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April 3, 2013

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Dear Director Cordray, Chairman Gruenberg and Comptroller Curry:

I am writing to express ICBA's legal and regulatory concerns about the Bluebird Account¹, a "checking and debit alternative," offered by American Express and Wal-Mart. The Bluebird Account initially debuted as a prepaid card and in a matter of approximately six months, has quickly evolved into a full-featured alternative to traditional checking accounts and debit cards.

Currently, Bluebird Accounts are available to consumers at Wal-Mart stores, online at bluebird.com and via mobile applications. Bluebird Accounts allow account holders to:

¹ www.bluebird.com

- deposit funds using direct deposit, transfers from linked checking and savings accounts, debit card transfers, checks by mail and through mobile deposit capture;
- write checks;
- withdraw cash from ATMs accepting American Express Cards;
- send, receive, or request money to/from other Bluebird Account Members;
- pay bills;
- pay for purchases at most merchants accepting American Express Cards;
- establish sub-accounts for family and friends; and
- receive American Express Branded Benefits such as roadside assistance, purchase protection, travel assistance and entertainment services.

Additionally, Bluebird Accounts are custodial accounts at FDIC-insured banks (currently Wells Fargo Bank, N.A. and American Express Centurion Bank) and therefore are insured by the FDIC under the FDIC's pass-through insurance coverage up to the maximum allowed per depositor. Bluebird Account funds are co-mingled with other funds held at the custodial bank for the purpose of determining per-depositor insurance coverage in the event of a bank failure. Bluebird Account funds are not covered by FDIC insurance until they are placed in the custodial account at FDIC-insured banks, typically a lag of one business day. Funds on the Bluebird Account temporary cards are not insured by the FDIC.

Except for perhaps the sub-account functionality and the American Express Branded Benefits, the Bluebird Account has all the attributes of a traditional checking account. Therefore, ICBA believes the Bluebird Account should be subject to the same legal and regulatory framework and oversight that traditional checking accounts offered by banks are subject to. Such a framework and oversight will ensure a common experience for consumers, including applicable consumer protections, regardless of whether the consumer has a typical bank-offered checking account or a checking and debit alternative such as the Bluebird Account.

ICBA requests that the Consumer Financial Protection Bureau take appropriate steps to ensure the Bluebird Account complies with the Truth in Savings Act/Regulation DD; Unfair, Deceptive or Abusive Acts or Practices Laws; the Electronic Fund Transfer Act/Regulation E; the Expedited Funds Availability Act/Regulation CC and other laws and regulations deemed applicable.

ICBA requests that the Federal Deposit Insurance Corporation take appropriate steps to ensure the Bluebird Account complies with the laws and regulations governing FDIC insurance coverage, particularly the disclosure requirements, expressed in General Counsel's Opinion No. 8 – Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms issued November 13, 2008. The Opinion indicates that disclosures regarding the name of the insured depository institution in which the funds are held and the applicability of deposit insurance provides important information concerning FDIC deposit insurance coverage. To ICBA's knowledge, there is no disclosure policy in the event there is a change in custodial banks.

The Bluebird Account, as currently structured, will create consumer confusion regarding the comingling with other funds held at the custodial bank for the purpose of determining per-depositor insurance coverage. Furthermore, this confusion will be even greater because of the lag in insurance coverage between the time funds are deposited and the time they are placed in a custodial account at an FDIC-insured bank.

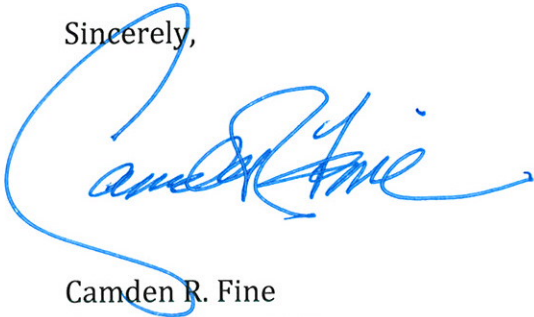
We question whether the custodial banks and Wal-Mart are violating state banking and branching laws concerning deposit taking since Bluebird Account holders have the capability not only to open an account at Wal-Mart stores but also add value to the account at stores nationwide. Indeed, each Wal-Mart store appears to be acting as a branch of the custodial bank when a Bluebird Account is opened or a customer adds value to the account at the store. Even though the Bluebird Account will be marketed as a "checking and debit alternative," we believe the customer relationship will be more like that of a depositor at one of the custodial banks. Since a violation of state branching laws would raise safety and soundness concerns for the custodial banks, we ask the FDIC and the OCC to evaluate whether these laws are being violated and to take appropriate action if that is the case.

ICBA also requests that the FDIC and OCC determine whether the Bluebird Account is in compliance with the other laws and regulations associated with traditional bank deposit taking such as the Bank Secrecy Act and applicable regulations, the Gramm-Leach-Bliley Act Privacy Rules and Data Security Guidelines and the Fair Credit Reporting Act.

It is paramount that your agencies regulate these types of arrangements – checking and debit alternatives – just like traditional checking accounts so that Wal-Mart, Wells Fargo, American Express Centurion Bank and future non-banks and custodial banks comply with all the disclosure and consumer protections and other laws and regulations associated with traditional bank deposit taking. Furthermore, such arrangements should not be a way for Wal-Mart and other non-banks to get into the business of banking while avoiding bank supervision and regulation.

Thank you in advance for your consideration of these important matters. I look forward to your responses to these concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Camden R. Fine". The signature is fluid and cursive, with a large loop at the beginning.

Camden R. Fine
President and CEO