Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

SEC MEMORANDUM CIRCULAR NO. 11
SERIES OF 2009

GUIDELINES ON ADDRESSING TRUST FUND AND CAPITAL DEFICIENCIES OF A PRE-NEED COMPANY

These Guidelines have been adopted by the Commission to enhance the response of a pre-need company in addressing its trust fund and/or capital deficiency.

I. If the amount of the trust fund deficiency is **below fifteen percent (15%)** of the Pre-Need Reserve, the following shall be made:

1. ***Notice To Fund The Deficiency.*** The SEC shall issue a notice to the pre-need company, ordering it to:

   i. To fully fund the deficiency within a period of thirty (30) days.

   ii. That in case the pre-need company fails to fully fund the deficiency within the above-given period, its officers are ordered to appear during the hearing set on the first business day following the above thirty (30) day period and show cause why its dealer's license and the registration of pre-need plans should not be suspended.

2. ***Posting on the SEC Website.*** If the pre-need company fails to fully fund the deficiency within the prescribed thirty (30) day grace period, a notice shall be posted on the SEC website informing the public of such fact or such failure.

3. ***Effects of Non-Appearance in the Hearing.*** Failure to appear in the hearing shall be deemed a waiver by the pre-need company of its right to explain why its dealer's license and registration of pre-need plans should not be suspended.

4. ***Order of Suspension.*** The pre-need company may be given a final and non-extendible period of five (5) days from the date of the hearing within which to fund the deficiency. If not complied with, the Commission shall suspend the dealer's license and registration of plans of the pre-need company and shall post a notice of such suspension in the SEC website. The suspension shall be for a period of sixty (60) days, or until such time the deficiency is addressed, whichever is earlier.

5. ***Notice and Hearing before Revocation.*** The order of suspension addressed to the pre-need company shall indicate that a hearing for the revocation of its dealer's license shall be conducted on the first business day following the above-given sixty (60) day period if the pre-need company fails to address the deficiency within the said 60-day suspension period.

6. ***Revocation.*** A hearing for the revocation of the pre-need company's dealer's license and revocation of plans shall be conducted on the first business day after the suspension period if it fails to address the deficiency. The dealer's license and registration of plans of the pre-need company shall be revoked by the Commission immediately after the hearing, and a notice of such revocation shall be posted in the website of the Commission.

II. If the amount of the trust fund deficiency is **15% or more** of the Pre-Need Reserve, the following shall be made:

1. ***Notice to Fund the Deficiency.*** A notice shall be issued to the pre-need company to fund fifty percent (50%) of the deficiency within fifteen (15) days from receipt of the notice.

2. ***Failure to Fund 50% of the Deficiency.***

   i. In case of failure to fund the said amount within the prescribed period, the Commission shall post in its website a notice that the subject pre-need company has a trust fund deficiency, indicating the amount thereof, and it has failed to fund the deficiency within the mandated 15-day period;

   ii. The pre-need company shall be simultaneously notified that its dealer's license and registration of plans shall be suspended if it fails to address the entire trust fund deficiency within the next 15-day period. Such notice shall indicate that a hearing for the suspension of its dealer's license and registration of plans shall be conducted on the first business day after the lapse of the fifteen (15) day period, if the pre-need company fails to address the said deficiency within the said 15-day period;

   iii. In case of failure of the pre-need company to fund the deficiency within the prescribed period, a hearing shall be conducted on the first business day after the lapse of the fifteen (15) day period for the suspension of the pre-need company's dealer's license and registration of securities.

3. ***Failure to Fund the Remaining 50% of the Deficiency.***

   i. In case the pre-need company is able to fund the first 50% deficiency of the trust fund but fails to fund the remaining 50%, the Commission shall post in its website a notice that the subject pre-need company failed to fully address its trust fund deficiency;

   ii. The pre-need company shall be simultaneously notified that its dealer's license and registration of plans shall be suspended if it fails to address the entire trust fund deficiency within the next 15-day period. Such notice shall indicate that a hearing for the suspension of its dealer's license shall be conducted on the first business day after the lapse of the fifteen (15)

day period if the pre-need company fails to address the said deficiency within the said 15-day period;

iii. In case of failure of the pre-need company to fund the deficiency within the prescribed period, a hearing shall be conducted on the first business day after the lapse of the second fifteen (15) day period for the suspension of the pre-need company's dealer's license and registration of plans.

4. ***Effects of Non-Appearance in the Hearing.*** Failure to appear in the hearing shall be deemed a waiver by the pre-need company of its right to explain why its dealer's license and registration of plans should not be suspended.

5. ***Order of Suspension.*** The pre-need company may be given a final and non-extendible period of five (5) days from the date of the hearing within which to fund the entire deficiency. Otherwise, the Commission shall suspend the pre-need company's dealer's license and registration of plans, and shall post a notice of such suspension in the SEC website. The suspension shall be for a period of sixty (60) days or until such time the deficiency is addressed, whichever is earlier.

6. ***Notice and Hearing before Revocation.*** The order of suspension addressed to the pre-need company shall indicate that a hearing for the revocation of its dealer's license and registration of plans shall be conducted on the first business day after the lapse of the sixty (60) day period if the pre-need company fails to fund the deficiency within the said suspension period.

7. ***Revocation.*** A hearing for the revocation of the dealer's license of the pre-need company shall be conducted on the first business day after the suspension period if it fails to address the deficiency. The dealer's license of the pre-need company shall be revoked by the Commission immediately after the said hearing, and the order of revocation shall be posted in the website of the Commission.

III. The funding of the trust fund deficiency shall be in accordance with SEC Memorandum Circular No. 4, Series of 2007 (Guidelines on the Management of the Trust Fund of Pre-Need Corporations) or any of its amendments as maybe issued by the Commission.

IV. In the event that the pre-need company has a capital deficiency, it shall be required by the Commission to submit a concrete plan[1] to address such deficiency within 60 days from receipt of notice. In case of failure to submit such plan, a notice shall be posted in the website of the Commission informing the plan holders of the capital deficiency of the pre-need company which it failed to address, that raises an issue on its going concern status.

All rules and regulations, circulars, orders, memoranda, or any part thereof, in conflict with or contrary to this Memorandum Circular or any portion hereof, are hereby repealed or modified accordingly.

[1] Written commitment from stockholders to infuse capital, credit line commitment from reputable banking institution

This Circular shall take effect on **03August 2009**. It shall not be applicable to any pre-need company which submitted a Multi-Year Capital Build-Up Program on or before April 15, 2009, and subsequently approved by the Commission.

Issued this 2nd day of July 2009, Mandaluyong City, Philippines.

For the Commission:

FE B. BARIN
Chairperson