EXHIBIT "3"

BINGHAM

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June 29, 2012

BY HAND

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Re: Hollis, et al. v. JPMorgan Chase Bank, N.A.
U.S. District Court for the District of Massachusetts
CA No. 1:12-cv-10544-JGD

Dear Mr. Miller:

We represent JPMorgan Chase Bank, N.A. ("Chase" or the "Bank") and write in response to your letter dated May 31, 2012 (the "May 31 Letter").[1] To the extent your letter purports to set forth claims under Mass. Gen. Laws ch. 93A ("Chapter 93A"), it fails to do so for a variety of reasons, including those outlined herein.[2]

Plaintiffs' Claims Are Barred by the *Benson* Decision

As a threshold matter, and as you implicitly concede in your May 31 Letter, all purported claims related to the Bank's alleged activities occurring prior to September 25, 2008 are (i) foreclosed under the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), and (ii) are *res judicata* under the Ninth Circuit's decision in *Benson v. JPMorgan Chase Bank, N.A.*, 673 F.3d 1207 (9th Cir. 2012).[3] *See also FDIC v. Kane*, 148 F.3d 36, 38 (1st Cir. 1998) ("The

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[1] By receiving the May 31 Letter, Chase does not also thereby accept service of the Complaint attached thereto, which has not been served.

[2] In responding to your letter, Chase in no way admits any violation of Chapter 93A or any other violation or liability of any kind, and expressly denies any such violation or liability. We do not, by anything stated or not stated herein, waive any defenses to any claims your clients have asserted or may choose to assert. Moreover, none of the statements contained herein is intended or shall be construed as an admission of any type.

[3] While the May 31 Letter purports to be sent on behalf of both the Hollises and the Mansors, the attached Complaint alleges that the Hollises made *all* of their payments, and that the Mansors some of their payments, before September 25, 2008. As such, any claims by the Hollises are completely foreclosed by the Ninth Circuit's ruling in *Benson* as well as the application of FIRREA's jurisdictional bar more generally, and only those

failure to participate in the administrative process [required under FIRREA] constitutes a failure to exhaust one's administrative remedies, and thus, is a bar to judicial review."). In particular, the banking systems about which you now complain (*i.e.*, the installation of the remote deposit capture ("RDC") and the cash management transfer ("CMT") systems) were all established *prior* to September 25, 2008. While we note your assertion that Chase allegedly continued these systems after September 25, 2008, such allegations are no more fruitful now than those previously found deficient in *Benson*. *See* 673 F.3d at 1217 (allegation that Washington Mutual Bank's "practices continued" after the acquisition of its assets by Chase held insufficient to avoid FIRREA's jurisdictional bar as a matter of law).

Plaintiffs Cannot State a Claim for Relief under Chapter 93A

To the extent plaintiffs' attempts to allege post-acquisition activities by Chase could survive the jurisdictional bar under *Benson*, they fail to state a claim for relief under Chapter 93A. First, claims asserted under Chapter 93A by institutional investors must establish, as a threshold matter, that the alleged misconduct occurred "primarily and substantially" in Massachusetts. Mass. Gen. L. c. 93A, § 11. As such, Chapter 93A cannot apply to claims asserted by any of Millennium's *institutional* investors, since the Bank's activities did not occur "primarily and substantially" in Massachusetts.

As the Complaint acknowledges, the CMT and RDC systems were all allegedly established outside of Massachusetts, and all of the purported interactions between Millennium and the Bank (*e.g.*, checks cashed, wire transfers made) would necessarily have taken place outside of Massachusetts. Indeed, the May 31 Letter and attached Complaint do not cite to any activities by Chase, Millennium or anyone else in Massachusetts whatsoever. The only possible connection with Massachusetts evinced by the Letter and Complaint is that some Millennium investors -- unbeknownst to Chase -- may have been residents of the Commonwealth.[4] Mere residence by some plaintiffs in Massachusetts, however, is not a substitute for the requirement that the claims arise from activities occurring "primarily and substantially" in the Commonwealth. *See Am. Mgmt. Servs., Inc. v. George S. May Int'l Co.*, 933 F. Supp. 64, 68 (D. Mass. 1996) (granting motion to dismiss Chapter 93A claim because complaint only alleged that the plaintiff resided in Massachusetts, finding that to hold otherwise would "denude the 'primarily and substantially' language of all meaning" and that "[s]omething more than a Massachusetts plaintiff is required to invoke the

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payments, if any, that may have made by the Mansors and deposited at a Chase account after September 25, 2008 could conceivably be included in the relief sought by the Letter.

[4] Tellingly, the *Benson* class plaintiffs themselves asserted consumer protection claims only under the *California* consumer protection statute, Cal. Bus. & Prof. Code § 17200.

provisions of Chapter 93A"); *Kenda Corp. v. Pot O' Gold Money Leagues, Inc.*, 329 F.3d 216, 235-36 (1st Cir. 2003) (affirming the dismissal of Chapter 93A claim where the "center of gravity" of the alleged wrongdoing was in Michigan, even though plaintiff was a Massachusetts corporation and used a Massachusetts account to fund the transaction at issue).

Plaintiffs also fail to show how the Bank's alleged activities could be actionable even if Chapter 93A were to apply. The mere establishment of the RDC and CMT systems provides no factual basis from which to conclude that such actions would be "*likely to mislead* [persons] acting *reasonably* under the circumstances,' and . . . be '*material.*'" *Marram v. Kobrick Offshore Fund, Ltd.*, No. 2001-02815-BLS1, 2010 WL 4457179, at *6 (Mass. Super. Ct. Aug. 25, 2010) (emphases and alteration in original) (quoting *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 395 (2004)).[5]

Moreover, plaintiffs cannot establish Chase's alleged activities caused their losses. As you undoubtedly know, to prevail under Chapter 93A, plaintiffs "must show that there was a causal connection between the deception and the loss and that the loss was foreseeable as a result of the deception." *Vaughn v. Am. Auto. Ass'n, Inc.*, 326 F. Supp. 2d 195, 199 (D. Mass. 2004) (citation and internal quotation marks omitted); *see also Hershenow v. Enter. Rent-A-Car Co. of Bos., Inc.*, 445 Mass. 790, 791 (2006) ("[P]roving a causal connection between a deceptive act and a loss to the consumer is an essential predicate for recovery under our consumer protection.").

While you contend that "[b]ut for JPMorgan's intentional and improper actions, these Massachusetts residents would never have invested in Millennium," May 31 Letter at 2, it is almost unimaginable how that is so. Here, you fail to assert -- nor could you assert -- facts demonstrating that Chase's alleged installation and/or use of the RDC and CMT systems had any impact on your clients' decision to start or continue to invest in Millennium. As such, plaintiffs cannot maintain any claims against Chase under Chapter 93A.

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[5] In addition to the fact that claims brought by institutional investors would not survive the "primarily and substantially" test, they also would not survive the heightened standard for liability under Section 11 of Chapter 93A. Under that heightened standard, "defendant's conduct must be not only wrong, but also *egregiously wrong*. . . . the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce." *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 41-42 (1st Cir. 1998) (internal citation and internal quotation marks omitted) (emphasis added). Merely setting up RDC and CMT systems could not satisfy this standard.

The Putative Class Cannot Be Certified under Chapter 93A

It is also abundantly clear that plaintiffs cannot meet the requirements for asserting a class action under Chapter 93A.

First, the class does not satisfy the numerosity test under Chapter 93A. At a minimum, only those Millennium investors from Massachusetts who made payments to Millennium that were then deposited in a Millennium account at Chase after September 25, 2008 could be included in the putative class. Moreover, as noted above, any institutional investors must be excluded, since Chapter 93A cannot under any circumstances apply to them. You have identified only two putative class members whom you claim fit these parameters: the Mansors. While the May 31 Letter vaguely asserts there are "numerous other putative class members," it fails to identify even approximately how many such members exist, let alone whether there are at least 100 such members. *See* 52 MASS. PRAC., LAW OF CHAPTER 93A § 5.10 (2012) (Chapter 93A numerosity prong requires "probably at least 40 in number and particularly over 100" class members). Plaintiffs have not suggested there are enough potential class members to satisfy this test, and we have serious doubts that such a class exists.

Plaintiffs' allegations also do not satisfy the test for "commonality" under Chapter 93A:

> Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.' This does not mean merely that they have all suffered a violation of the same provision of law. . . . Their claims must depend upon a common contention . . . . That common contention, moreover, must be of such a nature that it is capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.

Wal-Mart Stores, Inc. v. Dukes, --- U.S. ---, 131 S. Ct. 2541, 2551 (2011) (internal citation omitted). As noted above, the May 31 Letter fails to demonstrate how any of the putative class members were injured as a result of the Bank's actions. The inclusion of such persons in the class renders it non-certifiable. *See, e.g., In re New Motor Vehicle Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 20 (1st Cir. 2008) (vacating class certification order where not all class plaintiffs could establish liability based on antitrust injury without "some means of determining that *each member* of the class was in fact injured" by defendants' actions) (emphasis added). At a minimum, such individualized questions of causation would destroy any likelihood that a class could be certified.

Moreover, individualized questions regarding the applicability of the various consumer protection acts at issue (*e.g.*, Massachusetts, Nevada, California, New York, etc.) would also undermine plaintiffs' ability to certify a nationwide class here. It is well-settled that one cannot certify a nationwide class of consumers bringing claims under the various consumer protection statutes, since the elements and the procedures for each statute vary widely. *See In re Pharm. Indus. Average Wholesale Price Litig.*, 230 F.R.D. 61, 84-85 (D. Mass. 2005) (excluding residents of certain states because their consumer protection statutes did not allow for class actions, and excluding those from other states, including Massachusetts, because they contained special notice provisions); *In re Pharm. Indus. Average Wholesale Price Litig.*, 233 F.R.D. 229, 231 (D. Mass. 2006) (denying class certification under remaining consumer protection statutes).

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In sum, given the above reasons, and in particular given the recent Ninth Circuit decision in *Benson*, Chase believes the contemplated Chapter 93A claims are frivolous. Plaintiffs' Complaint and their May 31 Letter are nothing more than transparent -- and sanctionable -- attempts by counsel in a previously unsuccessful action to find a new forum so as to evade the Ninth Circuit's clear ruling in *Benson*.[6] As such, Chase is unable to offer the Mansors or any other members of the putative class any amount in settlement of their claims.

Indeed, we urge you to think carefully before proceeding with this action. Your clients should also be advised that, to the extent we discover that one or more of them does not have a factual basis for a claim he/she pursues in litigation, or is otherwise pursuing such a claim in bad faith, Chase will seek its attorneys' fees and costs pursuant to Mass. Gen. Laws ch. 231, § 6F.

Sincerely,

Beth T. Z. Boland

cc: Robert A. Sacks, Esq.

[6] You are undoubtedly intimately familiar with the *Benson* decision and its application here because you were counsel to *Benson* in the District Court and your name was listed on the appellant's briefs filed in the Ninth Circuit.