance sheet that will reduce its taxable income in the future. A country's tax system can thus allow, for example, past losses to be deducted from future earnings.

Term	Description
Due diligence	Due diligence generally means the careful analysis and evaluation of a matter in a business context. Due diligence checks are carried out particularly with regard to upcoming transactions such as corporate acquisitions. Customer due diligence checks, i.e. thorough checks on new and existing customers, are a key element in fulfilling the due diligence obligations pertaining to the Anti-Money Laundering Act.
Emergency liquidity assistance (ELA) or ELA+	See Central bank facility
Enforcement	The term enforcement covers all of FINMA's investigations, proceedings, and measures in relation to violations of supervisory law.[80]
Funding in resolution (FiR)	Funding in resolution is a concept that was developed at an international level, particularly by the Financial Stability Board. According to the concept, a bank must calculate the liquidity required for its eventual resolution. In the best case, the bank will be able to ensure the liquidity required for a resolution from its own holdings (particularly in the case of a capital crisis). If this is not possible, it will be necessary to call on external sources (markets, central bank support, state liquidity guarantees, specific resolution funds [see EU], etc.).
General College of Supervisors	See International cooperation
Going concern capital	To meet the going concern capital requirements, systemically important banks must hold sufficient equity to ensure the continuation of business activities in the event of larger losses. The funds eligible for capital requirements are divided according to quality levels into core capital (Tier 1) and supplementary capital (Tier 2). The most important component is core capital, which consists of Common Equity Tier 1 capital (CET1) and Additional Tier 1 capital (AT1). Swiss systemically important banks must meet the requirements with Tier 1 capital only.
Gone concern capital	Gone concern capital requirements are intended to ensure that, in the event of the risk of insolvency and official measures, a bank can be restructured and wound down in an orderly manner without state financial assistance. Under the CAO, Swiss systemically important banks must hold corresponding capital as "additional loss-absorbing funds". These requirements are most often fulfilled by means of bail-in bonds, which are debt instruments that are explicitly designed for loss absorption in the event of insolvency measures. The conversion into equity occurs as the result of a bail-in ordered by the authorities.
Gone concern instruments	Debt instruments, usually bail-in bonds, that can be converted into bank equity as part of restructuring proceedings. These bail-in bonds have to meet certain criteria in order to qualify as gone concern instruments. In particular, they must in principle be issued by the group parent company, be subject to Swiss law, and be under the jurisdiction of the Swiss courts. Furthermore, they must contain an irrevocable clause whereby the creditors agree to any conversion or reduction in claims (i.e. a bail-in) ordered by the supervisory authority. They may not be offsettable or secured.
High-quality liquid assets (HQLA)	See Liquidity requirements
Idiosyncratic risk	Idiosyncratic risk is a type of investment risk that applies to a single asset (such as a share in a particular company) or a group of assets (such as the shares in a particular sector), in contrast to the systematic risk of the market as a whole.
Inherent risks	Risks resulting from a business activity without taking control or mitigation measures into account.

[80] All about enforcement (finma.ch).

Term	Description
International cooperation	Numerous supervisory authorities coordinate and cooperate closely in order to monitor and prepare crisis measures for each global systemically important bank (G-SIB). The supervisory activities are usually coordinated in what are known as colleges of supervisors. Various colleges of supervisors may be established depending on the relevance of a bank's local subsidiaries and branches and its group structure. In the case of CS this comprised the Core College with Swiss authorities (FINMA and the SNB) as well as the most important supervisory authorities from the United States and the United Kingdom, the APAC College with various authorities from Asia and the Pacific region, and the General College that essentially comprised all the international supervisory authorities that were relevant for CS. The concrete cooperation with regard to the restructuring or resolution of a G-SIB is done in the Crisis Management Group (CMG), which includes the main supervisory and insolvency authorities for the bank in question. The objectives of a CMG are to assess the resolvability of a bank, to develop a common understanding of the resolution plan for the G-SIB, and to define the crisis and resolution planning for the G-SIB.
Intraday liquidity risks	This is the risk that a bank does not have sufficient liquidity available at the start of the day to meet payments at the expected time. Intraday liquidity refers to funds that can be accessed during the business day, usually to enable banks to make payments in real time.
Leverage ratio / leverage exposure	See Capital requirements
Liquidity coverage ratio (LCR)	See Liquidity requirements
Liquidity crisis template (LCT)	The LCT is a predefined reporting scheme to be completed by a bank in a specific situation, such as a crisis, on the instructions of FINMA. It was developed by FINMA five years ago for the two G-SIBs and agreed with the core college authorities of these banks. In the event of a crisis, FINMA can request an LCT from the bank with immediate effect, typically on a daily basis. The contents of the LCT enable more in-depth supervisory monitoring of a bank's daily liquidity situation.
Liquidity requirements	The quantitative requirement for short-term liquidity is specified by the liquidity coverage ratio (LCR). The LCR is intended to ensure that banks have sufficient high-quality liquid assets (HQLA) to be able to cover at any time the net outflow of funds to be expected in a stress scenario defined by assumed outflows and inflows with a time horizon of 30 calendar days (30-day horizon) (see Art. 12 of the Liquidity Ordinance; available at https://www.fedlex.admin.ch/eli/cc/2012/883/de / no official English translation available).
Look-through basis	In connection with regulatory requirements, look-through refers to a perspective that replaces the regulations in force at a particular point in time due to transitional provisions in anticipation of the final state of the (usually more stringent) regulations. The purpose of such a perspective is to show how far away a bank is from fulfilling the final supervisory norm, or whether this is already being met ahead of schedule.
Loss potential analysis (LPA)	The loss potential analysis (LPA) is the most extensive stress test carried out by FINMA. The LPA includes a projection of baseline and stress assumptions over several years, which shows the effects on the earnings situation and prudential indicators. The design and calibration of the FINMA scenarios are even stricter than those of the UK and US supervisory authorities. The LPA is complemented by an exchange on capital planning, capital management and risk management with the bank.
Margin/collateral call	Call by a broker, a bank or a financial market infrastructure to an investor to pay additional funds or securities into the account in order to raise the value of the investor's coverage (for a loan granted by the bank) back to a minimum value specified by the margin call.

Term	Description
Net stable funding ratio (NSFR)	The net stable funding ratio (NSFR) is intended to ensure that the stable financing of a bank is continuously achieved over a one-year time horizon. The NSFR is the ratio of the available stable funding (ASF) as the numerator and the required stable funding (RSF) as the denominator (see Art. 17 f, 17 g of the Liquidity Ordinance; available at https://www.fedlex.admin.ch/eli/cc/2012/883/de / no official English translation available).
No creditor worse off (NCWO)	The NCWO test refers to a rule used in the context of the restructuring of a company or financial group. It states that creditors in the restructuring must not be in a worse position than they would be in the event of the bank's liquidation.
Parent bank	The highest operational unit of a financial group, which is subject to the comprehensive prudential supervision of a financial market supervisory authority. The parent bank within the CS Group is Credit Suisse AG (CS) from a single-entity perspective (not consolidated).
PEP relationship	Politically exposed persons (PEPs) are people who hold or have previously held influential public offices. Business with PEPs requires a higher level of due diligence.
PONV	Point of non-viability (the point of impending insolvency) is a term used in the Basel supervisory standards and in Article 29 of the CAO. The PONV has been reached if there is a threat of insolvency as defined in Article 25 BA, i.e. if there are justified concerns that a bank is overindebted, has serious liquidity problems, or if it cannot meet the capital requirements after expiry of a deadline set by FINMA. The term is specifically used in the terms of issue for own funds debt instruments and refers to one of the triggering events for the loss absorption of those instruments.
Prime services business	In prime services business, investment banks and other financial institutions offer numerous services to hedge funds and other major investors. The services provided in the context of prime brokerage include securities lending, credit financing for trading activities, and cash management.
Public liquidity backstop (PLB)	Refers to extraordinary state liquidity assistance for systemically important banks and aims to increase the confidence of market participants in a recapitalised and solvent systemically important bank's ability to survive. A PLB is one of the standard international instruments in the event of banking crises.
Rating	The assessment of a debtor's solvency (e. g. a government, company or private individual) on the basis of their creditworthiness is known as a rating. The rating can be assigned by a credit institution itself (internal rating) or by a rating agency (external rating). The rating level, often expressed as a code, reflects the expected probability of default for the borrower. The higher the rating, the better the borrower's creditworthiness, and the lower the estimated probability of default.
Recovery plan	In a recovery plan, the bank has to show what actions it could take to stabilise the bank sustainably in a crisis so that its business could continue without entering resolution.
Regulatory filter	Regulatory filter is used to denote the derivation of the eligible capital for regulatory purposes from the financial accounting. In the case of CS, in 2017 the parent bank (CS AG) was permitted to continue with the portfolio valuation method instead of the individual valuation of participations in its subsidiaries in the financial area.
Resolution plan	FINMA produces a resolution plan for systemically important banks. This indicates how the bank (or group) would be recapitalised, restructured and/or (partially) liquidated in the event of its application.
Resolvability	Resolvability means creating the conditions and meeting the prerequisites for successfully restructuring a systemically important bank in a crisis or enabling it to exit the market through bankruptcy without jeopardising financial stability.
Risk-weighted assets (RWA)	See Capital requirements

Term	Description
Runway period	Runway period refers to the amount of time a company has before it is likely to have used up all its cash liquidity.
Securitised products business	In securitised products business, financial assets such as loans are pooled, securitised, and sold to investors in the form of securities (often of various risk categories).
Senior Managers Regime (SMR)	Senior Managers Regime refers to the approaches of various supervisory authorities to ensure that the responsibilities and competencies of high-level managers of financial companies are clearly regulated in order to make them accountable for their behaviour.
SPoE strategy	The single point of entry (SPoE) resolution strategy is an approach that envisages that a bank's home supervisory authority converts only the debts of the highest unit of the group into new equity via a bail-in. This is intended to ensure that the operational units (which are often active in foreign jurisdictions) are not subject to any government interventions.
Standard operating procedure (SOP)	A standard operating procedure is a binding written description of process flows, including the reviewing and documentation of the results.
Steering Committee (SC)	See Cooperation with regard to financial crises
Stress test	A stress test is used to investigate the effects of a potential crisis on the institution's equity and solvency. The institutions being tested must have sufficient capital and liquidity buffers to deal with unforeseen events at any time.
Swiss emergency plan	In an emergency plan, systemically important banks in Switzerland must demonstrate that the continuity of their systemically important functions in Switzerland could be maintained independently from the other parts of the bank if the bank is at risk of insolvency. Unlike global recovery and resolution planning, the emergency planning is therefore focused on the banks' Swiss business.
Systemically important financial group (systemically important bank, SIB)	Systemically important banks / financial groups refers to institutions or groups whose failure would seriously damage the Swiss economy and the Swiss financial system (Art. 7 para. 1 BA). In a national context, the SNB designates the systemically important banks or financial groups registered in Switzerland and their systemically important functions via a ruling following consultation with FINMA (Art. 8 para. 3 BA). At an international level, the FSB designates the global systemically important banks on the basis of an annual analysis and allocates them to different categories. These categories result in different levels of G-SIB add-ons (of required capital) for the institutions in question.
Too big to fail (TBTF)	Financial market participants that become so large at a national or international level that their disorderly failure could undermine financial stability and force a government bail-out.[81]
Total loss-absorbing capacity (TLAC)	Total loss-absorbing capacity refers to the total of all capital instruments available to absorb losses in the event of restructuring or insolvency (the total of the going and gone concern capital components). The term TLAC was coined by the FSB.
Trapped liquidity	Trapped liquidity refers to the portion of liquidity that is only available to a particular legal entity, and consequently cannot or can only partially be allocated or available to other units of the financial group or at consolidated level.
Valuation in resolution (ViR)	The ViR is used to provide the required information to the resolution authorities as to whether a bank is likely to fail. This is primarily relevant in a capital scenario. The ViR is used to determine whether the capital measures are adequate to offset valuation losses and whether, following the capital measures, the restructured bank will meet the capital requirements to a sufficient extent to enable it to absorb further potential losses.

[81] "Too big to fail" and financial stability (finma.ch).

9 Annex

9.1 Capital requirements for global systemically important banks

Phases in the development of the TBTF capital rules for systemically important banks

The Capital Adequacy Ordinance (CAO) (Arts. 124–135) has undergone various revisions of the capital requirements since the introduction of provisions for systemically important banks (SIBs) in summer 2012. The main stages in this development are summarised below. The focus is on the provisions for G-SIBs. Specific requirements for units of CS, as applied in particular to CS AG (parent bank), will be presented elsewhere.

Initial phase 2012–2016

For the first time, in addition to the risk-weighted requirements (RWA), binding unweighted capital requirements (leverage ratio, LR) were also introduced for all banks. Special provisions for SIBs led to higher minimum requirements compared with other banks.

The requirements distinguished between the basic requirement, a capital buffer, and the progressive component. The latter comprised two separate add-ons for the market share (in Switzerland, measured in terms of the higher share of either savings deposits or loans with a maturity below one year) and for the size of the entire financial group, minus a discount to be determined by FINMA in recognition of measures aimed at improving the global resolvability of the financial group.

In quantitative and qualitative terms, the requirement (presented here in RWA) comprised the sum of:

- a basic requirement of 4.5% held in the form of Common Equity Tier 1 capital (CET1),
- a capital buffer of 8.5%, to be held as 5% in the form of Common Equity Tier 1 capital and 3.5% as Additional Tier 1 capital (AT1), with an initiating trigger of 7% for Common Equity Tier 1 capital,
- a variable requirement from the progressive component with Additional Tier 1 capital with an initiating trigger of 5% for Common Equity Tier 1 capital.

The risk-weighted requirements thus amounted to (4.5% + 8.5% + 1%) at least 14% plus the requirements from the countercyclical capital buffer. Calibration of the progressive component originally generated a total requirement of up to 19% RWA for the two large banks. The LR requirement corresponded to 24% of the percentages of weighted capital requirements (excl. countercyclical capital buffer).

Revision July 2016

The main conceptual change concerned the reclassification of requirements into capital for the going concern of the bank, on the one hand, and additional loss-absorbing funds, on the other hand.

In addition, the requirement based on the LR was now calculated with a stricter risk density of 35%. The total of the requirements from the minimum capital and capital buffer were set at 12.86% RWA and 4.5% LR. It could only be met mainly in the form of Common Equity Tier 1 plus – to a lesser extent – AT1 contingent capital with a new trigger of 7% CET1. The requirements from the progressive component meant that G-SIBs now had to fulfil total requirements in terms of capital for the banks' ordinary continuation amounting to 14.3% RWA and 5% LR.

The requirements for additional loss-absorbing funds were basically set at the same level as those for capital for the ordinary continuation of the bank. These could now be met via bail-in bonds, in line with the international standard of the Financial Stability Board for additional loss-absorbing funds.

This theoretically resulted in a maximum total require-

ment of 28.6% RWA and 10% LR, before rebates on the additional loss-absorbing funds (gone concern requirements). This new regime was phased in by means of transitional provisions as regards the increase in quantitative requirements for additional loss-absorbing funds up to and including the end of 2019.

Revision 2019

The main point in the revision with regard to G-SIBs was the elimination of Article 125 CAO. The provisions it contained had previously meant a major restriction for FINMA in substantiating capital requirements. Paragraph 1 had de facto imposed an obligation on FINMA to grant capital relief at the single entity level if fulfilment of the (ordinary) requirements at the single entity level would otherwise have meant a nominal over-fulfilment of the requirements at the financial group level. The banks argued that a capital ratio of max. 19% had been agreed and that indirect fulfilment of an estimated, inexplicable 26% should not be permitted via "the back door of parent bank requirements". On this basis, the two large banks had succeeded in pushing through relief regarding the requirements for the parent banks.

Revision 2023

As part of the amendment of the Banking Ordinance (BO) on 1 January 2023, the previous rebate system for improving the resolvability of G-SIBs (gone concern requirements) was eliminated and replaced with a new incentive system. This system switch led to a number of amendments to the CAO. The previous 100% reflection of the basic requirement minus a rebate was replaced with a fixed 75% reflection. The rebates granted were thus made permanent. The 75% reflection is the lower limit resulting from adherence to the requirements of the Financial Stability Board's total loss-absorbing capacity standard in force since 1 January 2022.

In return, FINMA can request additional, supplementary loss-absorbing funds if it identifies obstacles in terms of resolvability. This applies at both the financial group and parent bank levels. The Swiss entity, as the source of the systemically important functions, is subject to the requirements of the emergency planning.

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