

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION	)	
ADMINISTRATION BOARD,	)	
as Liquidating Agent of Southwest Corporate	)	
Federal Credit Union and Members United	)	
Corporate Federal Credit Union,	)	No. 13-cv-6731 (DLC)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UBS SECURITIES LLC,	)	
	)	
Defendant.	)	
_____	)	

**NOTICE**

Pursuant to Federal Rule of Civil Procedure 68(a), plaintiff National Credit Union Administration Board, as liquidating agent for Members United Corporate Federal Credit Union and Southwest Corporate Federal Credit Union (“NCUA”), hereby files the Offer of Judgment served by Defendant UBS Securities LLC on February 11, 2016 (“Offer”; attached hereto as Exhibit A), and the written notice accepting the Offer, along with proof of service (attached hereto as Exhibit B). NCUA accordingly requests, pursuant to Rule 68 and the terms specified in the Offer, that the Clerk of Court enter judgment against UBS in the amount of \$33,014,285 (thirty three million, fourteen thousand, and two hundred eighty five dollars), plus prejudgment interest calculated at the appropriate rate and methodology as determined by the Court. As specified in paragraph 1 of the Offer, NCUA and UBS will attempt to reach an agreement regarding the amount of costs and attorneys’ fees to be paid by UBS.

Respectfully submitted,

/s/ David C. Frederick

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Gregory G. Rapawy  
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*Attorneys for Plaintiff National Credit Union Administration Board*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 25, 2016, I caused to be electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ David C. Frederick  
*Attorney for Plaintiff*

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION  
ADMINISTRATION BOARD, as Liquidating  
Agent of Southwest Corporate Federal Credit Union  
and Members United Corporate Federal Credit  
Union,

Plaintiff,

v.

UBS SECURITIES LLC,

Defendant.

Case No. 13-CV-6731 (DLC)

**DEFENDANT UBS SECURITIES LLC'S OFFER OF JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 68, Defendant UBS Securities LLC ("Defendant") hereby offers to allow judgment to be taken against it in favor of Plaintiff National Credit Union Administration Board as liquidating agent for Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union ("Plaintiff") in the action captioned *Nat'l Credit Union Admin. Bd. v. UBS Securities LLC*, No. 13-cv-6731-DLC (S.D.N.Y.) (the "Action") on the terms set forth below. This offer of judgment is made for purposes of Rule 68 only and shall not constitute or otherwise be construed as an admission of liability in any respect.

1. Plaintiff shall recover \$33,014,285 from Defendant, plus prejudgment interest calculated at the appropriate rate and methodology as determined by the Court. In addition, Defendant shall pay any and all reasonable costs and attorneys' fees allowable under law in connection with Plaintiff's prosecution of the Action. If Plaintiff and Defendant are unable to

reach agreement on this amount, Defendant agrees to have the amount of reasonable attorneys' fees and costs determined by the Court.

2. Any judgment entered pursuant to this offer shall fully and completely terminate the Action with prejudice and shall have claim preclusive effects as between Plaintiff and Defendant. For the avoidance of any doubt, any judgment entered pursuant to this offer shall satisfy, settle, resolve, and eliminate any cause of action or claim by Plaintiff against, implicating, or involving Defendant arising out of the transactions, occurrences, and operative facts relating to the Action, whether or not such causes of action or claims are asserted, known, or suspected by Plaintiff, but any judgment entered pursuant to this offer shall have no claim or issue preclusive effect in, or otherwise settle or terminate, any other actions brought by Plaintiff against other defendants or brought by NCUA in its capacity as liquidating agent of other credit unions, including but not limited to, U.S. Central Federal Credit Union and Western Corporate Federal Credit Union.

3. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission by Defendant of any allegations, assertions or averments contained in any complaint, motion, letter or other paper submitted or filed by Plaintiff.

4. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of liability in any respect, including but not limited to Defendant's liability to the Plaintiff.

5. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of the insufficiency of any defense, affirmative or otherwise, Defendant has or could have asserted.

6. This offer of judgment and any judgment entered pursuant to it shall not have any collateral estoppel or issue preclusive effects in any other judicial, regulatory, administrative, or other proceeding, including but not limited to the matter captioned *Nat'l Credit Union Admin. Bd. v. UBS Securities LLC, et al.*, No. 12-cv-2591-JWL (D. Kan.).

7. In the event this offer is not accepted and judgment is not entered pursuant to its terms, Defendant retains, reserves, and preserves any and all rights to contest liability and damages in any further proceedings.

8. Pursuant to Federal Rule of Civil Procedure 68, this offer of judgment is made at least fourteen days before the date set for trial. This offer shall be deemed withdrawn unless written notice of acceptance is received within fourteen days of service.

Dated: February 11, 2016

/s/ Robert A. Fumerton  
Robert A. Fumerton  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
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F: (212) 735-2000  
robert.fumerton@skadden.com

*Attorneys for Defendant UBS Securities LLC*

# **EXHIBIT B**



KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

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WASHINGTON, D.C. 20036-3209

(202) 326-7900

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(202) 326-7999

February 25, 2016

*Via Electronic Mail*

Robert Fumerton  
Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, NY 10036

Re: *NCUA v. UBS Securities LLC*, No. 13-cv-6731 (DLC) (SDNY)

Dear Robert:

Pursuant to Federal Rule of Civil Procedure 68(a), plaintiff NCUA, as liquidating agent for Members United and Southwest Corporate Federal Credit Unions, provides notice that it accepts the Offer of Judgment served on February 11, 2016, by defendant UBS Securities LLC to allow entry of judgment against them in the above-captioned action ("Offer"). A copy of the Offer is attached hereto. NCUA will file the Offer and notice of acceptance of the Offer with the Court.

Sincerely,

  
David C. Frederick

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION  
ADMINISTRATION BOARD, as Liquidating  
Agent of Southwest Corporate Federal Credit Union  
and Members United Corporate Federal Credit  
Union,

Plaintiff,

v.

UBS SECURITIES LLC,

Defendant.

Case No. 13-CV-6731 (DLC)

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1. Plaintiff shall recover \$33,014,285 from Defendant, plus prejudgment interest calculated at the appropriate rate and methodology as determined by the Court. In addition, Defendant shall pay any and all reasonable costs and attorneys' fees allowable under law in connection with Plaintiff's prosecution of the Action. If Plaintiff and Defendant are unable to

reach agreement on this amount, Defendant agrees to have the amount of reasonable attorneys' fees and costs determined by the Court.

2. Any judgment entered pursuant to this offer shall fully and completely terminate the Action with prejudice and shall have claim preclusive effects as between Plaintiff and Defendant. For the avoidance of any doubt, any judgment entered pursuant to this offer shall satisfy, settle, resolve, and eliminate any cause of action or claim by Plaintiff against, implicating, or involving Defendant arising out of the transactions, occurrences, and operative facts relating to the Action, whether or not such causes of action or claims are asserted, known, or suspected by Plaintiff, but any judgment entered pursuant to this offer shall have no claim or issue preclusive effect in, or otherwise settle or terminate, any other actions brought by Plaintiff against other defendants or brought by NCUA in its capacity as liquidating agent of other credit unions, including but not limited to, U.S. Central Federal Credit Union and Western Corporate Federal Credit Union.

3. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission by Defendant of any allegations, assertions or averments contained in any complaint, motion, letter or other paper submitted or filed by Plaintiff.

4. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of liability in any respect, including but not limited to Defendant's liability to the Plaintiff.

5. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of the insufficiency of any defense, affirmative or otherwise, Defendant has or could have asserted.

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Dated: February 11, 2016

/s/ Robert A. Fumerton  
Robert A. Fumerton  
SKADDEN, ARPS, SLATE,  
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*Attorneys for Defendant UBS Securities LLC*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION	)	
ADMINISTRATION BOARD,	)	
as Liquidating Agent of Southwest Corporate	)	
Federal Credit Union and Members United	)	
Corporate Federal Credit Union,	)	No. 13-cv-6731 (DLC)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UBS SECURITIES LLC,	)	
	)	
Defendant.	)	
	)	

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**AFFIRMATION OF SERVICE**

I, David C. Frederick, declare under penalty of perjury that on February 25, 2016, I served a copy of the attached written notice accepting Offer of Judgment by electronic mail and Federal Express on:

Robert Fumerton  
Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, NY 10036  
robert.fumerton@skadden.com

Dated: February 25, 2016

/s/ David C. Frederick  
David C. Frederick  
KELLOGG, HUBER, HANSEN, TODD,  
EVANS & FIGEL, P.L.L.C.  
Sumner Square  
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