

April 28, 2003



By Electronic Delivery

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

Re: Passenger Vessel Financial Responsibility Proposed Rulemaking—Docket
No. 02-15

Dr. Mr. VanBrakle:

This letter is submitted to the Federal Maritime Commission (“FMC”) by Visa USA Inc. (“Visa”) in response to the FMC’s notice of proposed rulemaking (“Proposed Rule”)¹ to amend its existing rule regarding the establishment of passenger vessel financial responsibility under sections 2 and 3 of Public Law 89-777. Visa appreciates the opportunity to comment on this very important matter. The Visa Payment System, of which Visa U.S.A.² is a part, is the largest consumer payment system in the world, with more volume than all other major payment cards combined. Visa plays a pivotal role in advancing new payment products and technologies to benefit its 21,000 member financial institutions and their hundreds of millions of cardholders worldwide.

Although Visa supports lifting the \$15 million ceiling on coverage for financial responsibility for cruise lines, Visa strongly objects to the exclusion of purchases made by credit card from the financial responsibility for cruise line coverage. The Proposed Rule seeks to force federally insured financial institutions to subsidize the cruise line industry. In response, financial institutions, on their own and with the likely encouragement of federal banking regulators, would need to take steps to protect themselves from loss under the Proposed Rule, which in turn likely would lead to adverse effects on the sales and liquidity of troubled cruise lines, further weakening their financial condition and precipitating failures.

Among other things, the FMC’s existing financial responsibility rule requires each covered person to establish a bond or other security to cover unearned passenger revenue up to a \$15 million ceiling in order to assure that that adequate funding is available to indemnify passengers should the cruise line be unable to perform on tickets purchased.³ In its proposal to

¹ 67 Fed. Reg. 66,352 (Oct. 31, 2002).

² Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

³ 46 C.F.R. § 540.9(j) (2003).

eliminate the \$15 million cap, the FMC cites to an instance where a surety bond was insufficient to reimburse passengers, and only reliance on credit card issuers to reimburse passengers of a non-performing cruise could satisfy all passenger claims.⁴ The FMC then attempts to further shift financial risk resulting from cruise line performance failures to federally insured financial institutions by proposing that any surety bonds established to protect unearned passenger revenue would not cover payments made by credit cards that are subject to the billing error resolution provisions of the Fair Credit Billing Act ("FCBA").⁵ The FCBA⁶ requires credit card issuers to credit charges for "billing errors" when a purchaser notifies the credit card issuer of the billing error in writing within 60 days after transmittal of the statement containing the billing error.⁷ A billing error is defined by the FCBA to include "goods or services . . . not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction."⁸

General-purpose credit cards subject to the billing error resolution provisions of the FCBA are issued virtually exclusively by financial institutions that are insured by the Federal Deposit Insurance Corporation ("FDIC"). The deposit insurance fund administered by the FDIC is backed by the United States Government. Insured depository institutions are subject to their own stringent regime of financial responsibility that is intended, at least in part, to protect the insurance fund. It is both arbitrary and capricious for the FMC to attempt to discharge its responsibility for overseeing the financial responsibility of cruise lines by requiring innocent third parties in the form of insured financial institutions, and ultimately the United States Government, to assume risks due to failure of cruise lines to meet their obligations. Insured financial institutions and the millions of consumers who are their stockholders, either directly or indirectly through their pension plans and mutual funds, should enjoy the benefits of the federal financial responsibility requirements for cruise line operators, as well as the cruise line customers.

Further, because the amount a cruise line would need to provide as security would be inversely related to its volume of credit card sales under the Proposed Rule, the cruise ship industry would be given an incentive to make as many of its sales by credit card as possible in order to minimize the amount of security required. Thus, increased sales of cruise line tickets by credit card would further increase the risk to insured financial institutions and their stockholders.

The FMC blithely ignores the effects of excluding credit card purchases from unearned passenger revenue by stating "[w]hatever means credit card issuers use to cover risks posed by excepted passenger revenue or the FCBA is beyond the scope of this proceeding."⁹ Moreover, the FMC's characterization that requiring cruise lines to provide coverage for transactions

⁴ See 67 Fed. Reg. 66,352, 66,353 (Oct. 31, 2002).

⁵ 67 Fed. Reg. 66,352, 66,353 (Oct. 31, 2002).

⁶ 15 U.S.C. § 1666(a).

⁷ Pub. L. No. 93-495 (1974).

⁸ 15 U.S.C. § 1666(b)(3).

⁹ 67 Fed. Reg. 66352, 66354 n.8 (Oct. 31, 2002).

covered by the FCBA as “redundant” and imposing a “needless financial burden”¹⁰ erroneously equates federally insured financial institutions issuing credit cards or acquiring credit card transactions as insurers who knowingly underwrite such cruise line risks.

First, the dispute resolution procedures of the FCBA were designed to encourage the credit card issuer to contact the merchant to resolve disputes on behalf of the cardholder, with reimbursement to the cardholder occurring after the card issuer has contacted the merchant and attempted to resolve the dispute. In the case of merchant insolvency, federally insured financial institutions are in no better position than their cardholders to influence the failing cruise line to provide promised services.

Furthermore, a more thorough analysis of the effects of the means that financial institutions are likely to use to cover risks would lead to the conclusion that the increased reliance on credit card sales that is likely to result from the Proposed Rule, coupled with the resulting risk controls implemented by financial institutions, is likely to accelerate the failure of troubled cruise lines.

A Visa credit card transaction between a ticket purchaser and a cruise line typically involves two financial institutions as well as Visa. A cruise line that accepts Visa credit card charges for payment maintains a relationship with the financial institution to which the cruise line submits credit card charges for payment. That acquiring financial institution submits the charges to Visa, which clears and settles the charge with the financial institution that issued the credit card. Under the FCBA dispute resolution procedures, the issuing financial institution would be responsible for resolving a claim with its customer—*i.e.*, the consumer—and any resulting charge backs would be passed back by the issuing financial institution to the acquiring financial institution under the Visa rules. Accordingly, under the Proposed Rule, the acquiring financial institution would bear the risk of the cruise line’s failure. In order to avoid absorbing such losses, acquiring financial institutions would have a strong incentive to cease providing credit card services to troubled cruise lines, thereby cutting off the flow of funds from the heightened level of credit card transactions to the already troubled cruise line. Even if acquiring financial institutions continue to serve the cruise lines, these institutions would have a strong incentive, perhaps with the encouragement of federal banking regulators, to defer the availability of funds to the cruise lines, again exacerbating the financial difficulties of already troubled cruise lines.

For these reasons, Visa believes that the Proposed Rule should be modified to provide security for all purchases of cruise line tickets, regardless of the method of payment. This approach is not only more equitable, but is also less likely to further disrupt the financial stability of troubled cruise lines.

¹⁰ 67 Fed. Reg. 66352, 66354 (Oct. 31, 2002).

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Visa appreciates the opportunity to submit comments on this important topic. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel