

By: Representative Pierce

To: Judiciary A

HOUSE BILL NO. 837

1 AN ACT TO AMEND SECTION 75-71-203, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE TRANSACTIONAL DEMINIMUS EXCEPTION RULE OF THE
3 SECURITIES ACT; TO AMEND SECTION 75-71-321, MISSISSIPPI CODE OF
4 1972, TO MAKE A TECHNICAL CORRECTION REGARDING DENIAL, SUSPENSION
5 OR REVOCATION OF REGISTRATION; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. Section 75-71-203, Mississippi Code of 1972, is
8 amended as follows:

9 75-71-203. The following transactions are exempted from
10 Sections 75-71-113 and 75-71-401:

11 (1) Any isolated nonissuer transaction, whether
12 effected through a broker-dealer or not.

13 (2) Any nonissuer distribution of an outstanding
14 security if (A) a recognized securities manual contains the names
15 of the issuer's officers and directors, a balance sheet of the
16 issuer as of a date within eighteen (18) months, and a profit and
17 loss statement for either the fiscal year preceding that date or
18 the most recent year of operations, or (B) the security has a
19 fixed maturity or a fixed interest or dividend provision and there
20 has been no default during the current fiscal year or within the
21 three (3) preceding fiscal years, or during the existence of the
22 issuer and any predecessors if less than three (3) years, in the
23 payment of principal, interest or dividends on the security.

24 (3) Any nonissuer transaction effected by or through a
25 registered broker-dealer pursuant to an unsolicited order or offer
26 to buy; but the Secretary of State may by rule require that the
27 customer acknowledge upon a specified form that the sale was

28 unsolicited, and that a signed copy of each such form be preserved
29 by the broker-dealer for a specified period.

30 (4) Any transaction between the issuer or other person
31 on whose behalf the offering is made and an underwriter, or among
32 underwriters.

33 (5) Any transaction in a bond or other evidence of
34 indebtedness secured by a real or chattel mortgage or deed of
35 trust, or by an agreement for the sale of real estate or chattels,
36 if the entire mortgage, deed of trust or agreement, together with
37 all the bonds or other evidences of indebtedness secured thereby,
38 is offered and sold as a unit.

39 (6) Any transaction by an executor, administrator,
40 sheriff, marshal, receiver, trustee in bankruptcy, guardian or
41 conservator.

42 (7) Any transaction executed by a bona fide pledgee
43 without any purpose of evading this chapter.

44 (8) Any offer or sale to a bank, savings institution,
45 trust company, insurance company, investment company as defined in
46 the Investment Company Act of 1940, pension or profit-sharing
47 trust, or other financial institution or institutional buyer, or
48 to a broker-dealer, whether the purchaser is acting for itself or
49 in some fiduciary capacity.

50 (9) The sale of its securities by an issuer during a
51 period of twelve (12) consecutive months ending with the date of
52 the sale in question to not more than ten (10) persons, in this
53 state, if (A) the seller reasonably believes that all the buyers
54 are purchasing for investment purposes only; (B) no commission or
55 remuneration is paid or given directly or indirectly for
56 soliciting any prospective buyer; and (C) no public advertising or
57 solicitation is used in any such solicitation or sale.

58 Such offers or sales of securities shall be made only by duly
59 elected and acting officers of the issuer, or by the general

60 partner of a limited partnership, or a broker-dealer and his
61 agents registered pursuant to this chapter.

62 The Secretary of State may by rule or order withdraw or
63 further condition this exemption or waive one or more of the
64 conditions herein.

65 (10) Any offer or sale of a preorganization certificate
66 or subscription if (A) no commission or other remuneration is paid
67 or given directly or indirectly for soliciting any prospective
68 subscriber, (B) the number of subscribers does not exceed
69 thirty-five (35), and (C) no payment is made by any subscriber.

70 (11) Any transaction pursuant to an offer to existing
71 security holders of the issuer, including persons who at the time
72 of the transaction are holders of convertible securities,
73 nontransferable warrants, or transferable warrants exercisable
74 within not more than ninety (90) days of their issuance, if (A) no
75 commission or other remuneration (other than a standby commission)
76 is paid or given directly or indirectly for soliciting any
77 security holder in this state, or (B) the issuer first files a
78 notice specifying the terms of the offer and the Secretary of
79 State does not by order disallow the exemption within the next ten
80 (10) full business days.

81 (12) Any offer (but not a sale) of a security for which
82 registration statements have been filed under both this chapter
83 and the Securities Act of 1933 if no stop order or refusal order
84 is in effect and no public proceeding or examination looking
85 toward such an order is pending under either law.

86 (13) Any other transaction which the Secretary of State
87 by rule or order exempts from the registration requirements of
88 this chapter upon finding that (A) such registration is neither
89 necessary in the public interest nor for the protection of
90 investors; or (B) such exemption shall further the objectives of
91 compatibility with federal exemptions and uniformity among the
92 states.

93 SECTION 2. Section 75-71-321, Mississippi Code of 1972, is
94 amended as follows:

95 75-71-321. (a) The Secretary of State may by order deny,
96 suspend or revoke any registration if the Secretary of State finds
97 (1) that the order is in the public interest and (2) that the
98 applicant or registrant or, in the case of a broker-dealer or
99 investment adviser, any partner, officer or director, any person
100 occupying a similar status or performing similar functions, or any
101 person directly or indirectly controlling the broker-dealer or
102 investment adviser:

103 (A) Has filed an application for registration which as
104 of its effective date, or as of any date after filing in the case
105 of an order denying effectiveness, was incomplete in any material
106 respect or contained any statement which was, in light of the
107 circumstances under which it was made, false or misleading with
108 respect to any material fact;

109 (B) Has willfully violated or willfully failed to
110 comply with any provision of this chapter or any rule or order
111 under this chapter;

112 (C) Has been convicted, within the past ten (10) years,
113 of any misdemeanor involving a security or any aspect of the
114 securities business, or any felony;

115 (D) Is permanently or temporarily enjoined by any court
116 of competent jurisdiction from engaging in or continuing any
117 conduct or practice involving any aspect of the securities
118 business;

119 (E) Is the subject of an order of the Secretary of
120 State denying, suspending or revoking registration as a

121 broker-dealer, agent, investment adviser or investment adviser
122 representative;

123 (F) Has engaged in dishonest or unethical practices in
124 the securities business;

125 (G) Is insolvent, either in the sense that his
126 liabilities exceed his assets or in the sense that he cannot meet
127 his obligations as they mature;

128 (H) Is not qualified on the basis of such factors such
129 as training, experience and knowledge of the securities business.

130 (b) The Secretary of State may by order deny, suspend or
131 revoke any registration if the Secretary of State finds (1) that
132 the order is in the public interest and (2) that the applicant or
133 registrant:

134 (A) Has failed reasonably to supervise his agents if he
135 is a broker-dealer or his investment adviser representatives if he
136 is an investment adviser; or

137 (B) Has failed to pay the proper filing fee.

138 SECTION 3. This act shall take effect and be in force from
139 and after its passage.