

BEFORE THE FEDERAL MARITIME COMMISSION

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Passenger Vessel Financial Responsibility Notice of Inquiry

OFFICE OF THE
FEDERAL MARITIME COMMISSION

**COMMENTS OF TERRY L. DALE, PRESIDENT AND CEO OF THE CRUISE
LINES INTERNATIONAL ASSOCIATION**

March 3, 2010

INTRODUCTION

Good morning. I am Terry Dale, President and Chief Executive Officer of the Cruise Lines International Association, known in the industry as "CLIA". Our offices are in Fort Lauderdale, Florida. With me today are representatives of our member lines American Cruise Line, Carnival, Crystal and Royal Caribbean. Also here is our counsel on regulatory matters, Michael Cavanaugh of Holland & Knight.

CLIA has existed pursuant to Federal Maritime Commission Agreement No. 010071 and a predecessor agreement since 1975. We are North America's largest cruise industry organization. CLIA represents the vast majority of cruise lines embarking passengers in the United States and subject to passenger vessel operator financial responsibility requirements under Public Law 89-777. With a membership of 25 cruise lines and 16,000 affiliated travel agencies, CLIA is the voice of the cruise industry in the United States.

CLIA member lines include U.S. and foreign-flag operators with vessels ranging in size from 50 to 5,400 passengers. CLIA estimates that the North American cruise industry in 2008 provided 357,710 total U.S. jobs and generated \$16.18 billion in total wages for U.S. employees. The industry produced \$40.2 billion in total U.S. economic

benefits including \$19.07 billion in direct spending by the cruise lines and passengers on U.S. goods and services. Much of the industry is concentrated in Florida, California, Hawaii and Alaska, but cruise vessels on international voyages call in more than 15 U.S. states and in Puerto Rico and the U.S. Virgin Islands, providing substantial numbers of jobs and economic activity in all these locations. Other vessels serve inland ports, and our thousands of affiliated travel agencies are employers in all U.S. states and territories.

SUMMARY OF POSITION

CLIA strongly believes the purpose of Public Law 89-777 has been realized in that passengers' deposits are well protected in the unlikely event of nonperformance by any cruise line that embarks passengers at U.S. ports. The current regulatory arrangement, with a \$15 million cap on each line's security requirement, is adequate to cover actual nonperformance risks.

Congress amended the law to clarify that 100 percent coverage of fare deposits was neither necessary nor intended. As shown in those few historical situations where cruise lines cancelled sailings a panoply of other legal protections work in concert with Public Law 89-777 to mitigate the risk of loss. These protections include credit card issuer refunds under the Fair Credit Billing Act and a bankruptcy priority for deposit refunds. The risk is also mitigated by the fact that a vast preponderance of the berths on cruises departing from U.S. ports are provided by public companies whose financial statements are available online through the Securities and Exchange Commission. It should be noted that the industry survived two separate "stress tests" -- 9/11 and the 2009 recession -- with no loss of passenger deposits.

Accordingly, CLIA believes that the current arrangement and levels of coverage are adequate. Incremental increases in required coverage, at a time when the economic

downturn is already having an effect, would significantly and negatively impact individual lines, causing increases in fares with no meaningful benefit.

Several cruise lines have provided answers to the Notice of Inquiry, and one has included confidential information about the costs of arranging security. We hope such responses will provide useful insights for the Commission in understanding how the current financial security works from the lines' point of view. We hope CLIA can provide more information as the Commission needs it, and we would like to establish our association as a source for prompt and reliable data about the industry when the Commission and staff need it. The industry is pleased to work with the staff, who have a high degree of expertise and have been most helpful and informative over the years. We expect the productive regulatory relationship that has emerged over the years will continue to grow in a useful manner.

BACKGROUND

In its infancy in the 1960s, the industry was plagued with some old ships and undercapitalized operators. While most operators were successful and responsible, some operators went out of business or cancelled sailings, and passengers sometimes lost deposits. In 1966, Congress established financial responsibility requirements by enacting Public Law 89-777. That legislation has played a role in keeping undercapitalized operators out of the industry and instilled confidence that fare deposits -- known as "UPR" for unearned passenger revenue -- are safe.

The original statute was somewhat ambiguous but a literal reading seemed to require that "total" revenue be covered by some type of security. In 1993, the Commission asked Congress to clarify that the statute did not require 100 percent, dollar-

for-dollar coverage. Congress agreed and amended the law. Since that time, it has been clear that coverage of 100 percent of UPR is not required.

Originally, the Commission set a coverage ceiling of \$5M, raising this to \$10M in 1981 and to \$15M in 1991. The Commission has examined the regulatory arrangement several times since then, but has not taken any action to effect further changes.

Despite the 9/11-induced failures of American Classic Voyages, Commodore and Premier in the early 2000s, no passengers have lost their cruise deposits due to nonperformance or failure of a cruise line. The recent economic recession, while very hard on many companies, has not led to cruise line bankruptcies. In the history of the industry following implementation of the law by the Commission, we are not aware of any losses of UPR. We also believe the facts show the risks of any future losses are both declining and far easier to monitor and manage than they were a decade ago.

DISCUSSION

CLIA submits that the existing regulatory arrangement, requiring UPR coverage up to a cap of \$15 million, is adequate to protect against the risks addressed by Public Law 89-777. For many reasons, it would be counterproductive to overburden companies with unnecessary increased regulatory costs that may cause higher fare prices.

Most Cruise Are Provided by SEC Reporting Companies

First of all, we note that approximately 80 percent of berths on cruises offered by CLIA member lines serving U.S. ports that have UPR exceeding the \$15M cap are provided by large companies that file audited financial statements that are posted on the SEC's EDGAR website, and can readily be viewed by the Commission and the financial press. Some of these companies are also monitored periodically and rated by S&P and Moody's. An additional 10 percent of the berths offered by companies with UPR above

the cap are sold by other public companies filing consolidated or unaudited financial statements on line with the SEC.

The financial reporting of those companies offering the bulk of the berths, and thus holding the preponderance of the UPR, coupled with the practice of the financial and travel trade press and the travel agent community to follow cruise lines' financial data closely, mean that deterioration in the financial health of such a public company would quickly be clear for all to see. It is highly unlikely that any crisis affecting a broad swath of the industry or large segment of UPR could simply "sneak up" on the Commission.

The FCBA provides for refunds by credit card issuers.

Under the Fair Credit Billing Act, credit card issuers must refund fares paid on cards they have issued if the passenger notifies the issuer of the cruise line's nonperformance within 60 days following the billing statement covering the fare payment. Card issuers charge the cruise lines a fee of up to three percent for providing their services. Our members advise that nearly 90 percent of all cruise fares are charged on credit cards, and approximately half of all fare deposits are paid within the time that would entitle the cardholder to obtain a refund under the FCBA. Thus, without making any change in the existing regulatory system that would increase costs, passengers have very significant protection in the event of nonperformance by the cruise line.

Passenger deposits are given a preference in bankruptcy proceedings.

In the unlikely event that a line declares bankruptcy, passengers have additional refund protection under the Bankruptcy Code for refund claims. Section 507(a)(7) of the Code includes a priority of up to \$2,425 per passenger over lower priority claims and general unsecured creditors.

The Impact of Change is Higher Costs with No Significant Benefits

Because there have been no historical instances in which passengers have not been reimbursed for their deposits in the event of nonperformance by a cruise line, CLIA sees no reason to require lines to increase their financial security requirements.

The burden of increasing the cap on lines could be significant. The cost of securing a bond or guaranty can vary from line to line, and the additional cost of securing a higher amount could dramatically increase the costs of a company's operation, especially for the smaller lines. The response to an increase by P&I clubs and financial institutions that currently provide such guarantees is unknown. In most instances, the cruise lines' P&I clubs provide coverage simply as an accommodation to their insureds, as this type of coverage is not their primary business line.

There are real questions as to whether increased bonds or guarantees are available, and if so, at what cost. Conversely, as shown above, a very large percentage of all cruises provided by cruise lines with UPR above \$15 million are offered by publicly-traded companies that file financial statements with the SEC. The burdens of increased coverage clearly exist, but the benefits would not be meaningful.

CONCLUSION

Thank you for considering our comments. We are pleased to answer any questions the Commissioners or staff may have. I will direct any questions on legal or regulatory issues to our counsel, with me today. I also note that very knowledgeable representatives of several of our member lines are with us today, and would also be pleased to field any questions after the session.

[Signature on next page]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry L. Dale", written over a horizontal line.

Terry L. Dale
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Submitted: February 26, 2010

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