

**[SEC MEMORANDUM CIRCULAR NO. 7, S. 2004,
April 29, 2004]**

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 ENCOURAGE 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 claim 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.