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30 May 2003

Bryant L. VanBrakle  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Room 1046  
Washington, D.C. 20573-0001

Dear Mr. VanBrakle,

The American Bankers Association (“ABA”) respectfully submits its comments to the Federal Maritime Commission’s (Commission’s) proposed changes to its rules regarding the establishment of passenger vessel operator financial responsibility under sections 2 and 3 of Public Law 89-777, published in the 31 October 2002 *Federal Register*. Among other changes, the amendments would eliminate the \$15 million ceiling on the amount of the unearned passenger revenue required to be covered and exclude from the determination of unearned passenger revenue credit card charges made within 60 days of sailing. In essence, the proposal shifts the financial obligation of passenger vessel operators to unrelated third parties, that is, financial institutions providing credit card services to passenger vessel operators.

The ABA brings together all elements of the banking community to represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Under Public Law 89-777, passenger vessel operators must establish financial responsibility to indemnify passengers for nonperformance of transportation. Currently, the amount of unearned passenger revenue required to be covered is capped at \$15 million. The Commission proposes to remove this cap.

“However, the commission recognizes this could be costly to many in the industry. Accordingly, it is proposed that coverage of all passenger funds for voyages not yet performed be achieved in part by relying on the obligations of credit card issuers under the Fair Credit Billing Act . . .”

The Commission relies on Fair Credit Billing Act's provisions which requires credit card issuers to correct "billing errors" when a purchaser notifies the credit card issuer of the billing error in writing within 60 days after the statement is transmitted. "Billing errors" include "goods or services. . .not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction."(15. USC 1666(b)(3))

In effect, the Commission is shifting the financial obligations of the cruise line industry to innocent parties, that is, the "acquiring financial institutions" (financial institutions that acquire credit card transaction from merchants for processing). The proposal will transform acquiring financial institutions into insurance providers for the cruise line industry. The inevitable consequence will be higher costs to passenger vessel operators for merchant credit card services. In addition, the rule may lead to the undesirable effect of accelerating the financial decline of a failing cruise line, hastening its failure and bankruptcy.

Public Law 89-777 envisions that passenger vessel operators themselves will be responsible for indemnification of passengers for nonperformance of the transportation:

No person in the United States shall arrange, offer, advertise, or provide passage on a vessel. . . without there first having been filed with the Federal Maritime Commission such information . . .to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security. . for indemnification of passengers for nonperformance of the transportation.

The public law basically holds the cruise line industry responsible for its financial obligations. Yet, the Commission now seeks to shift this responsibility for the financial obligations of the cruise line industry to an unrelated, innocent party. In effect, the Commission is proposing to make financial institutions the involuntary insurance company of the cruise line industry.

Any thought that shifting the responsibility and cost to a third party will lower the cost to the passenger vessel operators, as the Commission apparently anticipates, is illusory. To compensate for the substantial additional risk, especially if passenger vessel operators shift to credit card transactions to lower the covered unearned passenger revenue, acquiring financial institutions will impose higher fees on such operators. Moreover, in the event a passenger vessel operator begins to falter financially, the acquiring financial institution will hold funds or discontinue accepting and processing credit card transactions, accelerating the passenger vessel operators' failure and bankruptcy. Some acquiring financial institutions will avoid such businesses, reducing choices and potentially increasing costs for passenger vessel operators.

For these reasons, the ABA objects to the proposed rule that exempts from the calculation of the unearned passenger revenue, credit card charges made within 60 days of sailing.

We appreciate the opportunity to comment on this important matter. We will be happy to provide additional information.

Regards,

A handwritten signature in cursive script that reads "Nessa Feddis". The signature is written in black ink and is centered on the page.

Nessa Eileen Feddis