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Credit Suisse Group AG

Credit Suisse investors sue Swiss regulator over bond wipeout

Complaint accuses Finma of failing to behave 'proportionately' and 'in good faith'



Credit Suisse was rescued by rival UBS in March © Francesca Volpi/Bloomberg

Sam Jones in Zurich APRIL 21 2023

Investors representing \$4.5bn of wiped-out Credit Suisse bonds have filed a lawsuit against Switzerland's banking regulator, in a dispute which challenges the country's reputation as the world's most politically stable and reliable financial centre.

The claim is the first to be brought by holders of \$17bn of Credit Suisse convertible bonds which were [rendered worthless](#) by the bank's government-orchestrated rescue by rival UBS last month.

It is the opening salvo in what lawyers have told bondholders is likely to be a multiyear process in the Swiss courts. By value alone, the case is one of the biggest bondholder disputes to embroil a sovereign country. One lawyer involved compared it to the long-running saga concerning Argentine government creditors who were [eventually paid out \\$9.3bn](#) in 2016 in the “sovereign debt trial of the century”.

The legal challenge is directed against the Swiss financial regulator, Finma, and was filed by the law firm Quinn Emanuel in the city of St Gallen in eastern Switzerland on Wednesday.

Three people with direct knowledge of the claim provided information on it, including a typed summary of the main legal points it contains, to the Financial Times. The full claim is not public, according to the rules governing the court in St Gallen, which adjudicates on constitutional and administrative disputes.

The complaint accuses Finma of having acted unconstitutionally, by failing to behave “proportionately” and “in good faith” when it ordered Credit Suisse to cancel the \$17bn of convertible “AT1” bonds on March 19.

Finma acted based on what it claimed were rights available to it, as the bank’s regulator, under the hybrid instruments’ own terms.

An emergency ordinance, simultaneously issued by the Swiss government, explicitly expanded Finma’s powers under Swiss law to do so.

In the days that followed, [bondholders accused Bern](#) of having arbitrarily changed legislation to facilitate an act of expropriation — their fury piqued in particular by the fact that nominally subordinate Credit Suisse shareholders will see \$3.25bn worth of UBS shares given to them.

Quinn Emanuel’s case in St Gallen seeks to formally repeal Finma’s decision. It leaves open the question of compensation.

Despite bondholders’ publicly aired grievances, the legal case does not claim that Finma acted beyond its legal authority, nor that the government’s emergency ordinance was enacted without proper authority.

The law firm has advised bondholders that trying to challenge the constitutional right of the Swiss government to evoke emergency powers, in what was a potentially economically explosive situation, is an unwise legal strategy.

Instead the case hinges on constitutionally-enshrined protections for due process, arguing that Finma's right to act was conflated by its officials with its necessity to act.

The complaint argues that Finma was obliged under Articles 5 and 9 of the Swiss constitution to arrive at a decision "in good faith and in a non-arbitrary manner" and did not do so.

It also argues that Article 36, paragraph 3 was violated, which stipulates that "any restrictions on fundamental rights must be proportionate". The right to property is a fundamental right in Swiss law. The fact that shareholders were compensated, but bondholders were not, demonstrates that consideration was not given to proportionality, Quinn Emanuel will argue.

Finma said that it had already [publicly explained](#) its decision and had no further comments to make.

Lawyers working with bondholders stressed that there was still a huge amount of information which the government had withheld using official secrecy laws.

Details about the decision making ahead of Credit Suisse's takeover will be fundamental to a successful case. Of particular interest will be information regarding why Finma and the Swiss government decided that a takeover by UBS was the only viable option and what negotiations they engaged in with the bank to secure its participation.

One advantage of pursuing the litigation in St Gallen will be that the court there does not rely solely on evidence submitted by the plaintiffs, and can itself demand documentation and testimony from the government and Finma.

Quinn Emanuel's lawyers are also eagerly anticipating the possible formation of a powerful commission of inquiry by Swiss parliamentarians when they [reconvene next month](#).

The commission will have powers to override Bern's use of official secrecy laws and can compel politicians, regulators and bankers to give sworn testimony to it.

Other legal strategies are still on the table. They include a civil challenge to the contractual basis of Finma's action according to the bond's terms, and potential lawsuits against Credit Suisse directors or executives for allegedly misleading the market in the days ahead of the bank's near-collapse.

Beyond Switzerland, affected bondholders from countries that have signed bilateral investment treaties with Bern, [such as Singapore](#), may also seek redress through arbitration mechanisms.

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