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March 27th 2012

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capital Street, N.W.
Washington, D.C. 20573-0001
(ph) (202) 523 – 5725

Re: Docket No. 11-16 Passenger Vessel Operator Financial Responsibility Requirements for Non-Performance of Transportation. – Public filing

Dear Madam Secretary,

This letter is in response to the Commission's request for additional comments and information regarding Docket 11-16. As defined by the Small Business Regulatory Enforcement Fairness Act (SBREFA), Innersea Discoveries LLC is a small business and believes that the current and proposed changes in rules regarding Passenger Vessel Operator (PVO) Financial Responsibility Requirements for Non-Performance of Transportation will create a significant and negative economic impact on its operations. Because of this impact on what we believe to be *all* small businesses operating in this industry, the Federal Maritime Commission is compelled to reopen its economic analysis of these proposed rules. We hope that our answers to the questions below will respectfully be included in the public response to the proposed rulemaking.

1. Estimated Cost of Compliance of the financial responsibility for nonperformance of passenger vessel transportation.

a. Based on current operations and costs for the past year.

InnerSea Discoveries estimated yearly compliance cost is from \$97,250 - \$245,125. There are three factors driving our compliance costs; (a) Administrative, (b) Cost of Capital and (c) Professional service fees.

(a) Administrative: We currently estimate that 1/5 accounting FTE is required to maintain weekly filing and support quarterly escrow audit. Estimated cost: \$15,000

(b) Cost of Capital: **REDACTED**

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- (c) Professional services: The company currently pays on average \$3,500 per quarterly audit as required by the FMC for an estimated annual cost of \$14,000.

b. Estimated cost of compliance if alternative forms of protection are available

Because Innersea Discoveries has chosen to escrow all unearned passenger revenue, we do not believe that alternative forms of protection, such as those from credit cards or travel insurance will affect the administrative or capital costs resulting from the compliance with current regulations. Further to this, if there is more industry reliance on credit cards and travel insurance to protect potential passengers from non-performance, usage costs for these services will increase to off set service providers increased risk exposure. In the long run, we believe that this will be bad for the industry as a whole. If, however, these alternative forms of protection could be utilized to reduce the Company's fixed escrow requirements (i.e. funds required in escrow above actual unearned passenger revenue), then the savings from the reduction in Company's working capital needs may off-set these potential future and unknown increased costs.

2. Will the nonperformance requirements in the proposed rule change your type of coverage – if yes, please explain how.

Our Company philosophy has always been to maintain in deposited funds all unearned passenger revenue until which time they are earned. We believe that this is the most prudent and fiscally responsible cash management policy. This insures that the Company always has the capital to deliver its product to its passengers and that capital is always available for any refund contingency. We continue this practice even with our vessels that carry fewer than 50 passengers. Never the less, in the coming years, we expect that our required escrow deposits could exceed \$15 Million. If this does occur, the proposed changes could have a direct impact on our cost of compliance through an increase in our fixed escrow requirements, which as noted below, does has a significant negative economic impact on operations.

3. How will the proposed changes to the requirements affect your continuing operations?

As noted in Question 2 – during 2012 or 2013 we do not believe that the currently proposed changes would represent a significant impact on the Company's current compliance with these regulations. However, in the coming years, as our sales increase, the currently proposed changes in regulations could effect operations by increasing our working capital requirements.

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4. Estimated number of your company's staff hours required to comply with the proposed changes to the application form

We do not believe that the current regulations will cause an increase in compliance over current regulations. We will still be required to report to the Commission all changes in unearned passenger revenue on a weekly basis as well complete a quarterly audit through an independent third party accounting firm.

5. Estimated number of staff hours required to company with proposed changes to unearned passenger revenue reports.

We believe that our current administrative work load of approximately 1/5 FTE will remain the same.

6. What was your total revenue in 2011? These figures should reflect revenues obtained from all sources

REDACTED

7. What were your total expense in 2011

REDACTED

8. What were your earning after taxes in 2011?

REDACTED

9. Please provide the following information regarding the number of employees your company employed during the most recent 12 months

REDACTED

10. Which passenger vessel operations (brands) do you consider your closest competitors in the US market

REDACTED

11. What was your average revenue generated by each passenger who embarked on your US based cruises in 2011

REDACTED

12. How many passengers did you embark in 2011 at:

- a. US ports: REDACTED
- b. Non-US ports: REDACTED

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13. Please provide any other comments or information that you believe would assist the commission in analyzing the economic or competitive impact on the proposed rule in this proceeding.

As an operator of US Flagged Coastwise vessels , we believe that the Federal Maritime Commission (FMC) is missing a very significant opportunity to amend current rules in order to create a level playing field for passenger vessels operating in US waters. Both current and proposed regulations unfairly treat small businesses operating US flagged, US operated and US inspected coastwise vessels.

When these regulations were established the PVO industry was a very different from the industry of today. No one expected that cruise ships would have grown to their current gargantuan size and that there would be so many vessels offering such a wide range of products to the consumer. At the regulations inception, the original \$10M was perhaps an appropriate cap for funds to protect the consumer from nonperformance. This is simply not the case today. We believe that the Commission's proposal to simply increase the \$15M cap on financial responsibility to \$30M shows either a complete lack of understanding of the current state of the PVO industry or the commissions preference for large foreign flagged over US flagged vessels.

When reading 46 CFR Part 540 , it is very clear that these regulations are in the favor of the larger PVOs as their effective cost of compliance is significantly lower than the smaller PVOs. Further, because of the ludicrously low \$15 M or proposed \$30M cap, the current regulations simply do not address the initial intent of the regulations, namely to protect the largest number of passengers from PVO nonperformance. As a case in point - in 2011 Carnival Corporation carried almost 9.6 million passengers world wide with approximately 38% of these being carried on its North American Fleet. At the current \$15M cap, this represents that \$4.11 per passenger is bonded or held in escrow. This is a far cry from the 110% required from the US Flagged small ship operators and a far cry from protecting a meaningful portion of unearned passenger fare – as was original intent of the regulations.

If, perhaps, the Commission believes that the small ship operators are less financially sound than the large ship operators and should be held to a higher standard, then the regulations should address financial stability. This could be achieved, for example, by tying required bond / escrow levels to financial ratios such as quick ratio, debt to equity, etc... What ever the case, it is clear that the inequity caused by Passenger Vessel Operator (PVO) Financial Responsibility Requirements for Non-Performance of Transportation needs to be eliminated if the US is to maintain a healthy US flagged passenger vessel fleet. Modification of the rules that would that would increase the protection of the passenger and not target small businesses would clearly benefit the passengers, marginally increase the cost of operations for the large cruise ship companies and have positive impact on the small ship cruise companies.

In conclusion, InnerSea Discoveries, as a Small Business Entity as defined in the SBREFA, believes that both the current and proposed regulations are disproportionately unfair on small businesses. As such, these rules



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need to be amended to either treat small and large businesses under separate and more appropriate rules or be amended in such a fashion as to treat all Passenger Vessel Operators fairly and on a level playing field.

Regards,

Eric J. Gier
Chief Financial Officer