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

SEC Memorandum Circular No. 1
Series of 2009

TO : Pre-need Companies

SUBJECT : Multi-year Capital and Trust Fund Build-up

Date : 25 February 2009

The Commission, pursuant to its authority under the Corporation Code and Securities Regulation Code, resolved in its meeting on 12 February 2009 that pre-need companies shall be granted an extension of time until 15 April 2009 within which to apply for a multi-year funding scheme, known as the **Multi-year Capital and Trust Fund Build-up**, for the purpose of addressing the pre-need companies' concerns on capital and trust fund deficiencies.

Attached as Annex "A" hereof are the revised terms and conditions under the Multi-year Capital and Trust Fund Build-up.

This Memorandum Circular shall take effect immediately.

Mandaluyong City, Metro Manila, Philippines.

For the Commission,

Fe B. Barin
Chairperson

ANNEX "A"

Multi-year Capital and Trust Fund Build-up

A. APPLICATION. The application for the Multi-year Capital and Trust Fund Build-up is open only to the 24 pre-need companies who have been granted Dealer's Licenses for 2009 as of the date of effectivity of this SEC Memorandum Circular and are in need of strengthening their capital and trust fund position to address the Commission's requirements. The said pre-need companies shall have until **15 April 2009** within which to file their application, subject to but not limited to the following requirements:

1. The pre-need company shall submit a letter containing the following:

   a. acknowledgment of the trust fund deficiency/ capital impairment based on the Actuarial Validation/ Valuation Report ("AVR")/ Audited Financial Statements ("AFS") ending 31 December 2008[a]; and

   b. undertaking that should the economic conditions/financial condition of the pre-need company improve during the implementation period of the Multi-year Capital and Trust Fund Build-up, the pre-need company may be required by the Commission to shorten said period.

2. The letter must be accompanied by the following:

   a. AVR and AFS ending 31 December 2008 (with proof of filing with the Bureau of internal Revenue, if applicable) which must have been prepared in accordance with Rule 31 of the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code, as amended;

   b. five (5)-year period projected financial statements together with the assumptions taken;

   c. fifteen (15)-year financial program addressing the old basket of plans that are commercially impracticable, taking into consideration the respective maturity values of the plans; and

   d. board resolution authorizing the filing of the application and its supporting documents, and taking full responsibility over the representations and commitments indicated therein.

[a] For pre-need companies which observe the fiscal year (any 12-month period not ending on December 31), the interim AVR and AFS (audited) ending 31 December 2008 shall be made as basis.

B. MULTI-YEAR CAPITAL AND TRUST FUND BUILD-UP. The pre-need companies whose applications for the Multi-year Capital and Trust Fund Build-up are approved must immediately address their respective trust fund deficiencies and capital impairment based on the AVR and AFS ending 31 December 2008 **within sixty (60) days from such approval by the Commission** and must observe the following conditions:

1. Trust fund build-up

The deficiency between the trust fund and the pre-need reserves shall be funded within **2009 until 2013**, subject to yearly adjustments based on the AVR for the year. Shown below is the tabular presentation of the multi-year trust fund build-up:

TRUST FUND DEFICIENCY	AMOUNT TO FUND	FORMULA	PERIOD WHEN TO FUND
2008[b]	1/5 of Trust Fund Deficiency	Trust Fund Deficiency, based on AVR for 2008[b], divided by 5 years	Within 60 days from SEC approval of the application for multi-year trust fund build-up
2009[c]	1/4 of Trust Fund Deficiency	Trust Fund Deficiency, based on AVR for 2009[c], divided by 4 years	Within 30 days from deadline of submission to the SEC of AVR for 2009[c]
2010[d]	1/3 of Trust Fund Deficiency	Trust Fund Deficiency, based on AVR for 2010[d], divided by 3 years	Within 30 days from deadline of submission to the SEC of AVR for 2010[d]
2011[e]	1/2 of Trust Fund Deficiency	Trust Fund Deficiency, based on AVR for 2011[e], divided by 2 years	Within 30 days from deadline of submission to the SEC of AVR for 2011[e]
2012[f]	Entire Trust Fund Deficiency	Trust Fund Deficiency, based on AVR for 2012[f]	Within 30 days from deadline of submission to the SEC of AVR for 2012[f]

The final tranche of funds infusion to address the trust fund deficiency under the Multi-year Capital and Trust Fund Build-up must be completed within thirty (30) days from deadline of submission to the SEC of AVR for 2012[f].

[b] Interim AVR ending 31 December 2008, if the pre-need company observes the fiscal year.
[c] AVR for the fiscal year 2009-2010, if the pre-need company observes the fiscal year.
[d] AVR for the fiscal year 2010-2011, if the pre-need company observes the fiscal year.
[e] AVR for the fiscal year 2011-2012, if the pre-need company observes the fiscal year.
[f] AVR for the fiscal year 2012-2013, if the pre-need company observes the fiscal year.

2. Funding the trust fund deficiency by means of real estate, unlisted shares of stocks and planholder loans

Notwithstanding the provisions of SEC Memorandum Circular No. 4, s. of 2007, the pre-need companies shall be given temporary relief during the period within which they avail of the Multi-year Capital and Trust Fund Build-up such that they may fund the trust fund deficiency using the following:

a. investments in real estate, such that the total amount of the said investments may exceed the prescribed limit of fifteen percent (15%) of the total trust fund equity, provided that the requirements for investments in real estate other than the prescribed limit under SEC Memo Circular 4, s. of 2007 are observed and that the additional real properties are income-generating. Investment in memorial lots shall be allowed only if the pre-need company sells or offers for sale pre-need life plans;

b. investments in *unlisted* shares of stocks of companies, provided that the unlisted companies are financially stable/ in sound financial condition, solvent, possess positive track record of growth and not in any way related to the pre-need company. Prior to investing, the pre-need company shall submit to the Commission the unlisted companies' policy and history on dividend declaration; and

c. investments in the form of planholder loans, such that the total amount of the said investments may constitute up to ten percent (10%) of the total trust fund equity thereby exceeding the present prescribed limit of five percent (5%) of the total trust fund equity, provided that the pre-need company submits a monthly report on the planholder loans and the other requirements for planholder loans under SEC Memo Circular 4, s. of 2007 are complied with.

3. Capital build-up

The pre-need company whose paid-up capital has been impaired shall address the impairment during the period **2009 until 2012**, subject to yearly adjustments based on the AFS for the year. Shown below is a tabular presentation of the multi-year capital build-up:

CAPITAL IMPAIRMENT	MANDATORY DECREASE IN THE AMOUNT OF CAPITAL IMPAIRMENT	FORMULA	PERIOD WHEN CAPITAL INFUSION SHALL BE MADE
2008[g]	1/3 of Capital Impairment	Capital Impairment, based on AFS for 2008[g], divided by 3 years	Within 60 days from SEC approval of the application for multi-year capital build-up
2009[h]	1/2 of Capital Impairment	Capital Impairment, based on AFS for 2009[h], divided by 2 years	Within 1 year from deadline of submission to the SEC of AFS for 2009[h]
2010[i]	Entire amount of Capital Impairment	Capital Impairment, based on AFS for 2010[i]	Within 1 year from deadline of submission to the SEC of AFS for 2010[i]

The final tranche of capital infusion under the Multi-year Capital and Trust Fund Build-up must be completed within one (1) year from deadline of submission to the SEC of AFS for 2010[i].

In addition to the foregoing, the pre-need companies must strictly comply with the following conditions:

1. Notwithstanding the provisions of SEC Memorandum Circular No. 7, Series of 2008, the pre-need companies subject of the Multi-year Capital and Trust Fund Build-up shall be governed by the following schedule with respect to the filing of the AFS (with proof of filing with the Bureau of Internal Revenue, if applicable), including AVR:

	Deadline
AVR and AFS for 2008[g]	15 April 2009
AVR and AFS for 2009	Within 105 days after the close of the calendar/fiscal year
AVR and AFS for 2010	Within 105 days after the close of the calendar/fiscal year
AVR and AFS for 2011	Within 105 days after the close of the calendar/fiscal year
AVR and AFS for 2012	Within 105 days after the close of the calendar/fiscal year

[g] Interim AFS (audited)/AVR ending 31 December 2008, if the pre-need company observes the fiscal year.

[h] AFS for the fiscal year 2009-2010, if the pre-need company observes the fiscal year.

[i] AFS for the fiscal year 2010-2011, if the pre-need company observes the fiscal year.

2. The application for and availment of the Multi-year Capital and Trust Fund Build-up must be disclosed by the pre-need companies in their respective AFS;

3. The reclassification of financial assets of pre-need companies shall be made in accordance with Philippine Accounting Standards 39, as amended, and SEC Memorandum Circular No. 10, Series of 2008. This is with the condition that after reclassification, the pre-need companies must still observe the twenty percent (20%) liquidity reserve requirement;

4. The pre-need companies are ineligible from declaring any form of dividends, stock options or warrants during the effectivity of the Multi-year Capital and Trust Fund Build-up;

5. Without prejudice to the observance of law-mandated bonuses, the pre-need companies are not allowed to distribute any form of profit sharing, performance bonus and other compensation schemes that are based on the profits or earnings of the corporation to the members of the Board of Directors, executives and officers during the effectivity of the Multi-year Capital and Trust Fund Build-up;

6. The salaries, per diems, allowances, fringe benefits and any similar compensation and benefits of the members of the Board of Directors, executives and officers shall not increase by a total of more than five percent (5%) during the effectivity of the Multi-year Capital and Trust Fund Build-up; and

7. Should the economic conditions/ financial condition of the pre-need company improve during the implementation period of the multi-year capital and trust fund build-up program, the pre-need company may be required by the Commission to shorten said period.