Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, Mandaluyong City, Metro Manila

SEC MEMORANDUM CIRCULAR NO. 7
Series of 2004

TO : Pre-Need Corporations
General Agents of Pre-Need Corporations

SUBJECT : **Guidelines on Pre-Need Advertisements**

Section 1. Mandate

The Securities and Exchange Commission (SEC) pursuant to Section 16 of the Securities Regulation Code (SRC) issues these guidelines on pre-need advertisements for corporations authorized to carry on the business of issuing pre-need plans or to act as general agents of pre-need corporations.

Section 2. Objective

The objective of these guidelines on pre-need advertisements is to assure truthful and adequate disclosure of all materials and relevant information in the advertising of pre-need plans in order to prevent unfair, deceptive and misleading advertising.

Section 3. Applicability

3.1 These guidelines shall apply to all pre-need advertisements intended for presentation, distribution, or dissemination either directly or indirectly by or on behalf of the pre-need corporations authorized to carry on the business of pre-need plans or the corporations authorized to act as general agents of pre-need plans.

3.2 Every pre-need corporation or general agent of pre-need corporations shall establish and maintain a system of control over the content, form, and method of presentation, distribution, and dissemination of all such advertisements of its plan contracts. All such advertisements, regardless of by whom written, created, designed, presented, distributed, or disseminated, shall be the responsibility of the pre-need corporations whose pre-need plans are advertised.

3.3 Every advertisement by a general agent that affects a pre-need corporation must be approved by the pre-need corporation in writing prior to its issue.

3.4 It shall be the responsibility of the pre-need corporation while granting such approval to ensure that all advertisements that pertain to the corporation or its products or service comply with these regulations and are not deceptive or misleading.

3.5 Rule 14 of the New Pre-Need Rules particularly on advertisements or publications made by the issuer is herein incorporated with revisions as follows:

a) The Commission shall not process/approve any advertisement of a pre-need plan.

b) The approval of registration of pre-need plans does not constitute a recommendation or endorsement of the registered pre-need plans, and this fact shall be printed in bold face prominent type letters in all advertisements and/or literature which the issuer, general agent, broker or salesman shall distribute to prospective planholders.

c) All advertisements are required to bear the following message in bold face prominent type:

"THE SECURITIES AND EXCHANGE COMMISSION HAS NOT DETERMINED THE ACCURACY OR COMPLETENESS OF THIS ADVERTISEMENT. ANY REPRESENTATION TO THE CONTRARY CONSTITUTES A VIOLATION OF THE SECURITIES REGULATION CODE AND IS CRIMINALLY PUNISHABLE. THE PUBLIC IS ENCOURAGED TO REPORT IMMEDIATELY TO THE SECURITIES AND EXCHANGE COMMISSION ANY MISREPRESENTATION OR FALSE OR INACCURATE STATEMENT."

d) Advertisement in broadcast medium other than radio shall likewise clearly emphasize that the Commission has not approved or passed upon the accuracy and completeness of such advertisement.

e) All pre-need advertisements, whether institutional or product, for broadcast (television and/or radio) must be submitted to the Advertising Board of the Philippines (AdBoard) for pre-screening, in keeping with its Code of Ethics. For print advertisements, only those which fall under the classification stipulated under AdBoard procedures (e.g. "Exclusivity" claims or "Superiority" claims) must also be pre-screened.

Section 4. Definitions

4.1 Definitions given in the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the SRC and in this Memorandum Circular govern the construction of this Memorandum Circular.

4.2 **Pre-need advertisement** means and includes communication directly or indirectly related to a pre-need plan contract and intended to result in the eventual sale or solicitation of a plan contract from the public, and shall include all forms of printed and published materials or any material using the print, and/or oral communication or electronic medium for public communication such as:

a) Printed and published material, audio visual material and descriptive literature of a pre-need corporation or general agent used in direct mail, newspapers, magazines, radio scripts, TV scripts, website, email, portals, billboard and similar displays;

b) Descriptive literature and sales aids of all kinds issued by a pre-need corporation or general agent for presentation to the buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, form letters;

c) Scripted, written or printed sales talks, presentation and materials for use by the pre-need corporation or general agent, whether prepared by the pre-need corporation or general agent.

4.3 The definition of "pre-need advertisement" includes also an advertisement material that is used in the solicitation of renewals and reinstatements.

4.4 The following materials shall not be considered to be an advertisement provided they are not used to induce the purchase, increase, modification, or retention of a pre-need plan:

a) materials used by a pre-need corporation or general agent within its own organization and not meant for distribution to the public;

b) communications with planholders other than materials urging them to purchase, increase, modify surrender or retain a pre-need plan;

c) materials used solely for the training, recruitment, and education of personnel or salesmen of a pre-need corporation or general agent provided they are not used to induce the public to purchase, increase, modify, or retain a pre-need plan contract.

4.5 **"Unfair or misleading advertisement"** will mean and include any advertisement that:

a) fails to clearly identify the product or service as a pre-need plan;

b) makes claims beyond the ability of the plan contract to deliver or beyond the reasonable expectation of performance;

c) describes benefits that do not match with the plan contract provision;

d) gives information in a misleading way;

e) illustrates future benefits based on assumptions which are not realistic nor realizable in the light of the plan contract's current performance;

f) where the benefits are not guaranteed, does not explicitly say so as prominently as the benefits are stated or says so in a manner or form that it could remain unnoticed;

g) makes unfair or incomplete comparisons with products or services which are not comparable or disparages competitors.

Section 5. Method of Disclosure of Required Information

All information required to be disclosed by these guidelines shall be set out conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of sufficient prominence that the information is not minimized, rendered obscure, presented in an ambiguous fashion or so intermingled with the content of the advertisement as to be confusing or misleading.

Section 6. Form and Content of Advertisements

6.1 The form and content of an advertisement shall be sufficiently complete and clear or concise in order that the plan buyer is fairly apprised of the total consideration for and the essential features of the pre-need plan.

6.2 Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with pre-need terminology, shall not be used.

6.3 Where other specific details which could influence the plan buyer's decision are not stated, the advertisement should indicate this and the manner in which complete information may be obtained. For this purpose, the advertisement may use a statement such as "For other important details and information, please contact or see _____."

Section 7. Deceptive Words, Phrases, or Illustrations

7.1 No advertisement shall use words or phrases such as "all", "full", "complete", "up to", "as high as", or similar words or phrases, in a manner which exaggerates any benefit beyond the terms of the plan contract.

7.2 No advertisement of an insurance benefit for which payment has been included in the pricing or similar facility shall use words or phrases such as "free", or substantially similar words or phrases in a manner which has the capacity, tendency, or effect of misleading prospective planholders into believing that the pre-need plan advertised will in some way enable them to be insured without any cost from them.

Section 8. Identification of Plan

When the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends on the pre-need plan selected and that the installment payments will vary with the amount of benefits selected.

Section 9. Identity of Advertiser

9.1 Every advertisement for a pre-need corporation or general agent of a pre-need corporation shall:

a) state clearly and unequivocally that pre-need plan is the subject matter of the solicitation;

b) state the full registered name of the pre-need corporation or general agent.

9.2 An advertisement shall not create the impression directly or indirectly that the pre-need corporation, its financial condition or status, the payment of its benefits, or the merits, desirability or advisability of its plan contracts or kinds of pre-need plans are approved, endorsed or accredited by this Commission.

9.3 If an advertisement states either that the pre-need corporation or general agent or the plan being offered is approved or licensed by Commission, it must also qualify the statement with words: **"This does not constitute a recommendation or endorsement of (this company) (this plan contract)"** or equivalent words.

Section 10. Disparaging Comparisons and Statements

10.1 An advertisement shall not directly or indirectly make unfair or incomplete comparisons of benefits or plan contracts, or comparisons of non-comparable benefits or plan contracts of other pre-need corporations or general agents, or unfairly characterize other methods of marketing pre-need plans of competitors.

10.2 An advertisement shall not directly or indirectly disparage, ridicule, criticize or attack any natural person or groups or persons especially on the basis of gender, social or economic class, religion, race or nationality.

Section 11. Comparison Advertising

11.1 Direct comparison shall not be allowed.

11.2 Comparison advertising may be permitted provided it does not use symbols, slogans, titles, or statements that are clearly identified or directly associated with a competitor. Competitive claims inviting comparison with other pre-need services without identifying any specific name or brand may be allowed provided these are adequately substantiated.

11.3 A comparison of competitive services must provided a clear, substantiated and verifiable basis for any comparative claim favorable to the advertiser.

Section 12. Advertising Slogans and Terms

Advertising copy, slogan or terms should not tend to mislead or confuse the planholder as to the materials, content, origin, utility or function of any product or service.

Section 13. Use of Statistics

13.1 An advertisement stating the amount of benefits paid, the number of persons who availed or similar statistical information relating to the pre-need corporation or plan shall not use irrelevant facts, and must accurately reflect all of the relevant facts. Such an advertisement shall not imply that the statistics are derived from the advertised plan unless such is the fact. When the statistics are applicable to other plans, the advertisement shall specifically so state.

13.2 An advertisement using statistics which describe a pre-need corporation, such as assets, corporate structure, financial standing, age, product/service lines or relative position in the pre-need business, may be irrelevant and, if used at all, must be used with extreme caution because of the potential for misleading the public. Such claims must have adequate substantiation.

13.3 An advertisement shall not represent or imply that benefit settlements by the pre-need corporation are "liberal" or "generous" or use words of similar import, or represent or imply that benefit settlements are or will be beyond the actual terms of the plan contract. The source of any statistics used in an advertisement shall be identified in the advertisement.

Section 14. Use of Specific Claims

14.1 Advertisements using the results of bona fide research, surveys, or test relating to a product/service should not be so prepared or disseminated as to be misleading or inaccurate in any manner, including by creating or claiming any implication beyond that clearly established by the research, survey or test.

14.2 For television advertising materials that require the presence of qualifiers in reference to a claim, such should be prominently readable and last for at least two (2) seconds.

Section 15. "No 1" Claim (Or Equivalent)

15.1 No "No. 1" claim with respect to any product or service shall be allowed unless it is clearly delineated and qualified as to render the claim objectively verifiable. The claim should, in any case, be substantiated.

15.2 A "No. 1" claim may be made only with respect to a clearly delineated and defined category of product or service.

15.3 No "No. 1" claim may be made by a product or service with no competitors.

15.4 Substantiations for a "No. 1" sales claim must confirm that the claimant is leading in both (a) physical units sold and (2) peso values and should be supported by data acceptable to the Commission.

15.5 Substantiations for a "No. 1" sales claim must be discontinued or prevented from being used if it is proven by a competitor that its sales figures for the succeeding calendar period put it ahead of the leading company.

Section 16. Use of "New"

The word "new" which connote "newness" of a product may be used in advertisements only for a period of one (1) year from the time the new product or service has been introduced in the market.

Section 17. Philippine Standards and Symbols

17.1 The Philippine National Flag or any of its earlier versions and the Seal of the Republic may be used as illustrative material only in sober and respectful advertising whose theme is patriotic or commemorative, or reflects the heritage and/or traditions of the Filipino people.

17.2 Historical/national events, national heroes and national shrines can be used in advertisements only if presented accurately and respectfully and used to promote positive values.

17.3 The representation of the Philippine currency in advertisements shall be governed by the rules promulgated by the Bangko Sentral ng Pilipinas.

17.4 The use of the Philippine National Flag in advertising shall conform with the standards set by the National Historical Institute and the National Commission for Culture and Arts.

Section 18. Price Advertising

18.1 Advertisements should not contain misleading, exaggerated or fictitious pricing or price comparisons, discounts or other claimed saving. All indicated prices and other economic terms should be complete and accurate and should not mislead the public by distortion, omission or undue emphasis.

18.2 Pricing should refer to the prices of the pre-need plan as approved by the Commission.

18.3 Advertisement for installment payments or types of modal payment or terms of payments should provide all pertinent information, additional charges, if any, and all other economic or financial features of the transaction so as to reflect the total cost or consideration of the product or service being advertised.

18.4 However, there is no time frame for the mere mention of a product price as long as there is no reference to a previous price.

Section 19. Testimonials

19.1 Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the plan advertised and be accurately reproduced. The pre-need corporation or general agent in using a testimonial makes as its own all of the statements contained therein, and the entire advertisement, including such testimonial **and live plugs**, is subject to the guidelines on pre-need advertisements.

19.2 The pre-need corporation or general agent must substantiate a testimonial by producing the original written and signed evidence supporting the testimonial.

19.3 When a testimonial is used more than one year after it was originally given, a confirmation must be obtained.

19.4 If the person making a testimonial has a financial interest in the pre-need company or a related entity, as a stockholder, director, officer, employee or otherwise, this fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, this fact shall be disclosed in the advertisement by the phrase "paid endorsement" or its equivalent. In the case of television or radio advertising, the required disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.

19.5 An advertisement shall not state or imply that the pre-need corporation or general agent or the plan has been approved or endorsed by any individual, group of individuals. society, association or other person, unless such is the fact and unless any proprietary relationship between such person and the pre-need corporation or general agent is disclosed. If the person making the testimonial has been formed by the pre-need corporation or general agent, or is owned or controlled by the pre-need corporation or general agent this fact shall be disclosed in the advertisement.

Section 20. Changes in Advertisement

20.1 Any change in an advertisement would be considered a new advertisement.

20.2 All the provisions of this Memorandum Circular shall apply to the new advertisement. The Commission shall be informed at the time of filing the advertisement the extent of change in the original advertisement.

Section 21. Advertising on the Internet

21.1 Every pre-need corporation or general agent's web site or portal shall:

a) include disclosure statements which outline the site's specific policies vis-á-vis the privacy of personal information for the protection of both their own businesses and the planholders they serve.

b) display their registration/ license numbers on their web sites.

21.2 For the purposes of these regulations, except where otherwise specifically excluded or restricted, no pre-need plan otherwise permissible for use shall be deemed invalid or impermissible if such pre-need plan or plan contract accurately reflects the intentions of the parties in such pre-need plan or plan contract as published electronically or transmitted electronically between parties.

Section 22. Compliance and Control

22.1 Every pre-need corporation or general agent shall:

a) have a compliance officer, whose name and official position in the organization shall be communicated to the Commission, and he shall be responsible to oversee the advertising program;

b) establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its plan contracts.

c) maintain an advertising register at its corporate office which must include:

i) a specimen of every advertisement disseminated, or issued or a record of any broadcast or telecast, etc.;

ii) a notation attached to each advertisement indicating the manner, extent of distribution and form number of any plan advertised,

d) maintain a specimen of all advertisements for a minimum period of three years.

e) file a copy of each advertisement with the Commission as soon as it is first issued, together with the certificate of compliance stating that, to the best of his knowledge, advertisements disseminated by the pre-need corporation or its general agents during the preceding year have complied with the provisions of these regulations and the AdBoard Code of Ethics. The Commission reserves the right to inspect and review the materials in the advertisement register.

Section 23. Administrative Actions

23.1 If an advertisement is not in accordance with these regulations, the Commission may take action in one or more of the following ways:

a) issue a letter to the pre-need corporation or general agent seeking information within a specific time, not being more than ten working days from the date of issue of the letter;

b) direct the pre-need corporation or general agent to correct or modify the advertisement already issued in a manner suggested by the Commission with a stipulation that the corrected or modified advertisement shall receive the same type of publicity as the one sought to be corrected or modified;

c) direct the pre-need corporation or general agent to discontinue the advertisement forthwith;

d) any other action deemed fit by the Commission, keeping in view the circumstances of the case, to ensure that the interests of the public are protected without prejudice to the referral of complaints to the AdBoard where complaints refer to the violation of the AdBoard Code of Ethics and to the Department of Trade and Industry for promotions and activities covered under the Consumer Act of the Philippines.

23.2 The pre-need corporation or general agent may seek additional time from the Commission to comply with the directions justifying the reasons therefor. The Commission may, however, refuse to grant extension of time if it feels that the pre-need corporation or general agent is seeking time only to delay compliance. Any failure on the part of the pre-need corporation or general agent to comply with the directions of the Commission may require the Commission to take such action as deemed necessary including levy of penalty.

23.3 Violation of any provision of this Memorandum Circular and the Rules on the Registration and Sale of Pre-Need Plans shall result in sanctions as provided in the SRC and such other sanctions and measures the Commission may deem reasonably necessary for the implementation of this Memorandum Circular.

Section 24. Effectivity

This Memorandum Circular shall take effect after fifteen (15) days from publication in a newspaper of general circulation.

EDSA, Greenhills, Mandaluyong City, Philippines.

April 29, 2004.

Lilia R. Bautista

LILIA R. BAUTISTA
Chairperson