

## Continuation and end of Credit Default Swaps on Credit Suisse

# No bankruptcy constituting a credit event has occurred

Par Jean-François Mion le 1 June 2023

On May 17, the Europe Middle East & Africa Credit Derivatives Determinations Committee (DC) of the International Swaps and Derivatives Association (ISDA) issued an initial ruling on the absence of government intervention constituting a credit event for credit default swaps (CDS) on Credit Suisse's subordinated bonds for the amortization of Additional Tier 1 (AT1) bonds.

The day after its decision, the DC received a second request to establish whether a bankruptcy constituting a credit event had occurred in respect of the same event, filed hastily one day before the end of the 60-day look-back period. Unlike the first request, this one concerned CDSs on both senior and subordinated Credit Suisse bonds. The applicant had focused its request on sections 4.2(b) and 4.2(h), which refer to the entire section 4.2 on bankruptcy of the 2014 ISDA Credit Derivatives Definitions.

Bankruptcy is broadly defined as the dissolution of the reference entity (excluding mergers), the inability to pay its debts, the conclusion of an agreement with its creditors, the opening of proceedings affecting creditors' rights or liquidation, or the transfer of all its assets to a creditor.

The DC decided on May 22 that no bankruptcy constituting a credit event had taken place, without any particular motivation, certainly insofar as the amortization of the AT1 bonds results directly from their terms (sections 7(a)(iii) and 7(b)). It is therefore not a question of an inability to pay debts (section 4.2(b)) or any other bankruptcy event covered by section 4.2 of the 2014 Definitions. This decision marks the end of questions concerning the occurrence of a credit event in respect of the amortization of AT1 bonds, insofar as the look-back period has now been exceeded. No new requests will be accepted by the DC, unless unknown information is revealed during its decisions in accordance with section 2.5(b) of the 2018 Credit Derivatives Determinations Committees Rules (DC Rules).

In a press release dated May 23, the Swiss Federal Administrative Court (TAF) reported that it had received around 230 appeals against FINMA's decision of March 19, under which it ordered Credit Suisse to write down its AT1 bonds. To our knowledge, FINMA has not published its decision, which could potentially constitute new information under the DC Rules depending on its content.

Similarly, if a TAF decision were to reveal new information, a new request could be made to the DC. That said, the two DC decisions were taken unanimously, and all the relevant information seems to be known, particularly concerning the level of subordination of AT1 obligations. It

therefore seems unlikely that these decisions will be overturned in the future.

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