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June 4, 2003

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

Re: Establishment of Financial Responsibility of Passenger Vessel Operators (PVO)

Dear Mr. VanBrakle:

The American Financial Services Association (AFSA) appreciates this opportunity to comment on the interaction of credit card companies and your proposed rules governing cruise line operators. AFSA was established in 1916 and is based in Washington, D.C. AFSA is the national trade association for market funded providers of financial services to consumers and small businesses. These providers (over 500 of which are members of AFSA) offer an array of financial services, including credit cards, through specialized bank institutions. AFSA members are important sources of credit to the American consumer, providing approximately over 20 percent of all consumer credit.

AFSA appreciates the opportunity to comment on the proposal of the Commission to implement Sections 2 and 3 of Public Law 89-777 regarding the establishment of financial responsibility of passenger vessel operators (PVO). The purpose of the provision is to be sure that a cruise line customer is reimbursed in the event that a PVO becomes insolvent.

It is the aspect of the proposed rule affecting credit cards that is of concern to AFSA's members. When a credit card is used in payment for a cruise, the proposal shifts the liability for loss in the event of a PVO's insolvency from the PVO's bond to the bank credit card industry.

In AFSA's view, the proposed action is illegal on at least two bases:

1. There is no justification for the rule.
2. The rule is contrary to the legislative intent.

Under current law, when a PVO posts a performance bond and files for bankruptcy, the customer seeks reimbursement from the bond. If the customer has paid by credit card, he or she can seek reimbursement from the bond or if the customer cannot achieve satisfaction, he or she can refuse to pay the portion of his or her credit card statement reflecting the cruise line charge or seek reimbursement of the credit card issuer. In this latter event, the bank that issued the customer's credit card charges this amount back to the bank that enrolled the cruise operator (called the merchant bank). The merchant bank is then subrogated to the cardholder's rights and is reimbursed by the fund.

Under the proposal, neither the customer who paid by credit card nor the merchant bank will have any rights against the bond. The merchant bank ends up in the position of insuring the solvency of the cruise line operator.

The potential loss is not spread throughout the industry but is borne by the merchant bank.

The Commission's justification for this shifting of the loss to the banks is:

> The Commission is mindful of the tremendous cost and difficulty that may be faced by some PVOs in covering all UPR (as currently defined), and therefore proposes to exclude revenue received from credit card charges made within 60 days of sailing from the computation of UPR.

No other justification is given and no economic analysis appears to have been made. The problem with this justification is that it ignores the fact of the risk and its accompanying cost. **The cost of the risk exists and it not only should be but it will be born by the cruise line operators.**

The merchant banks faced with the risk of being unable to seek reimbursement from the bond will either build the cost of the risk of insolvency into the discount they charge the cruise line operators for accepting their sales drafts or they will simply refuse to enroll high risk cruise operators into the credit card program, i.e., refuse to accept customers' credit cards in payment for cruises. **Neither of these results inure to the benefit of the cruise line industry.**

Not only is the proposal economically unsound but also it is not supported by the law. Public law 89-777 provides:

> 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.

This is an explicit Congressional direction to PVOs to prove that they are financially sound or post a bond for the benefit of their customers. It is not a direction to the Commission to try to shift some or all of the cost to others including the banking industry.

The federal government has an interest in maintaining the solvency of banks because they are insured by an agency of the federal government, the F.D.I.C. Congress would not approve a shifting of risk such as is this by implication.

The two statutes can be read together by applying the narrow explicit statute, Public Law 89-777 to the situation it addressed, the risk to consumers of insolvency of a PVO and the broadly based Fair Credit Billing Act to the general credit card market.

In summary, AFSA believes that there is no legal or economic justification for the rule and that it is contrary to the intent of Congress to have the PVOs bear this risk.

Sincerely,

Robert E. McKew
Senior Vice President & General Counsel