

**[ SEC MEMORANDUM CIRCULAR NO. 4, SERIES OF  
2007, September 27, 2007 ]**

**GUIDELINES ON THE MANAGEMENT OF THE TRUST FUND OF  
PRE-NEED CORPORATIONS**

*SECTION 1. Mandate and Objectives*

Pursuant to Sections 16 and 74 of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), the Securities and Exchange Commission (Commission) issues these Guidelines to Pre-Need Corporations and entities authorized to engage in trust operations and act as Trustee for Pre-Need Corporations:

- a) to govern the management and administration of Trust Funds established for the payment of Pre-Need Benefits under plan contracts, and
- b) to provide an updated and more flexible choice of investments for the Trust Fund subject to rules and regulations that would ensure prudent investment management and protection of the interests of the Planholders.

*SECTION 2. Scope*

These Guidelines shall cover the following subjects:

- a) Trust Fund
- b) Trust Agreement
- c) Responsibilities of the Trustee d) Investments of the Trust Fund
- e) Recognition and Measurement of Trust Fund Assets and Liabilities
- f) Liquidity Reserve Fund
- g) Reportorial Requirements
- h) Time of Making Deposits to the Trust Fund i) Transitory Provisions
- j) Sanctions

*SECTION 3. Definition of Terms*

Whenever used in these Guidelines, the following terms shall have the respective meanings hereafter set forth or indicated, unless the context requires otherwise:

- a) Best execution refers to the obligation of the Trustee to use reasonable diligence in ascertaining the best available price for the investment and, to buy or sell at a price so that the resultant price is as favorable as possible to the Trust Fund under prevailing market conditions.
- b) Collective Investment Schemes (CIS) refer to any arrangement whereby funds

are pooled together for the purpose of investing in a portfolio of securities or other financial assets.

c) Delinquent Plan refers to a Pre-Need Plan where any due installment has been unpaid.

d) Exchange refers to an organized market place or facility that brings together buyers and sellers and executes trades of securities and/or commodities.

e) In Force Plan refers to a Pre-Need Plan for which the Pre-Need Corporation has an outstanding obligation, either for the (i) delivery of Pre-Need Benefits or (ii) payment of Termination Value.

f) Investment Strategy refers to a method of portfolio management and asset allocation that a Trustee employs.

g) Lapsed Plan refers to a Delinquent Plan which has remained unpaid beyond the grace period of two (2) months from date of delinquency.

h) Liquidity Reserve Fund refers to a portion of the Trust Fund set aside by the Trustee to cover the Pre-Need Benefits.

i) Pre-Need Benefits refer to the payment of monetary consideration and/or performance of future services which the Pre-Need Corporation undertakes to deliver either to the Planholder or his beneficiary at the time of actual need or agreed maturity date, as specified in the Pre-Need Plan.

j) Pre-Need Reserves refer to the measure of liabilities of the Pre-Need Corporation for its In Force Plans or Lapsed Plans as of valuation date. It is set up for the Pre-Need Benefits payable by the Pre-Need Corporation as stated in the plan contract.

k) Termination Value refers to the amount the Planholder should be paid upon surrender of the Pre-Need Plan prior to maturity or availment of full Pre-Need Benefits.

l) Trust Agreement refers to an instrument in writing covering the terms and conditions of the Trust.

m) Trust Fund refers to the fund set up from the Planholders' payments, separate and distinct from the paid-up capital of a registered Pre-Need Corporation, established with a Trustee under a Trust Agreement approved by the Commission, to pay for the Pre-Need Benefits as provided in the plan contract.

n) Trust Fund Equity refers to the total assets less total liabilities of the Trust Fund.

o) Trust Investment Committee refers to a body of the Trustee which reviews and approves transactions between trusts and/or fiduciary accounts.

p) Trustee refers to a trust company, trust department of a bank or an investment house that is authorized to perform trust and other fiduciary functions by the Bangko Sentral ng Pilipinas (BSP) and act as Trustee for Pre-Need Corporations.

q) Trustor refers to the Pre-Need Corporation.

#### *SECTION 4. Trust Fund*

A Trust Fund shall be separately established for each type of plan with a trust company, trust department of a bank or an investment house authorized to perform trust and other fiduciary functions by the BSP.

#### *SECTION 5. Trust Agreement*

The proposed Trust Agreement, for each type of plan, shall be submitted by the concerned Pre-Need Corporation to the Commission for approval before execution and shall contain and/or state, among other things, the following provisions:

- a) The Trust Fund shall be under the management and control of the Trustee;
- b) Investment powers of the Trustee with respect to the Trust Fund;
- c) The required monthly regular contributions to the Trust Fund shall be deposited and  
  
credited to the Trust Fund account in accordance with Section 11 of these Guidelines;
- d) Investments, loans or credit accommodations to directors, officers, stockholders and related interests (DOSRI) of the Pre-Need Corporation and the Trustee are prohibited unless otherwise allowed by these Guidelines or the Commission;
- e) Withdrawals and payments from the Trust Fund;
- f) Recognition and measurement of Trust Fund assets and liabilities;
- g) Continuing authorization for the Commission's duly authorized representative/s to examine and verify the Trust Fund;
- h) Undertaking to abide by the rules and regulations and investment guidelines of the Commission relating to the Trust Fund;
- i) Disclosure and submission within forty eight (48) hours from the date of execution of any material agreement between the Trustor and the Trustee other than the Trust Agreement;
- j) Prior notice by the Trustee to, and, approval by, the Commission of amendments to or termination of the Trust Agreement;
- k) Contractual liability of the Trustee to the Trustor in case of substantial losses to the Trust Fund as a result of fraud, gross negligence or evident bad faith; and
- l) Undertaking by the Trustee to submit to the Commission such other data or information as may be required by the latter.

#### *SECTION 6. Responsibilities of the Trustee*

The Trust Fund, inclusive of earnings, shall be administered and managed by the Trustee for the protection of the Planholders. The Trustee shall exercise the skill, care and diligence that a prudent man acting in the same capacity would give under the circumstances, guided by sound investment principles, and taking into consideration, among other things, the following:

- a) preservation of capital
- b) risk diversification
- c) growth of investment portfolio.

#### *SECTION 7. Investments of the Trust Fund*

7.1 To ensure the liquidity of the Trust Fund and to meet the Pre-Need Reserves essential to the delivery of the Pre-Need Benefits under the plan contract, Trustees are allowed to invest the Trust Fund in the following:

a) Securities

i) Evidence of indebtedness of the Republic of the Philippines and any other evidence of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines (ROP), such as, but not limited to, treasury bills, fixed rate treasury notes, retail treasury bonds, denominated either in Philippine or in foreign currency, and foreign currency linked notes.

ii) Loans, bonds or other evidence of indebtedness issued by government agencies/entities and government owned and controlled corporations, and guaranteed by the Republic of the Philippines as to the payment of the principal and the interest.

iii) Bonds and other evidence of indebtedness issued by:

iii.1) the government of any foreign country with which the Philippines maintains diplomatic relations, with a credit rating obtained from a reputable international credit rating agency or a credit rating agency acceptable to the Commission that is at least two (2) notches higher than that of ROP bonds, and

iii.2) supranationals (or international organizations whose membership transcends national boundaries or interests, e.g. International Bank for Reconstruction and Development, Asian Development Bank).

iv) Corporate bonds of privately-owned domestic corporations duly registered with the Commission with a current credit rating<sup>1</sup> of at least "A" by an accredited Philippine rating agency.

v) Corporate bonds registered in another country with a credit rating obtained from a reputable international credit rating agency that is at least two (2) notches higher

than that of ROP bonds.

vi) Commercial papers duly registered with the Commission with an investment grade credit rating based on the rating scale of an accredited Philippine rating agency at the time of investment.

vii) Equities listed on a local Stock Exchange.

These shall include stocks issued by companies that are financially stable, actively traded, possess good track record of growth and have declared dividends for the past three (3) years.

The Trustee shall in no case be allowed to fully invest the Trust Fund in a single issue.

viii) Savings and/or time deposits (peso or foreign currency denominated) maintained with a universal, commercial or thrift bank that passed the Trustee's investment review process.

ix) Loans to private corporations that passed the Trustee's investment review process subject to the following guidelines:

ix.1) If classified as held-to-maturity, the remaining term to maturity shall not exceed ten (10) years unless matched to a liability for a batch of maturing benefits;

ix.2) If collateralized, the borrower shall have a credit rating of at least "BAA" or "Average" by an accredited Philippine rating agency;

ix.2.1) The loan shall be fully secured by any of the following:

ix.2.1.1) Assignment of deposits maintained with universal, commercial or thrift banks other than the Trustee's own bank proper provided the financial institution passed the Trustee's investment review process;

ix.2.1.2) Standby letters of credit for the term of the loan issued by a universal or commercial bank subject to the requirements under Sections 7.1(a)(viii) and 7.2(b);

ix.2.1.3) Real estate mortgage up to the extent of seventy five percent (75%) of the appraised value of the respective real estate security plus sixty percent (60%) of the appraised value of the insured improvements at the time the loan was granted.

The property shall be covered by an Original/Transfer Certificate of Title (OCT/ TCT) registered in the name of the mortgagor and free from liens and encumbrances;

ix.2.1.4) Mortgage Trust Indenture (MTI) and Mortgage Participation Certificates (MPCs);