TO: Federal Maritime Commission ("Commission")

FROM: Fredric Lazarus

October 19, 2021

Re: Docket No. 20-15, Comments on PVO Financial Responsibility Rulemaking

Dear Commissioners,

I submit this comment as a cruise ticket purchaser that is significantly impacted by the subject matter of the proposed rule. In the interest of fairness to passengers and credibility for the cruise industry, and without exceeding the Commission's mandate to regulate "nonperformance of transportation" as envisioned by 46 U.S.C. 44102, it is imperative that the final rule requires refunds when both of the following conditions exist: a) the passenger cancels a booking after the declaration by the Secretary of Health and Human Services of a nationwide Public Health Emergency and b) the scheduled sailing is ultimately delayed or cancelled by the passenger vessel operator (PVO).

It is also critical for the protection and fair treatment of the passengers that were impacted by the nonperformance of transportation as a result of the pandemic that the rule is retroactively applied as of January 30, 2020 – i.e., the date that the nationwide public health emergency declaration was issued.

As reflected in the NPRM, the Fact Finder as well as the industry (both the CLIA and the PVA) all recognized that it was appropriate for the final rule to require refunds for passengers that cancelled their bookings before the scheduled sailing date, although they differ in identifying the specific scenarios in which such refunds should apply.

The Fact Finding 30 Interim Report, as reflected in the NPRM, proposed requiring refunds "in the event passengers cancel their booking with a PVO prior to or following certain governmental orders or declarations." Specifically, the Fact Finding 30 Interim Report recommended that a passenger be entitled to a refund if they cancel their booking no more than 60 days prior to a governmental order or declaration that results in the PVO canceling the voyage or delaying boarding of passengers by more than 24 hours. The CLIA recommended that passengers should be entitled to refunds when the scheduled sailing is ultimately delayed or cancelled by the PVO and that there is "(i) a declaration by the Secretary of Health and Human Services of a nationwide Public Health Emergency that (ii) results from events that were public knowledge prior to the passenger's cancellation." And even the PVA did not question the Fact Finder's recommendation that the rule should require refunds to passengers that cancel a booking after the declaration of a public health emergency when the scheduled sailing is ultimately delayed or cancelled.

The Commission included in its proposed rule a refund process that would apply in a situation when the passenger "elects not to embark on the delayed [or cancelled] voyage or a substitute voyage offered by the passenger vessel operator." This section of the rule should be modified to clarify that refunds are required when both of the following conditions exist: a) the passenger cancels a booking after the declaration by the Secretary of Health and Human Services of a nationwide Public Health Emergency and b) the scheduled sailing is ultimately delayed or cancelled by the PVO. Also, this section of the rule

should make clear that the rule applies retroactively to January 30, 2020, when the Covid19 nationwide public health emergency declaration was issued by the Secretary of Health and Human Services.

The regulation of the nonperformance of transportation (i.e., in the context of the cruise industry, delayed or cancelled sailings) must surely include oversight of the tactics and policies that PVA's employ in connection with a sailing that is delayed or cancelled, including such tactics and policies that are employed both before and after the scheduled sailing date. The particular situation that I experienced exemplifies the importance of correctly defining the scope of the rule. The Secretary of Health and Human Services had issued a declaration of nationwide public health emergency related to Covid-19 on January 30, 2020 – see https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx:

Determination that a Public Health Emergency Exists

As a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV), on this date and after consultation with public health officials as necessary, I, Alex M. Azar II, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby determine that a public health emergency exists and has existed since January 27, 2020, nationwide.

01/31/2020	/s/
_____	_____
Date	Alex M. Azar II

Despite the existence of the above public health emergency declaration, when I contacted Royal Caribbean through its travel agent in late February and early March 2020 and repeatedly request a full refund (the travel agency specifically contacted Royal Caribbean directly on at least 2 occasions while I was placed on hold), Royal Caribbean refused to grant a full refund and instead steadfastly maintained it standard policies without regard to the public health emergency (or the fact that many had already started to get seriously ill and die on cruise ships). Under Royal Caribbean's standard ticketing policy at the time, a passenger was entitled to a refund of only 25% of the booking cost if he/she canceled at least 30 days prior to the scheduled sailing and is entitled to no refund whatsoever if the cancellation is requested less than 30 days prior to the scheduled sailing. As the 30 day deadline was quickly approaching, we were faced with the grossly unreasonable choices to either accept a 25% refund and forfeit the balance or risk losing the entire booking cost if the scheduled sailing ultimately took place on time (all despite the existence of a nationwide public health emergency declaration). Just one day before the 30 day deadline, Royal Caribbean offered an option to its customers to accept future cruise credits for an alternative sailing through December 31, 2021; however, this so-called "Cruise with Confidence" policy specifically indicated that it could be withdrawn at any time at Royal Caribbean's sole discretion. Surely, the scenario where a passenger is denied his request for a full refund and is instead given the options by the PVA to either accept only a 25% refund within the next one day (i.e., prior to

the 30 day deadline) or accept future cruise credits (that turned out to be misleading in its own right in that Royal Caribbean ultimately had and will have very few sailings embarking from the USA through December 31, 2021) is not a "unilateral" decision by the passenger; instead, it is artificial situation caused by the PVA's grossly unreasonable unilateral policies. Faced with 2 poor options and recognizing Royal Caribbean's already troublesome decision to continue to cruise despite the public health emergency declaration and the many covid-related deaths that had already occurred on cruise ships, we were backed into a corner by Royal Caribbean. Surely, especially (as in my case) when a passenger was right in his/her pandemic-related safety concerns and Royal Caribbean did ultimate cancel our scheduled sailing (which they ultimately did), Royal Caribbean and all other PVO's cannot be allowed to refuse to grant full refunds and force passengers to choose from 2 poor options. And then, when the PVO decides a week later to finally allow passengers to obtain a full refund, for the PVO to be permitted to refuse to apply that full refund policy to those who it earlier forced into a poor decision (as they did with me) is contrary to the Commission's mission to fair treatment of passengers (including the availability of full refunds) in the case of delayed or cancelled sailings (i.e., nonperformance of transportation).

For the above reasons, it is clear that the final rule should contain a provision that requires PVO's to provide a full credit to passengers who cancel a booking after the declaration of a nationwide public health emergency when the scheduled sailing is ultimately delayed or cancelled. And it is equally critical that the rule is retroactive to January 30, 2020.

Sincerely,

Fredric Lazarus