

**CREDIT SUISSE AG**

Paradeplatz 8  
P.O. Box  
CH-8070 Zurich  
Switzerland

Phone 044 333 66 50  
Fax 044 337 01 86  
www.credit-suisse.com

Financial Stability Board  
CH-4002 Basel

Volker Baetz

044 333 2882  
volker.baetz@credit-suisse.com

Per email to:  
fsb@fsb.org

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**Monitoring the Technical Implementation of the FSB Total Loss-absorbing Capacity Standard  
Call for public feedback dated June 6, 2018**

Dear Ladies and Gentlemen:

Credit Suisse welcomes the opportunity to participate in the Financial Stability Board's (FSB) call for public feedback regarding the technical implementation of the TLAC standard. Credit Suisse is a longstanding supporter of efforts to establish credible G-SIB resolution strategies and end Too-Big-To-Fail (TBTf), both in terms of policy development and market practice.

Credit Suisse was an early adopter of TLAC and issued bail-in debt before national implementation in most major markets had been finalized. Our first 'Contingent Capital' or 'CoCo' issuance was an important early benchmark for that market in 2011, and we have been active in the bail-in debt market since 2015. We have worked to develop a broad market for these instruments and helped to establish standards and market best practice. Today, Credit Suisse is fully compliant with the FSB external TLAC requirements and is on track to meet the Swiss TBTf TLAC rules; the final Swiss rules around internal TLAC ('iTLAC') and the Parent Bank rules are still under development.

Please find below our five answers as follows:

**1. Question: The regulatory adoption of the TLAC principles and Term Sheet, including the relevant provisions of the Basel Committee standard on TLAC holdings and Pillar 3 disclosure requirements, through rules, regulations and policies in G-SIB home and relevant host jurisdictions**

Most jurisdictions have finalized the implementation of the TLAC principles into national law and regulation or are in the process of doing so. Credit Suisse regards the implementation in the major jurisdictions to date as largely in line with the FSB principles. However, national implementation can differ substantially in the details, and FSB coordination can help to reduce these differences.

Credit Suisse estimates that global market for TLAC and MREL debt securities will reach approximately USD 2 trillion in size in the next few years. Issuance will need to be sustained throughout a variety of market conditions. Both of these conditions illustrate the need for broad,

efficient and diversified markets. Investor diversification will also be beneficial for its own purpose; it seems clear that economic and systemic stress will be reduced if loss absorption is distributed globally, rather than concentrated among investors in the issuance jurisdiction that also holds the failing bank.

Given the aim of building a large, efficient and diversified market for TLAC instruments, we wish to highlight the following areas of concern:

**i. Requirement to issue under national law**

The rules were originally designed to ensure conversion or write-off at the Point of non-viability (PONV) was fully enforceable throughout the entire bail-in debt stack. It aimed to avoid legal challenges that could slow down or jeopardize the recapitalization process by blocking single issuances under foreign law that might be more challenging to bail-in.

The Swiss implementation of the TLAC rules requires that bail-in debt is issued under Swiss law with place of jurisdiction in Switzerland; it allows for exceptions if enforceability of bail-in under a foreign law can be proven. While a requirement to issue under national law had merit in the early days of bail-in, resolution regimes in the major markets today are well advanced. Enforceability should not be a concern under New York law, UK law or the law of any major EU financial market, among others. Credit Suisse believes that national law requirements should be relaxed for well-established jurisdictions like these, so that we can maximize the scope and diversity of the TLAC investor base. As noted in our preamble to this section, considerations like investor reach, diversification and marketability should now be given the higher priority, so that we can support the growing volume of TLAC debt in an efficient way.

**ii. New markets, flexibility and speed to market**

As an issuer of bail-in debt, it is important to diversify instruments, markets and currencies to achieve large scale as well as investor diversification. To reach a well-diversified investor base, TLAC instruments need to adapt to market trends in order to satisfy changing investor demand. As new markets open e.g. Green Bonds, it is important that issuers are able to supply bail-in debt to meet the demand.

Currency diversification is another key element. Issuers need to be able to tap markets that provide funding in the right currency mix, one that matches the issuer's asset base to the extent possible. Otherwise, large FX hedging portfolios need to be maintained to manage currency risk, which is typically viewed by regulators as an impediment to resolution.

Certain jurisdictions including Switzerland require prior regulatory approval before each issuance. In the long run, this reduces flexibility and speed to the market. It creates uncertainty if approvals are not forthcoming. As TLAC becomes 'normalized', it is

important to establish 'safe harbour' rules for efficient and fast market access. Eligibility constraints should be limited to the criteria listed in the respective law.

### iii. **TLAC holdings and market making**

Lastly, to support well-functioning TLAC / bail-in debt markets of the massive scale needed, Credit Suisse stresses the need for market making and new issue underwriting. This requires the flexibility to hold some TLAC debt issued by other banks (be it G-SIBs or D-SIBs) in the trading books. Under certain conditions, the Basel rules provide for a 5% threshold before deductions occur to allow for market making and new issue underwriting exceptions. Credit Suisse encourages the FSB to assess whether the existing rules and national flexibility give market makers the necessary leeway they need in order to promote well-functioning primary markets and deep secondary markets in TLAC instruments.

## 2. **Question: Cross-border aspects of the implementation of the TLAC standard, in particular relating to the identification of material subgroups, the determination of internal TLAC requirements and trigger conditions and mechanism for internal TLAC**

### i. **Establishing a cross-border framework for iTLAC that supports overall resilience and good outcomes for both home and host jurisdictions.**

Credit Suisse research has highlighted the danger of the increasing tendency of host countries to ring fence capital and iTLAC resources in their local jurisdictions.<sup>1</sup> We show that a fully ring fenced bank can be significantly riskier than an 'integrated' bank that has internal capital flexibility.<sup>2</sup> The ring fenced bank is subject to misallocation risk – a scenario where the Group has enough resources overall, but cannot get them to the right entity in time to avoid failure. For plausible structures and market assumptions, the risk of failure for a heavily ring fenced bank can be a multiple higher than the risk of an integrated bank. This is a serious obstacle to the progress of the FSB reform effort and a deeply inefficient use of valuable equity capital and TLAC resources.

There are policy frameworks that can address this problem. Our proposal looks to balance the need for *certainty* for host jurisdictions (subsidiaries) with the need for *flexibility* for the home

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<sup>1</sup> For details on the underlying risk analysis, see W. Ervin working paper: "The Risky Business of Ring-Fencing," at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3085649](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3085649). For a more developed discussion of the policy implications, see "Ring-fencing: Escape from the Prisoner's Dilemma, Banking Perspectives (forthcoming, Q3). Interim copies available on request.

<sup>2</sup> These issues have also recently come to the attention of senior central bank officials, for example: Randall Quarles, Governor U.S. Federal Reserve: "Trust Everyone –But Brand Your Cattle", May 16, 2018; Mario Draghi, President of the ECB: "Risk-reducing and risk-sharing in our Monetary Union", 11 May, 2018; and Mark Carney, Governor, Bank of England: "The high road to a responsible, open financial system." April 7, 2017.

jurisdiction (parent). We believe it also can deliver useful benefits for transparency and predictability to support home-host cooperation, even under highly stressed conditions.

A outline of the framework includes as follows:

- a. **Moderate capital prepositioning** to protect hosts. The parent should have sufficient net investment in key subsidiaries to enforce cooperation and deter “walkaway risk”. Such 'skin in the game' is also important to ensure that the “No Creditor Worse Off than in Liquidation” (NCWOL) principle is upheld. Based on calibration work, we propose that preplaced iTLAC should comprise roughly 50% of the FSB's external TLAC requirement approximately 10% of RWA.
- b. **Top-up rules** to maintain host safety perhaps via binding support agreements to support needy entities on a pooled basis. These could be incorporated into the iTLAC sufficiency requirements in some way, in order to achieve an outcome in the FSB's 75% to 90% range (or the range could be redefined).
- c. Prepositioning should mostly be in **subordinated, gone-concern TLAC**, plus a minimum amount of equity. This is to ensure sufficient 'endgame resources' to support credible resolution if necessary.
- d. The remaining Group Capital (equity buffers) should be kept in a **central / mobile reserve**, in order to ensure resilience equity buffers comprise perhaps two-thirds of the equity layer today). This would significantly improve the recovery capability of the Group and reduce failure risk by a large percentage.

The current regulatory approach has mostly transposed rules for external capital into internal capital and TLAC rules, and has yet to capture the broader implications of the new resolution architecture. A better approach could improve Group resilience by replacing hard ring-fencing with a broader framework, while also addressing the legitimate concerns of host countries. In particular, the large resources established by the new bank capital and resolution frameworks e.g. equity buffers, gone-concern TLAC can be harnessed to support effective and transparent cross-border cooperation. Credit Suisse believes that such iTLAC policies (together with similar policies in other key resources like common equity and liquidity) would ensure a resilient and stronger outcome for both home and host jurisdictions.

As Credit Suisse works towards addressing these elements, a necessary first step in our view is a harmonised and faithful transposition across all key jurisdictions of the FSB's iTLAC range (75% - 90% of RWA). Currently major jurisdictions are contemplating no range and defaulting to the highest threshold, which increases ring-fencing and misallocation risk.

## ii. Identification of material subgroups

While the FSB gave guidance on the criteria for material subgroups, Credit Suisse believes that the following elements should be strengthened:

- a. The FSB should clarify that material subgroups are subgroups under a combined legal ownership and not virtual subgroups of sister companies.

- b. The FSB clarified should the relationship between the material legal entity (MLE) / material subgroup for iTLAC purposes and the definition of MLEs that the G-SIBs have identified in their Recovery and Resolution Plans (RRP). It should clarify whether these are different explain that the RRP should only cover the material legal entities which fall under the same criteria as for the TLAC term sheet. To illustrate the point, Credit Suisse has identified several MLEs in its RRP that are key for its funding strategy or material from a business strategy perspective, but yet are way below the MLE thresholds for iTLAC prepositioning as specified by the FSB.

**iii. Determination of iTLAC requirements, trigger conditions**

National implementation of iTLAC rules has progressed significantly over the last 2 years. The initial rules are now being reviewed to consider 'source-of-strength' capabilities from a Single Point of Entry (SPOE) parent company, the availability of TLAC buffers, as well as global resolution plans. These issues are maturing and have become better understood within Crisis Management Groups (CMG).

The differences between regimes (e.g. the EU MREL standard vs. the US Long Term Debt requirement) is one remaining challenge. Exact eligibility criteria and trigger mechanisms can differ slightly, and this can make it more difficult for CMGs to coordinate iTLAC procedures.

Credit Suisse believes that iTLAC is established primarily to serve as a safety net and should only trigger in extreme cases. As long as resolution remains coordinated, the required capital resources should be provided top down, in line with the SPOE framework. Equally important, we believe is that excess iTLAC in surplus legal entities should be available for release and upstreaming to the respective parent company, in a timely manner.

**3. Question: G-SIBs' issuance strategies and overall progress towards meeting external and internal TLAC requirements, including nature and composition of the issued TLAC instruments and specific features (e.g. triggers) and level of public disclosures by each bank**

Credit Suisse's strategy for TLAC funding is to issue out of the Group holding company Credit Suisse Group AG ("CSG AG"), to align with our bail-in SPOE strategy. As of Q2 2018, the Group already complies with 2020 look-through going-concern requirements, our total going concern capital of CHF 48 bn comprised of CHF 35.4 bn of CET1 qualifying under Swiss capital rules and CHF 12.6 bn of Additional Tier 1 instruments including both high trigger Tier 1 and low trigger Tier 1 instruments. Our gone-concern loss absorbing capacity meanwhile totalled approximately CHF 38.7 bn, leading to a total TLAC resource level of approximately CHF 86.7 bn (for a TLAC / RWA ratio of over 31%).

We continue to replace existing callable capital instruments with fully compliant high-trigger Additional Tier 1. We also continue to replace a portion of our maturing OpCo debt (debt issued out of the bank

Credit Suisse AG) with TLAC-eligible bail-in HoldCo (or CSG AG) debt.

We look to tap different markets and currencies to optimise funding costs and ensure proper investor diversification. We expect our 2018 issuance volumes to be similar to 2016 and 2017: approximately CHF 11 bn – 14 bn split between CHF 2 bn - 3 bn Additional Tier 1 notes with the remainder TLAC qualifying senior debt.

Public disclosure is assured through our fixed income debt investor relations team notably through the bank's internet website: <https://www.credit-suisse.com/corporate/en/investor-relations/information-for-debt-investors.html>. This website presents lists of high and low trigger capital instruments as well as HoldCo debt instruments; it also includes a broader fixed income investor presentation that is regularly updated.

In terms of iTLAC we have initiated disclosure for several jurisdictions, and comply with the requirements from jurisdictions where expectations have been set.

#### **4. Question: Distribution of TLAC instruments and liabilities in the market, including obstacles relating to issuance and holdings**

We refer to our general remarks under: “1. Regulatory adoption of the TLAC rules”. However, we would like to point out that adequate risk disclosure, including clarity regarding investor position in the hierarchy is critical to support a credible bail-in resolution strategy. The Swiss resolution regime is very transparent and clear on what happens in resolution and the distribution of losses across the debt hierarchy. It requires a full wipe-out of more junior instruments, before losses or conversions are forced to the next creditor class. Structural subordination via holding company issuance provides clarity to all investors in the holding company, and emphasizes that they will participate in forced recapitalization measures during resolution.

Credit Suisse believes that the clarity of this arrangement provides important benefits, especially under the pressure of stressed resolution conditions. We are concerned that some other arrangements may create unfortunate financial and legal ambiguities, especially ones that rely on operating company as the resolution vehicle, and most especially where a portion of senior debt may count as TLAC. The risk of confusion or legal challenge under highly stressed conditions is not likely to be viewed favourably in the midst of the next crisis.

Credit Suisse is of the opinion, that bail-in debt is only suitable for more sophisticated retail investors, and that a high concentration of local retail investors in the bail-in stack should be avoided. However, it needs to be emphasised that secondary market transactions cannot be controlled and retail investors are likely exposed to bail-in risk already today (and retailers are able to purchase bank equity). Under those conditions it is difficult to impose a strict legal requirement, but issuers should look to ensure their primary market allocations are well diversified and meet the right level of sophistication.

**5. Question: Any technical issues, jurisdiction-specific circumstances or other material factors affecting or likely to affect the implementation of the TLAC standard**

Since the financial crisis ten years ago, the industry has worked through a substantial package of regulatory changes. Many of the concepts and rules were developed progressively along the way. The industry started off by establishing substantial living will documents which cover thousands of pages and which need to be kept up to date. Building on what started as a documentation exercise, substantial progress was made in defining resolution strategies and developing the capabilities required to implement them. We would encourage the FSB to take stock at this point in time and review the TBTF regulations and Recovery and Resolution plans with the objective of eliminating unnecessary and non-practical requirements. In addition we would encourage the FSB to review the TBTF rules and the set of national implementation laws and regulations to identify unintended consequences or conflicting rules, again with the aim to streamline and simplify standards / rules without jeopardizing the effectiveness of the resolution regime. Credit Suisse feels that with the TLAC standards in place it is now also the right time for the FSB to articulate their strong confidence that bank resolution plans for the G-SIBs are now credible, to express their strong confidence in the new system and that TBTF is solved.

We would be delighted to discuss our perspective more fully with FSB staff if this would be helpful, and appreciate the opportunity to comment on this consultation.

In case of any queries or questions on our comments, please do not hesitate to contact us.

Yours sincerely

CREDIT SUISSE AG

[signed]

Volker Baetz  
Managing Director

[signed]

Wilson Ervin  
Vice Chairman Group Executive Office

cc: Swiss Financial Market Authority (FINMA)