

EXHIBIT 3

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2 MR. CHINN: So we can have the

3 lunch break before he appears. That

4 way there's not a lot of time before

5 he appears. And I just want to

6 address what Mr. Bortnick said -- at

7 least 99.9 percent of it. To the

8 extent Mr. Bortnick is calling

9 witnesses during Mr. Passaretta's

10 case, who we also intend to call on

11 our case, we absolutely agree for

12 efficiency's sake they should testify

13 once.

14 THE CHAIRWOMAN: Thank you.

15 MR. CHINN: With the following

16 caveat: That Mr. Passaretta is not

17 testifying first. And so if

18 Mr. Passaretta testifies after UBS

19 witnesses have testified and, for

20 example, says something -- attributes

21 a statement to Mr. Zola that we've

22 never heard about before, let me just

23 say as an example -- I'm not saying

24 that will happen -- we reserve the

25 right to recall Mr. Zola in our case,

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2 because it's something we didn't know

3 about and haven't heard of before.

4 THE CHAIRWOMAN: What --

5 MR. BORTNICK: That's our

6 intent. The idea is to be as

7 efficient as possible, but sometimes

8 the goal is not met.

9 MR. CHINN: Broadly speaking, we

10 completely agree with that.

11 THE CHAIRWOMAN: The goal of the

12 efficiency comment.

13 MR. CHINN: Witnesses only

14 testify once.

15 MR. BORTNICK: And we do a have

16 a witness who is appearing in the

17 order of appearance by subpoena, a

18 former UBS employee, tomorrow morning.

19 I don't know if Mr. Zola will be done

20 or not. Hopefully he will.

21 Is there any flexibility in his

22 start time?

23 MS. SHORE: Yes.

24 MR. BORTNICK: We could probably

25 work through that without a problem.

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2 THE CHAIRWOMAN: Are we good?

3 All minds clear? Does that mean you

4 would like to take a two-minute break

5 before your opening or would you like

6 to get right into it?

7 MR. BORTNICK: We can go right

8 into it, because both sides are always

9 juggling witnesses before they show

10 up.

11 What is the intended stop time?

12 THE CHAIRWOMAN: Today?

13 MR. BORTNICK: And tomorrow, if

14 you know that, too.

15 THE CHAIRWOMAN: I'll take

16 guidance from you guys.

17 ARBITRATOR ZATKIN-BUTLER:

18 Whatever you want to do is fine.

19 THE CHAIRWOMAN: Is 5 a good

20 time?

21 ARBITRATOR ZATKIN-BUTLER:

22 Whatever they want is fine.

23 THE CHAIRWOMAN: Is 5 a good

24 time or would you like to push it?

25 MR. BORTNICK: I'm happy to push

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1 Opening - Claimant

2 it. Also, in my experience it's also

3 a good breaking point, 5 or 5:30.

4 Staying later than 6 --

5 MR. CHINN: The guards leave.

6 THE CHAIRWOMAN: Let's not do

7 past 6 because we all have to be back

8 here tomorrow, too. So we want to

9 pace ourselves accordingly.

10 Let's take a break at 5 and see

11 where we are. How's that? Good? All

12 minds clear?

13 So, Mr. Bortnick, you have the

14 floor.

15 MR. BORTNICK: Thank you.

16 Good morning again. I'm going

17 to try to keep this short, as I said,

18 at least short by lawyers' standards.

19 Because when it comes right down to

20 it, I think this matter is relatively

21 simple and straightforward. I also

22 believe that it's generally best for

23 the evidence to speak for itself

24 without the spin that one often hears

25 in the opening argument.

<p style="text-align: right;">Page 26</p> <p>1 Opening - Claimant 2 Gianluca Passaretta, 3 Mr. Passaretta, was hired by UBS in 4 October of 2009. 5 (Discussion off the record.) 6 THE CHAIRWOMAN: Okay. I'm 7 sorry. You're just getting started. 8 We're going to have to do one 9 housekeeping matter, and that's just 10 to get the court reporter hooked up 11 properly. 12 MR. BORTNICK: Certainly. 13 MR. CHINN: You want to take a 14 two-minute break? And why don't we 15 let Mr. Bortnick start again with, 16 "Good morning." 17 MR. BORTNICK: I think I can 18 leave the introductory paragraph out. 19 ARBITRATOR CARACCILO: I'm up 20 to "2009." 21 (A recess was taken.) 22 ARBITRATOR ZATKIN-BUTLER: We're 23 back on the record. Session 1 on the 24 record, 11:15. 25 THE CHAIRWOMAN: Mr. Bortnick?</p>	<p style="text-align: right;">Page 28</p> <p>1 Opening - Claimant 2 bolted on to it. So he was to come up 3 with the business plan for the 4 continuation of this group. It was 5 the Latin American Rates & Credit 6 Trading operation, albeit it was very 7 thinly staffed by intent and had, as 8 you'll see, a very little balance 9 sheet to do -- to be a significant 10 contributor to UBS. Because when 11 you're in an area of the securities 12 industry at a firm like UBS where 13 you're taking risk, the firm's balance 14 sheet, the firm's capital is being 15 used and put at risk so that there is 16 only so much in any firm and 17 particularly in UBS Mr. Passaretta's 18 area's allowed to use in order to take 19 a risk. 20 But the bottom line here, you'll 21 see, was, that it was set up in a way 22 that it was not going to be a 23 significant contributor to UBS. 24 In fact, you'll see that UBS 25 from the very outset had its own</p>
<p style="text-align: right;">Page 27</p> <p>1 Opening - Claimant 2 MR. BORTNICK: Okay. I'll pick 3 up basically where I left off. 4 So Mr. Passaretta was hired at 5 UBS in October 2009 to head Latin 6 American Derivatives Trading. You 7 will see in some documents it's called 8 LatAm. As you'll see, he performed 9 extremely well over the next 10 succeeding years. And I don't think 11 that's going to be disputed. 12 In November 2012 UBS underwent a 13 major restructuring. Indeed, you'll 14 see that Mr. Passaretta was even on 15 the cut list. Ultimately, his job was 16 saved. And so he continued to be 17 employed, although the role did change 18 substantially. 19 He was moved to another area. 20 And, in sort of the basic most 21 simplistic terms, was charged with 22 coming up with a business plan for 23 sort of a new combined area that had 24 been -- part of it had been pruned, 25 other parts of UBS had sort of been</p>	<p style="text-align: right;">Page 29</p> <p>1 Opening - Claimant 2 doubts about this new group and 3 whether it would even pan out at all. 4 And, in fact, you'll see that it 5 didn't pan out for a number of 6 reasons. And we're not necessarily 7 blaming anyone for this. It's just 8 what happened. In fact, subsequent to 9 Mr. Passaretta's termination, that 10 area was, for the most part, largely 11 wound down. 12 Mr. Passaretta's performance 13 reviews are truly excellent. The only 14 exception that you'll see was in 2012 15 where what even UBS called some 16 outlier comments by one particular 17 individual, Douglas Ellison, who is 18 scheduled to be here tomorrow. He 19 worked in the Market Risk function, 20 sort of a control function area. And 21 you'll see that his commentary had to 22 do with a disagreement regarding 23 primarily the pricing of a security, 24 nothing to do with this case, per se. 25 But they had a somewhat public</p>

<p style="text-align: right;">Page 30</p> <p>1 Opening - Claimant 2 disagreement that caused some issues 3 between them personally for a while. 4 But other than that -- and 5 Mr. Ellison, you'll hear him testify 6 about those comments presumably. 7 You'll see that his reviews were just 8 essentially uniformly excellent. 9 After the business plan was 10 approved, which did not happen at the 11 beginning of 2013 -- the changeover 12 occurred right at the end of the year 13 2012, after the holidays, didn't even 14 get up and going until January 2013. 15 The business plan was approved 16 sometime thereafter. 17 There was a trader in Brazil, 18 Mr. ██████████ he reported to 19 Mr. Passaretta -- and he sought to do 20 a large trade. In simplest terms, it 21 was an arbitrage trade. Mr. ██████ had 22 recognized that the same security but 23 was trading at two different prices in 24 the market, depending on where it was 25 trading. This security was due to</p>	<p style="text-align: right;">Page 32</p> <p>1 Opening - Claimant 2 matures and everyone gets paid off. 3 So unless there was some risk of 4 default, which there really wasn't 5 here, the price will converge and 6 there's a profit to be made. 7 So that's what was going on. 8 And this is what Mr. ██████ sought to 9 take advantage of, this price 10 discrepancy, but also wanted to hedge 11 the trade to make it essentially 12 riskless. 13 Nevertheless, even though it was 14 essentially a riskless trade, it was a 15 large trade. And Mr. ██████ recognized 16 that under the UBS standards at the 17 time, he could not just pull the 18 trigger. He had to get 19 Mr. Passaretta's permission to do so, 20 and he did. He asked Mr. Passaretta 21 for permission. 22 And Mr. Passaretta recognized, 23 however, that due to the size of the 24 trade, regardless if it's riskless, 25 regardless of whether the risk policy</p>
<p style="text-align: right;">Page 31</p> <p>1 Opening - Claimant 2 mature very shortly, and therefore he 3 understood that the prices would 4 slowly converge. And that's what 5 arbitrage traders often do. They try 6 to take advantage of the price 7 discrepancy between the same security 8 in different markets and get that 9 advantage. 10 In a completely different 11 context, nothing to do with this, one 12 example might be if one company is 13 going to take over another company, 14 the stock is trading at \$60 and the 15 takeover price is at \$80, and there's 16 that \$20 discrepancy, you know the 17 deal's going to go through, assuming 18 you know it is, at \$80, arbitragers 19 like to jump in and take advantage of 20 that \$20 price discrepancy and make 21 that one-third gain. 22 Similarly here, that's the way 23 that trade worked, except instead of 24 wondering whether the deal would go 25 through -- it's a security that</p>	<p style="text-align: right;">Page 33</p> <p>1 Opening - Claimant 2 made sense or not, its size required 3 approval from a separate area of UBS, 4 Market Risk. They don't trade. They 5 just look at the risk and the balance 6 sheet of UBS ultimately across the 7 entire Investment Bank. And he needed 8 their permission to do that. 9 So that's what Mr. Passaretta 10 did. The first thing after talking to 11 Mr. ██████ and trying to understand what 12 the trade was about, he said, "I like 13 the idea. It's an excellent idea. 14 However, I'm instructing you you 15 cannot do the trade until I go to 16 Market Risk and get approval." It was 17 an order. 18 Mr. ██████ understood, and 19 Mr. Passaretta thereafter went off to 20 Market Risk to try to explain the 21 trade to them and seek approval. 22 Unknown to Mr. Passaretta, 23 however, while he was seeking Market 24 Risk's approval, as soon as he went 25 off to Market Risk, Mr. ██████</p>

<p style="text-align: right;">Page 34</p> <p>1 Opening - Claimant 2 nevertheless, went ahead and did the 3 trade without Mr. Passaretta's 4 permission, without Market Risk's 5 permission, without anybody knowing 6 about it other than the actual people 7 that executed the trade. So it was a 8 direct violation of Mr. Passaretta's 9 order. 10 Now, this is relatively a short 11 time before the market was closing. 12 And now this was done through Brazil. 13 So we're talking about the Brazilian 14 market closing. And it was shortly 15 soon to close. And it was when 16 Mr. Passaretta found out about it, it 17 was chaos, frankly, for him, for 18 Mr. [REDACTED] and what was going on. 19 Mr. Passaretta's first thought 20 was to try to protect the firm, try to 21 unwind the trade, which ultimately did 22 make a profit. He unwound part of it 23 before the market closed and 24 subsequently was told, "Don't bother 25 unwinding the trade any further." And</p>	<p style="text-align: right;">Page 36</p> <p>1 Opening - Claimant 2 least certainly -- in the heat of the 3 moment, that's certainly what 4 Mr. Passaretta understood him to say. 5 And he answered "No," not surprisingly 6 and honestly. 7 Mr. Murphy also said at that 8 time [REDACTED] meaning [REDACTED] -- 9 [REDACTED] was toast." 10 Not a surprising comment given 11 the fact that Mr. [REDACTED] had violated a 12 direct order. And in the trading 13 world, violating a direct order is 14 right up there with cheating and 15 stealing. It's about as bad as it 16 gets. 17 In any event, UBS here alleges 18 that Mr. Passaretta, as part of this 19 ongoing chaos, was asked a question by 20 Mr. Ellison -- who we'll hear from 21 tomorrow -- he was also in Market 22 Risk. And before the market closed, 23 Mr. Ellison, according to UBS in its 24 statement of answer, asked, "Was there 25 enough time to get this trade done?"</p>
<p style="text-align: right;">Page 35</p> <p>1 Opening - Claimant 2 so it did make a profit. 3 He also needed to interface with 4 Market Risk. It was a very chaotic 5 situation. And he was also 6 interfacing with Market Risk during 7 this time about whether there would be 8 approval. 9 Once the market closed, 10 Mr. Passaretta had all the facts, he 11 had some mitigation through partial 12 unwinding of the trade, and he told 13 Market Risk what had happened. 14 Matthew Zola was -- and you'll 15 hear from him this afternoon -- 16 Mr. Passaretta's direct boss. His 17 boss's boss was a gentleman by the 18 name of Chris Murphy, who is based in 19 London, but happened to be in New York 20 that day. 21 He asked Mr. Passaretta during 22 this chaotic time whether he knew 23 about it, meaning, did Mr. Passaretta 24 know about the trade and approve it 25 before Market Risk approved it. At</p>	<p style="text-align: right;">Page 37</p> <p>1 Opening - Claimant 2 This trade hadn't been approved at 3 this point, and that Mr. Passaretta 4 allegedly said, "Yes," implying, 5 therefore, that the trade had not 6 occurred. But you'll see that this 7 was not a question that was asked of 8 Mr. Passaretta. 9 Now, as expected, an 10 investigation followed. Quite normal. 11 It lasted, it appears, less than two 12 weeks or so, the evidence would 13 suggest. 14 By May 15th, it may have even, 15 at least from a fact-gathering 16 perspective, ended much sooner than 17 that. Maybe within a week or so or 18 just over a week. 19 But by this time UBS certainly 20 knew what had happened, knew all of 21 the relevant facts, certainly by May 22 15th or probably earlier. And it 23 clearly had to know what it wanted to 24 do. 25 One of the things it did not do</p>

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