

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Texas Commerce Bank National Association (Texas Commerce) Located in Houston, TX

[Application No. D-09783]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the leasing, since September 15, 1993, of certain office space in a building (the Building) owned by the Maritime Association—I.L.A. Pension Fund (the Pension Plan) to Texas Commerce, a party in interest with respect to the Pension Plan.

This proposed exemption is conditioned on the following requirements:

(a) The trustees of the Pension Plan (the Trustees), who are independent of Texas Commerce, believe that the leasing of office space in the Building by the Plan to Texas Commerce is and will continue to be in the best interest of the Pension Plan and its participants and beneficiaries.

(b) The decision by the Pension Plan to enter into and continue leasing office space in the Building to Texas Commerce has been made and will continue to be made by the Trustees in consultation with an independent property manager and an independent fiduciary.

(c) The terms of the lease have remained and will remain at least as favorable to the Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) The rental charged by the Pension Plan under the lease has been based and will continue to be based upon arm's length negotiations with unrelated parties.

(e) The Trustees, in conjunction with the independent fiduciary, have and will continue to (i) monitor the terms and conditions of the lease as well as the terms and conditions of the

exemption and (ii) take all actions that are necessary and proper to safeguard the interests of the Pension Plan and its participants and beneficiaries.

(f) The subject lease has involved and will continue to involve less than 25 percent of the Pension Plan's total assets.

Effective Date: If granted, this proposed exemption will be effective September 15, 1993.

Summary of Facts and Representations

1. The Pension Plan is a multiemployer, Taft-Hartley plan that has been established and maintained in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, between the South Atlantic and Gulf Coast District International Longshoremen's Association (the Union) and the West Gulf Maritime Association (the Association). The Pension Plan is administered by a board of 16 trustees, one-half of whom are appointed by the Association and one-half of whom are appointed by the Union. The principal offices of the Pension Plan are located in Houston, Texas. Investment decisions for the Pension Plan are made by the Trustees and various investment consultants. As of September 30, 1994, the Pension Plan had net assets of \$409,325,675. As of August 4, 1994, the Pension Plan had 6,069 participants.

2. The Union and its affiliated locals represent longshoremen from Lake Charles, Louisiana to Brownsville, Texas. There are 31 affiliated locals in this geographic area.

3. The Association is a Texas nonprofit corporation exempt from taxation under section 501(c)(6) of the Code. Its members include business organizations engaged in the shipping industry from Lake Charles, Louisiana to Brownsville, Texas. Approximately 35 members of the Association contribute to the Plan.

4. Texas Commerce is a national banking association with locations in Houston and other Texas cities. It is a wholly owned subsidiary of Texas Commerce BancShares, Inc., which is a wholly owned subsidiary of the New York City-based Chemical Banking Corporation. Texas Commerce provides a full range of banking and trust services to its customers. It currently serves as a fiduciary to the Pension Plan but it has no investment discretion with respect to the Pension Plan's real estate assets including the subject Building described herein.

5. First City Bank Texas (First City) was a national banking association with locations in Houston and other Texas cities. During 1979, First City entered

into a lease agreement under which it leased space in a building located at 11550 Fuqua, Houston, Texas. The Building is a five-story office building containing 88,678 square feet of gross space and 83,636 square feet of net rentable space. It is situated on an approximately 3.5 acre tract of land. The owner of the Building was Crow-Southpoint #1, Ltd. (Crow), a Texas limited partnership. First City used the office space in the Building as a bank lobby.

6. In October 1982, the Plan purchased a 60 percent interest in the Building from Crow for \$3.9 million. This transaction, together with a loan and lease agreement were covered by Prohibited Transaction Exemption (PTE) 85-79, (50 FR 18945), an administrative exemption that was granted by the Department on May 3, 1985. PTE 85-79, which was retroactive to October 27, 1982, provided for the formation of a joint venture (the Joint Venture) between the Pension Plan and Crow. Upon the formation of the Joint Venture, Crow became a party in interest with respect to the Pension Plan.

The terms of the Joint Venture were negotiated and approved by Mr. John D. O'Connell of O'Connell and O'Connell, Inc., a real estate consultant, who was designated by the trustees of the Pension Plan to serve as the independent fiduciary on behalf of the Pension Plan. Mr. O'Connell renders investment advice to the Pension Plan with respect to real estate transactions and supervises the making of real estate investments on behalf of the Pension Plan.

The terms of the Joint Venture were as follows: (a) Crow would be the managing general partner of the Joint Venture; (b) Crow would contribute the Building, a 3.5 acre site improved with a five-story office building to the Joint Venture in return for a 40 percent ownership interest; (c) the Pension Plan would be required to make a \$3.9 million capital contribution to the Joint Venture in return for a 60 percent ownership interest; (d) the Pension Plan would be required to make a loan of \$2 million to Crow at 11.25 percent interest only for a 15 year term, with interest payable annually on the anniversary date of the loan and principal due upon maturity; (e) the loan would be secured by Crow's 40 percent ownership interest in the Joint Venture and would be used to clear complete title to the Building and to repay Crow the funds it expended for the acquisition of the Building; (f) net cash flow from the operations of the Joint Venture would be distributed 60 percent to the Pension Plan and 40 percent to Crow; (g) Crow