

IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9829, OTHERWISE KNOWN AS THE “PRE-NEED CODE OF THE PHILIPPINES”

Pursuant to the authority vested in the Insurance Commission under Section 58 of the Pre-Need Code, the following Rules and Regulations are hereby promulgated:

RULE I GENERAL PROVISIONS

Sec. 1. Title.

These rules shall be referred to as the implementing rules and regulations of Republic Act no. 9829, otherwise known as the “Pre-need Code of the Philippines.”

Sec. 2. Objectives.

These rules are promulgated consistent with the policy of the State to:

- (a) Regulate the establishment of pre-need companies and place their operation on sound, efficient and stable basis;
- (b) Derive the optimum advantage from them in the mobilization of savings;
- (c) Prevent and mitigate, as far as practicable, for the protection of planholders practices prejudicial to public interest; and
- (d) Regulate, through an empowered agency, pre-need companies based on prudential principles to promote soundness, stability and sustainable growth of the pre-need industry.

Sec. 3. Constraction.

Any doubt in the interpretation and implementation of any provision of these rules shall be interpreted in favor of the rights and interests of the planholder.

Sec. 4. Definition of Terms.

For purposes of this Implementing Rules and Regulations, the following terms, words phrases shall mean and be understood as follows:

- (a) Actuary – a professional duly accredited by the Insurance Commission, who, among other things, deals with the financial impact of risk and uncertainty and who has been trained in mathematics and statistics in calculating premiums, dividends, pensions, reserves, employee benefits and risks.
- (b) Affiliate of, or affiliated with, a specified person - a person that directly or indirectly, through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. Exercising control over a legal entity shall mean any one of the following: (1) owning either solely or together with affiliated persons more than twenty-five percent (25%) of the outstanding capital stock of a legal entity; (2) being an officer or director of such legal entity.
- (c) Beneficiary - the person designated by the planholder as the recipient of the benefits in the pre-need plan.
- (d) Benefits - payment of monetary considerations and/or performance of future services which the pre-need company undertakes to deliver either to

the planholder or TO his beneficiary at the time of actual need or agreed maturity date, as specified in the pre-need plan.

(e) BSP - Bangko Sentral ng Pilipinas

(f) Cancelled plan - a plan that can no longer be reinstated by reason of delinquency in the payment of installments for more than two (2) years or a longer period as provided in the contract, counted from the expiry of the grace period provided for in the plan or contract.

(g) Commission - Insurance Commission.

(h) Contingent benefit plans - a plan the timing of the provision of the benefits of which is conditional on the occurrence of the contingency.

(i) Contract price - the stipulated price in the pre-need plan.

(j) Fixed value plans - pre-need plans whose benefits and costs are fixed and predetermined at the inception or purchase of the plan.

(k) General agent – a corporation or entity engaged in the sales of, or offering to sell, or advising prospective planholders for the purpose of selling pre-need plans in behalf of the pre-need company and/or performing other acts and things in its behalf in the conduct of its business as specified in the general agency agreement executed by and between them.

(l) In-force plan - a plan for which the pre-need company has an outstanding obligation for the delivery of benefits or services or payment of termination value.

(m) Lapsed plan - a plan that is delinquent in payment of installments provided for in the contract, the delinquency of which extends beyond the grace period provided for in the plan or contract.

(n) Liquidity reserve - a portion of the trust fund set aside by the trustee to cover benefits due to planholders for the ensuing year.

(o) Planholder - any natural or juridical person who purchases pre-need plans from a pre-need company for whom or for whose beneficiaries' benefits are to be delivered, as stipulated and guaranteed by the pre-need company. The term includes the assignee, transferee and any successor-in-interest of the planholder.

(p) Pre-need Code – Republic Act No. 9829, otherwise known as the pre-need code of the Philippines.

(q) Pre-need company - any corporation registered with the Commission and authorized/licensed to sell or offer to sell pre-need plans. The term “pre-need company” also refers to schools, memorial chapels, banks, nonbank financial institutions and other entities which have also been authorized/licensed to sell or offer to sell pre-need plans insofar as their pre-need activities or business are concerned.

(r) Pre-need plans - contracts, agreements, deeds or plans for the benefit of the planholders which provide for the performance of future service/s, payment of monetary considerations or delivery of other benefits at the time of actual need or agreed maturity date, as specified therein, in exchange for cash or installment amounts with or without interest or insurance coverage and includes life, pension, education, interment and other plans,

instruments, contracts or deeds as may in the future be determined by the Commission.

(s) Pre-need reserve liabilities - the measure of the liabilities of the pre-need company for its in-force plans or lapsed plans as of valuation date.

(t) Professional – refers to the company's external auditor or financial expert, actuary or other qualified professional to be accredited by the Commission to conduct valuation of reserves and other contractual liabilities related to the pre-need plans issued.

(u) Related interests – individuals related to each other within the fourth degree of consanguinity or affinity, legitimate or common law, and two (2) or more corporations owned or controlled by a single individual or by the same family group or the same group of persons.

(v) Risk-based capital - a measure of the minimum amount of capital that a pre-need company needs to support its overall business operation. It is used to set capital requirements, considering the size and degree of risk taken by the pre-need company.

(w) Rules - the Implementing Rules and Regulations of the Pre-need Code.

(x) Sales counselors - natural persons who are engaged in the sale of, or offer to sell, or counsel of prospective planholders for the purpose of selling, whether or not on commission basis, pre-need plans upon the authority of the pre-need company.

(y) Scheduled benefit plans - plans the date of availment of the benefits of which is set at the inception or purchase of the plan.

(z) SEC - Securities and Exchange Commission

(aa) Subsidiary – a corporation more than fifty percent (50%) of the voting stock of which is owned and controlled directly or indirectly through one (1) or more intermediaries by a pre-need company.

(bb) Trustee – the trust department of a bank, a trust company/entity, an investment house or financial institution authorized to perform trust functions in the Philippines which has an existing trust agreement with a pre-need company.

(cc) Trust fund - a fund set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to planholders and other costs necessary to ensure the delivery of benefits or services to planholders as provided for in the contracts.

The terms not otherwise defined under these Rules shall be construed in their usual and commonly understood trade, business, commercial or investment meaning.

RULE 2 AUTHORITY OF THE COMMISSION

Sec. 5. Supervision.

(a) All pre-need All pre-need companies, as defined under these rules, shall be under the primary and exclusive supervision and regulation of the Insurance Commission. The Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its

human resource component to enable it to effectively and efficiently perform its functions and exercise its powers under the Pre-need Code.

(b) All positions of the Commission shall be governed by compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas (BSP) and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

(c) The salary and allowances or personal services expense of the employees of the Insurance Commission shall be sourced from the retained amount of the fees, charges and other income derived from the regulation of pre-need companies and from the Insurance Fund under Sec. 418 of the Insurance Code of the Philippines (P.D. No. 612 as amended) and Sec. 286 of the National Internal Revenue Code. If the personal services expense cannot be covered by the retained amount and the Insurance Fund, it shall be appropriated in the General Appropriation Fund.

(d) A special pre-need fund is hereby created for all amounts received as fees, charges and other income in the regulation of pre-need companies.

(e) In case of the upgrading of the qualification standards of the existing positions in the commission, the employees and officers presently holding such positions shall not be affected thereby and are deemed qualified to continue the exercise of the duties and responsibilities therein and to receive salaries and benefits attendant to the positions as a result of the implementation of the new reorganization and compensation plan.

Sec. 6. Powers and Functions of the Commission.

The Commission shall, among others, have the following powers and functions:

(a) Approve, amend, renew or deny any license, registration or certificate issued under the Pre-need Code and these rules;

(b) Fix and assess fees and/or charges as it may find reasonable in the exercise of regulation;

(c) Regulate, supervise and monitor the operations and management of pre-need companies to ensure compliance with the Pre-need Code, these rules, existing laws, rules, regulations and circulars, with the power to:

i. Revoke or nullify, after due notice and hearing, investments made and/or entered into by a pre-need company or a trustee which are contrary to existing laws, rules and regulations;

ii. Demand in the event of non-compliance by the trustee with the investment and liquidity requirements under these Rules and after

due notice and hearing for the conversion of the investments made by the trustee to cash or other liquid assets to protect the interest of the planholders; and

iii. Regulate, investigate or supervise activities of pre-need companies, their officers, employees, sales counselors, consultants or agents;

(d) After due notice and hearing issue cease and desist orders to prevent fraud and injury to the investing public;

(e) Issue *subpoena duces tecum and ad testificandum*, order the examination, search and seizure of documents, papers, files, tax returns, books of accounts and other records, in whatever form, of any entity or person under investigation;

(f) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of, and the penalties prescribed by, the Rules of Court;

(g) After due notice and hearing impose sanctions, institute cases and/or prosecute offenders for violation of the Pre-need Code, related laws, rules, regulations, orders and circulars issued pursuant thereto;

(h) After due notice and hearing, suspend or revoke licenses;

(i) Enlist the aid and support of and/or deputize any and all enforcement agencies of the government in the implementation of its powers and in the exercise of its functions under the Pre-need Code;

(j) After due notice and hearing, take over pre-need companies which fail to comply with the Pre-need Code, related laws, rules, regulations, orders and circulars issued pursuant thereto, through the appointment of a conservator or receiver, or liquidator;

(k) Prepare, approve, amend or repeal rules, regulations, orders and circulars and issue opinions and provide guidance on, and supervise compliance with, such rules, regulations, orders and circulars;

(l) Formulate policies and recommendations on issues concerning the pre-need industry, including proposed legislations;

(m) Retain and utilize, in addition to its annual budget, an amount up to One hundred million pesos (P100,000,000.00) of the fees, charges and other income derived from the regulation of the pre-need companies; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to carry out the express powers granted the Commission to achieve the objectives and purposes of the law.

RULE 3 ORGANIZATION, LICENSING AND MANAGEMENT OF PRE-NEED COMPANIES

Section 7. Prerequisites to Incorporation.

(a) The Securities and Exchange Commission (SEC) shall not accept or approve the articles of incorporation and by-laws of any pre-need company without a favorable recommendation from the commission. no pre-need company shall be recommended for registration unless its paid-up capital

complies with the minimum paid-up capital required by the pre-need code and the rules promulgated by the commission. the name of the company shall contain words such as “Plans”, “Pre-need Company”, “Pre-need Corporation” or words that show that the company shall engage in pre-need business.

(b) A foreign corporation may be allowed to engage in a pre-need business in the Philippines: *Provided*, That it shall comply with the pertinent laws, rules and regulations.

Section 8. Amendment of the Articles of Incorporation and By-laws.

Amendments to the articles of incorporation and by-laws of a pre-need company, including merger, consolidation and dissolution, shall not be approved by the SEC without the favorable recommendation from the Commission.

Section 9. Paid-up Capital.

(a) A pre-need company incorporated after the effectivity of the Pre-need Code shall have a minimum paid-up capital of One hundred million pesos (P100,000,000.00). Existing pre-need companies shall comply with the following minimum unimpaired paid-up capital:

- i. One hundred million pesos (P100,000,000.00) for companies selling at least three (3) types of plan;
- ii. Seventy-five million pesos (P75,000,000.00) for companies selling two (2) types of plan; and
- iii. Fifty million pesos (P50,000,000.00) for companies selling a single type of plan.

(b) Existing pre-need companies with traditional education plans shall have a minimum unimpaired paid-up capital of One hundred million pesos (P100,000,000.00).

(c) The Commission may adopt risk-based principles on capital adequacy based on internationally accepted standards. In the exercise of its authority under this paragraph, the Commission may prescribe a higher minimum unimpaired paid-up capital for pre-need companies.

Section 10. Licensing of Pre-Need Companies.

(a) No person shall operate as a pre-need company or engage in the business of a pre-need company unless licensed by the Commission in accordance with the Pre-need Code and these rules.

(b) The pre-need company may be licensed and authorized to issue plans falling under any or all of the following plan types:

- i. Educational plan;
- ii. Pension plan; and
- iii. Life or Memorial plan.

(c) The license under this Section shall expire one (1) year from the time of the registration. It may be renewed provided that based on its latest audited financial statements, trust fund annual statements and reserves valuation reports, the pre-need company:

- i. has no solvency and trust fund deficiencies;
- ii. has no paid-up capital impairment; and

iii. is continuing to comply with the provisions of the pre-need code, and the circulars, instructions, rules and regulations of the commission.

Such renewal shall be deemed approved if not acted upon within thirty (30) days from the time of filing of the application for renewal.

(d) The following are the minimum documentary requirements for new applicant pre-need company:

- i. latest articles of incorporation and by-laws;
- ii. latest financial statements;
- iii. bio-data of its officers and board of directors;
- iv. copy of manual of corporate governance;
- v. organizational chart of the corporation; and
- vi. general information sheet showing the latest incorporators, their citizenship and percentage of shares owned and paid

Section 11. Qualification and Disqualification of Directors and Officers.

(a) To maintain the quality of management of pre-need companies and afford better protection to planholders and beneficiaries, the Commission shall prescribe, pass upon and review the qualifications and disqualifications of individuals elected or appointed directors or officers of pre-need companies, including its actuaries, and disqualify those found unfit. The Commission may, after due notice and hearing, disqualify, suspend or remove any director or officer who commits or omits an act which renders him unfit for the position.

(b) In determining whether an individual is fit and proper to hold the position of a director or officer of a pre-need company, regard shall be given to his integrity, experience, education, training and competence. The following persons, and those determined by the Commission to be unfit, shall in no case be allowed to serve or act in the capacity of an officer, employee, director, consultant or sales counselor of any pre-need company:

- i. Any person convicted of any crime involving any pre-need plan, security or financial product;
- ii. Any person convicted of an offense involving moral turpitude or involving fraud or embezzlement, theft, estafa or other fraudulent acts or transactions;
- iii. Any person who, by reason of any misconduct, is enjoined by order, judgment or decree by any court, quasi-judicial body or administrative agency of competent jurisdiction from acting as a director, officer, employee, consultant, agent or occupying any fiduciary position;
- iv. Any person found by the Commission to have willfully violated or willfully aided, abetted, counseled, commanded, induced or procured the violation of the Pre-need Code, the Insurance Code, the Securities Regulation Code or any related laws and any rules or orders thereunder;
- v. Any person judicially declared to be insolvent or incapacitated to contract; and

vi. Any person found guilty by a foreign court, regulatory authority or government agency of the acts or violations similar to any of the acts or misconduct enumerated in the foregoing paragraphs: Provided, That conviction in the first instance shall be considered as sufficient ground for disqualification.

Section 12. Independent Directors.

Pre-need companies shall have at least two (2) independent directors or twenty percent (20%) of the members of the board, whichever is higher. For this purpose, an "independent director" shall refer to a person other than an officer, employee or any person having a fiduciary relation to the pre-need company, its parent or subsidiaries, or any other individual having a relationship therewith, which may interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Section 13. Investment Restrictions of Directors and Officers.

(a) No director or officer of any pre-need company shall, after his election or appointment as such, directly or indirectly, for himself or as the representative or agent of others, have an investment in excess of Five million pesos (P5,000,000.00) in any corporation or business undertaking in which the pre-need company's trust fund has an investment in or has a financial interest with.

(b) No relatives of directors or officers of the pre-need company within the fourth degree of consanguinity or affinity shall, directly or indirectly, have an investment of more than Five million pesos (P5,000,000.00) in any corporation or business undertaking in which the pre-need company's trust fund has an investment in or has a financial interest with during the incumbency or term of the director or officer involved.

RULE 4 REGISTRATION OF PLANS

Section 14. Registration of Pre-Need Contracts/Plans.

(a) Within a period of forty-five (45) days after the grant of a license to do business as a pre-need company, and for every pre-need plan which the pre-need company intends to offer for sale to the public, the pre-need company shall, among other things, file with the Commission the following:

- (1) Duly accomplished Registration Statements;
- (2) Board resolution authorizing the registration of applicant's pre-need plans;
- (3) Opinion of independent counsel on the legality of the issue; and
- (4) Supporting documents:
 - i. Latest articles of incorporation and by-laws of the issuer;
 - ii. Trust agreement with the trustee;
 - iii. Copies of sales materials which the issuer intends to distribute to the public;
 - iv. Copies of related contracts such as mortuary contracts, school contracts or other service providers' contracts;

- v. List of schools for traditional education plans, including current costs of promised benefits;
- vi. Copies of agency contracts with general agents and sales counselors;
- vii. Curriculum vitae of officers and directors;
- viii. Photographs of the signatories to the registration statement taken not more than 30 days prior to the filing of registration statements;
- ix. NBI clearance of the directors and principal officers of the issuer or current passport;
- x. Description of training program for agents and sales counselors;
- xi. Pre-need plan contract/ agreement;
- xii. Pre-need plan application form;
- xiii. Specimen copies of group master policy for group credit life and group yearly renewable term including copies of insurance riders for supplementary insurance benefits;
- xiv. Sample copies of individual insurance certificates;
- xv. Detailed price schedule showing minimum and maximum pricing for the notice and order; and
- xvi. The written consent of the expert to be named as such and who has certified any part of the registration statement or any documents included therein shall be secured and attached to the registration statement;

(5) Audited financial statements accompanied by an audit report of the certifying auditors as of a date not more than ninety (90) days prior to the date of filing of the registration statement, with the balance sheet showing all the assets of the issuer, the nature and cost thereof whenever determinable, with intangible items segregated, including any loan to, or from any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer, and all the liabilities and surplus of the issuer showing how and from what sources such surplus was created.

If the above cannot be complied with, an unaudited financial statements as of a date not more than ninety (90) days prior to the date of filing of the registration statement, certified under oath by the principal officer of the company, or person performing similar functions, may be submitted. And in addition, the latest audited financial statements accompanied by an audit report;

(6) Actuarial feasibility study with actuarial certification of the actuary accredited by the commission for the pre-need company containing the following:

- i) A viability model which includes, but is not limited to, the following:

- a. interest rate assumptions;
- b. withdrawal assumptions: lapses and surrenders;
- c. schedule of trust fund deposits and projections;
- d. amount and costs of plan benefits including the contingent benefit availment rates assumed for mortuary-type benefits;
- e. expenses and loadings including, but not limited to, all required fees and taxes, commissions, overrides, bonuses, premiums on insured benefits, and all other charges;
- f. schedule of termination values together with the bases thereof;
- g. schedule of projected reserve liability values together with the basis/assumptions and formulations thereof; and
- h. pricing schedule including how the gross pre-need price was generated with actuarial formulations;

- ii) A statement certifying that the actuarial formulations used in the viability model are in accordance with sound actuarial principles and practices, existing laws, and pertinent rules and regulations of the commission;
- iii) A statement of opinion that the actuarial assumptions used in the viability model are reasonable and appropriate for the plan;
- iv) A statement certifying that the plan price/s, scheduled trust fund contributions, projected reserve liabilities, and termination values are in accordance with generally accepted actuarial principles;
- v) A statement certifying that the actuary has reviewed the provisions of the plan contract relative to its benefits and guarantees which have been quantified and considered in the pricing, reserve valuation, trust fund contribution, and termination values;
- vi) A statement of opinion that all insurance benefits included in the plan agreement are covered under insurance contract(s) with a duly licensed insurance carrier; and
- vii) Actuarial notes on the plan description, formulations and assumptions used in the viability model for the complete duration of the plan.

(b) The registration statement shall be signed by the issuer's chief executive officer or chief operating officer or chief finance officer or a corporate officer performing similar functions.

(c) The registration statement shall be properly completed – all items shall be answered; provided that items which are not applicable shall be filled up with "N.A.". if the issuer is selling two (2) or more types of pre-need plans, the amount and number for each type of plan to be registered shall be specified.

(d) Where applicable, all answers shall be consistent with those stated in the actuarial study submitted under paragraph 7 of this rule.

(e) The registration statements and sales materials required under this rule shall contain the appropriate risk factors as may be determined by the commission.

(f) Upon filing of the registration statement, the issuer shall pay the filing fee as prescribed by the commission, and the act of such filing shall be immediately published by the commission at the expense of the issuer, in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, reciting that a registration statement for the sale of such plans has been filed, and that the registration statement, as well as the papers attached thereto, are open for inspection during business hours.

(g) If, at any time, the information contained in the registration statement is or has become materially misleading, incorrect, inadequate or incomplete or the sale or offering for sale of the pre-need plans covered thereby tends to defraud or prejudice the investing public, the issuer shall immediately file an amendment to the registration statement.

Section 15. Denial of registration.

The commission shall deny the registration of pre-need plan/s of a pre-need company if on the basis of its latest audited financial statements, trust fund annual statements and reserves valuation report, it has solvency or trust fund deficiencies, or paid-up capital impairment.

Section 16. Suspension of permit to sell of pre-need plans.

(a) If, at any time the information contained in the registration statement filed is or has become materially misleading, incorrect, inadequate or incomplete or the sale or offering for sale of the pre-need plans covered thereby may work or tend to work a fraud or prejudice the investing public, the commission may require the issuer such further information necessary or conduct an investigation to ascertain whether the registration or permit to sell such pre-need plan should be cancelled on any of the grounds set forth in section 17.

(b) The commission may suspend the permit to sell such pre-need plan pending further investigation, by entering an order specifying the grounds for such action and by notifying by mail, personally or, by telephone and confirmed in writing, or by telegraph, the issuer and every general agent who shall have notified the commission of an intention to sell such pre-need plan.

(c) Refusal to furnish information required by the commission within the time fixed by the Commission, may be a proper ground for the entry of such order of suspension.

(d) The order, although binding on the person notified thereof, shall be deemed confidential and shall not be published. upon the entry of such order of suspension, no further sales of such pre-need plan shall be made until the commission orders otherwise.

(e) In the event of the entry of an order of suspension, the commission shall give a prompt hearing to the parties involved. If upon such hearing, the commission shall determine that the permit to sell of any such pre-need plan should be cancelled on any ground specified herein, it shall enter a final order cancelling the registration and the permit to sell and prohibiting the sale of such pre-need plan. If, however, upon such hearing the commission

finds that the sale of the plans will neither be fraudulent nor result in fraud, it shall forthwith enter an order lifting the order of suspension, and the pre-need plan shall be restored to its status as a registered pre-need plan contract under the code, as of the date of such order of suspension.

(f) Travel bans may be recommended to be issued by the appropriate authority on all the officers and directors of the issuer, upon issuance of a cease and desist order or order of suspension.

Section 17. Mandatory cancellation of registration.

(a) The commission shall cancel the registration of any pre-need plan and the permit to sell such pre-need plan by issuing an order to this effect, setting forth its findings in respect thereto, if, after due notice and hearing, it shall appear that the issuer:

- i. Is insolvent;
- ii. Has violated any of the provisions of the code, or the rules promulgated pursuant thereto, or any order of the commission of which the issuer has notice;
- iii. Has been or is engaged or is about to engage in fraudulent transactions;
- iv. Is in any other way dishonest or has made any fraudulent representation in any circular or other literature that has been distributed concerning the issuer or its pre-need plans; and
- v. Does not conduct its business in accordance with law.

(b) The Commission shall compel the production of all the books and records of the issuer, administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business or affairs, and may require a balance sheet exhibiting the assets and liabilities of such issuer and/or its income or profit statement, certified to by an independent certified public accountant.

(c) If the issuer shall refuse to permit an examination to be made by the commission, its refusal shall give ground for the cancellation of registration.

(d) Notice of issuance of an order of cancellation shall be given by mail, personally, by telephone confirmed in writing, or by telegraph, to the issuer and every dealer and broker who shall have notified the commission of an intention to sell such pre-need plan.

(e) The power of the commission to cancel the registration and/or the permit to sell is without prejudice to its power under the Pre-nee Code to enforce compliance therewith.

Section 18. Voluntary cancellation of registration or suspension of permit to sell.

(a) A registration of a pre-need plan may be cancelled or a permit to sell may be suspended or cancelled by the commission upon petition for its suspension and/or cancellation, as the case may be, by the issuer as herein provided.

(b) A petition for the cancellation of registration of a pre-need plan or a petition for suspension and/ or cancellation of a permit to sell shall be accompanied by the following:

- i. Petition for the cancellation of the registration or petition for suspension and/or cancellation for the permit to sell stating the reasons therefor;
- ii. Proof of the reasons for cancellation of registration or suspension and/or cancellation of the permit to sell;
- iii. Proof of publication of a notice to stockholders/investors/planholders of said petition for cancellation of registration and/or petition for suspension and/or cancellation of a permit to sell;
- iv. Board resolution certified under oath by the corporate secretary of the issuer and attested to by the president or one performing similar functions approving such petition for cancellation and/or suspension as the case may be;
- v. List of all planholders;
- vi. A certification under oath by the treasurer of the issuer attested to by the President that the planholders' claims have been settled in accordance with the Pre-need plan contract; and
- vii. A joint and several assumption of liability executed by the treasurer and the president of the issuer for claims that may arise as a result of said cancellation/suspension; and
- viii. Evidence of sufficiency of the trust fund to cover payment of outstanding liabilities to planholders.

(c) After filing of the petition and supporting documents and payment of the filing fee, the petition shall be immediately published by the issuer in two (2) newspapers of general circulation, once a week for two (2) consecutive weeks reciting the contents of the petition and notifying planholders to file their claims with the issuer.

(d) If after the completion of the aforesaid publication, the commission finds that the petition together with all the other papers and documents attached thereto is on its face complete and that no party stands to suffer damage thereby, it shall issue an order cancelling said registration or cancelling and/or suspending the permit to sell. however, such order shall not preclude any planholder from his available remedies under the law should the cancellation and/or suspension cause him damage.

Section 19. Approval of Contract Forms.

All forms, including amendments thereto, relating to the pre-need plans shall be approved by the Commission. No pre-need contracts or certificates shall be issued or delivered within the Philippines unless in the form previously approved by the Commission.

Section 20. Pre-need Advertising Rules.

(a) Pre-need plans shall be advertised and sold in an appropriate non-misleading manner.

(b) It shall be unlawful for any pre-need company to advertise itself or its pre-need plans unless the Commission has approved such advertising material. The Commission shall have a period of ten (10) working days to approve or deny the advertising material and failure to act within the said period shall

cause the advertising material to be deemed approved. For purposes hereof, the Commission shall have the power to define the scope of its advertising rules to appropriately cover advertising or other communications to the public.

(c) Any person who sells or offers to sell any pre-need plan or contract by any means or instruments of communication in violation of this section shall be liable to the person purchasing such pre-need contract who may sue to recover the consideration paid for such pre-need contract with interest thereon. In addition hereto, the Commission shall have the power to pursue the erring pre-need company in an administrative or criminal proceeding.

(d) A fine of One hundred thousand pesos (P100,000.00) shall be imposed on any pre-need company found to have violated this Section: Provided, That a second violation of this Section shall, in addition to the fine imposed, result in the suspension of the license of the pre-need company.

Section 21. Disclosures to Prospective Planholders.

(a) No registered pre-need plan shall be sold to prospective planholders unless an information brochure, which has been filed with the Commission, has been provided to the purchaser.

(b) The information brochure shall contain an explanation of the principal features of the pre-need plan, a statement that the planholder may avail of a default or reinstatement period within which to reinstate his lapsed plan, and the conditions of the same and the rates of return for scheduled benefit plans and illustrative yields for contingent benefit plans, and such other information that the Commission shall require by rule.

RULE 5

LICENSING OF SALES COUNSELORS AND GENERAL AGENTS

Section 22. Licensing of Sales Counselors.

(a) No sales counselor shall be allowed to solicit, sell or offer to sell pre-need plans under these rules without being licensed as such by the Commission.

(b) The following are the qualifications of applicant for license as sales counselor:

- i. The applicant must be of good moral character and must not have been convicted of any crime involving moral turpitude;
- ii. The applicant has undergone a training program approved by the Commission and such fact has been certified under oath by a duly authorized representative of a pre-need company; and
- iii. The applicant has passed a written examination administered by the Commission: *Provided*, That the administration of the examination may be delegated to an independent organization under the supervision of the Commission.

The license shall automatically expire every thirtieth (30th) day of June or such date of every year as may be fixed by the Commission and may be accordingly renewed.

Section. 23. Denial, Suspension, Revocation of License.

Subject to due notice and hearing, an application for the issuance or renewal of a license to act as sales counselor may be denied, or such license, if already issued, shall be suspended or revoked based on the following grounds :

- (a) materially misrepresented statements in the application requirements;
- (b) obtained or attempted to obtain a license by fraud or misrepresentation;
- (c) materially misrepresented the terms and conditions of pre-need plan which he sold or offered to sell;
- (d) solicited, sold or attempted to solicit or sell a pre-need plan by means of false or misleading representation and other fraudulent means;
- (e) terminated for cause from another pre-need company;
- (f) similar grounds found in Section 11 of these rules;
- (g) willfully allowing the use of one's license by a non-licensed or barred individual; and
- (h) analogous circumstances.

Section. 24. Licensing of General Agents.

(a) If the issuer should contract the services of a general agent to undertake the sales of its plans, such general agent shall be required to be licensed as such with the Commission, in accordance with the requirements imposed by the Commission.

(b) The following are the minimum requirements for the licensing of general agents:

- i. Copy of certificate of registration;
- ii. Copy of articles of incorporation/ partnership/ cooperation and by-laws;
- iii. Minimum paid-up capital of one million pesos;
- iv. Application form;
- v. Endorsement of the applicant by the principal pre-need company; and
- vi. Copy of the general agency agreement;

(c) The general agent must be a registered corporation or partnership in the Philippines. agents soliciting or selling pre-need plans in behalf of the general agent must possess the same qualifications as the sales counselors;

(d) The application of a general agent shall not be approved unless a salesman is qualified and licensed by the commission. the general agent shall cease solicitation and selling of pre-need plans when no natural person holds a valid license representing the general agent;

(e) The general agent must be authorized in the general agency agreement or by a written power of attorney to receive notices, summons and legal processes for and in behalf of the pre-need company concerned in connection with actions or legal proceedings against said pre-need company; and

(f) A license issued to a general agent shall authorize only the individual or individuals named in the license. exercise or attempted exercise of such authority by an individual not so named in the license, with the knowledge or

consent of the licensee shall constitute cause for the revocation, suspension or non-renewal of the license.

RULE 6 DEFAULT AND TERMINATION BY PLANHOLDERS

Section 25. Default; Reinstatement Period.

- (a) The pre-need company must provide in all contracts issued to planholders a grace period of at least sixty (60) days within which to pay accrued installments, counted from the due date of the first unpaid installment.
- (b) Nonpayment of a plan within the grace period shall render the plan a lapsed plan. Any payment by the planholder after the grace period shall be reimbursed forthwith, unless the planholder duly reinstates the plan. The planholder shall be allowed a period of not less than two (2) years from the lapse of the grace period or a longer period as provided in the contract within which to reinstate his plan. No cancellation of plans shall be made by the issuer during such period when reinstatement may be effected.
- (c) Within thirty (30) days from the expiration of the grace period and thirty (30) days prior to the expiration of the reinstatement period, which is two (2) years from the lapse of the grace period, the pre-need company shall give written notice to the planholder that his plan will be cancelled if not reinstated within two (2) years from the lapse of the grace period or a longer period as provided in the contract. Failure to give either of the required notices shall preclude the pre-need company from treating the plans as cancelled.

Section 26. Termination of Pre-Need Plans.

- (a) A planholder may terminate his pre-need plan at any time by giving written notice to the issuer.
- (b) A pre-need plan shall contain a schedule of termination values to which the planholder is entitled to upon termination. Such schedule of termination value shall be required for all in-force pre-need plans and shall be fair, equitable and in compliance with the Commission issuances. The termination value of the pre-need plan shall be pre-determined by the actuary of the pre-need company upon application for registration of the pre-need plans with the Commission and shall be disclosed in the contract.
- (c) Any offer by the pre-need company to terminate the pre-need plan for consideration exceeding the termination value provided in the plan contract shall not require the prior approval of the Commission, provided that (i) the consideration shall be below the pre-need reserves for the specific plan, (ii) the offer is accepted by the pre-need planholders, and (iii) the offer shall not prejudice the claim of planholders who do not avail of such offer.

RULE 7 CLAIMS SETTLEMENT

Section 27. Unfair Claims Settlement Practices.

- (a) No pre-need company shall refuse, without just cause, to pay or settle claims arising under coverages provided by its plans nor shall any such company engage in unfair claim settlement practices. Any of the following acts by a pre-need company, if committed without just cause, shall constitute unfair claims settlement practices:

- i. Knowingly misrepresenting to claimants pertinent facts or plan provisions relating to coverages at issue;
- ii. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its plan;
- iii. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its plan;
- iv. Failing to provide prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear; or
- v. Compelling planholders to institute suits or recover amounts due under its plan by offering, without justifiable reason, substantially less than the amounts ultimately recovered in suits brought by them.

(b) Evidence as to the number and types of valid and justifiable complaints to the Commission against a pre-need company shall be deemed admissible in an administrative or judicial proceeding brought under this section.

(c) Any violation of this section shall be considered sufficient cause for the suspension or revocation of the company's certificate of authority.

Section 28. Payment of Plan Proceeds.

(a) In the case of scheduled benefit plans, the proceeds of the plan shall be paid immediately upon maturity of the contract, unless such proceeds are made payable in installments or as an annuity, in which case the installments or annuities shall be paid as they become due. Refusal or failure to pay the claim within fifteen (15) days from maturity or due date will entitle the beneficiary to collect interest on the proceeds of the plan for the duration of the delay at the rate twice the legal interest unless such failure or refusal to pay is based on the ground that the claim is fraudulent: *Provided*, That the planholder has duly complied with the documentary requirements of the pre-need company.

(b) In the case of contingent benefit plans, the benefits shall be paid by the pre-need company thirty (30) days upon submission of all necessary documents.

Section 29. Recovery of Investment.

Subject to applicable laws on the extent of liability of directors, officers and stockholders of a corporation and in accordance with the rules on insolvency, the planholder may institute the necessary legal action in court to recover his/her investment in the pre-need company, in case of its insolvency or bankruptcy. However, in case the insolvency or bankruptcy is a mere cover-up for fraud or illegality, the planholder may institute the legal action directly against the officers and/or controlling owners of the said pre-need company.

Section 30. Consequences of Delay or Default

In case of any litigation for the enforcement of any pre-need plan, it shall be the duty of the Commission to determine whether the payment of the claim of the planholder has been unreasonably denied or withheld. If found to have unreasonably denied or withheld the claim, the pre-need company shall be liable to pay damages, consisting of actual damages, attorney's fees and legal interest, to be computed from the date the claim is made until it is fully satisfied: *Provided*, That the failure to pay any such claim within the time

prescribed in Section 26 shall be considered *prima facie* evidence of unreasonable delay in payment.

Section 31. Distribution of Profits.

A pre-need company may declare dividend provided that the following shall remain unimpaired, as certified under oath by the president and the treasurer with respect to items (a) and (b); and in the case of item (c), by the trust officer.

- (a) One hundred percent (100%) of the capital stock;
- (b) An amount sufficient to pay all net losses reported, or in the course of settlement, and all liabilities for expenses and taxes; and
- (c) Trust fund.

Any dividend declared under the preceding paragraph shall be reported to the Commission within thirty (30) days after such declaration.

RULE 8 TRUST FUND

Section 32. Trust Fund.

(a) To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category (i.e., life plan, education plan or pension plan) shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission.

(b) Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.

(c) Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission.

(d) The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.

(e) The trust fund shall at all times be sufficient to cover the required pre-need reserve.

Section 33. Deposits to the Trust Fund.

(a) The pre-need company shall make monthly deposits to the trust fund in an amount determined by the accredited actuary, sufficient to pay the benefits promised under the contract. For plans paid for in full, the pre-need company shall deposit into the trust fund at least forty-five percent (45%) for

life plans and fifty-one percent (51%) for education and pension plans of said full payment or such higher amount as determined by the actuary.

(b) In case of installment payments, the minimum limits of the deposit contributions to the trust fund, unless the viability study done by the actuary requires otherwise, shall be in accordance with the following schedule:

	Life Plans	Other Plans
Collection of the 1st 20% of Contract Price	5%	5%
Collection of the 2nd 20% of Contract Price	10%	10%
Collection of the 3rd 20% of Contract Price	70%	80%
Collection of the 4th 20% of Contract Price	70%	80%
Collection of the 5th 20% of Contract Price	70%	80%

(c) Contributions to the trust fund shall not form part of the income or gross receipts of the pre-need company and, therefore, shall not be available for dividend declaration or payment to creditors.

(d) The deposits to the trust fund shall be made within twenty (20) days from the end of each reference month for payments received from plans whether paid for in full or in installments. Failure to make the trust fund deposit shall subject the pre-need company to administrative liability as provided for under the Pre-need Code and these rules.

(e) To determine the adequacy of the trust funds in the interim, the pre-need company shall submit to the Commission valuation report on reserves and contractual liabilities as of June 30 and December 31 of each year not later than 30 days after the end of the reporting period.

(f) For plans sold prior to the effectivity of this law, the minimum contributions to the trust fund shall be governed by rules and regulations in force at the time of sale, subject to the overriding principle that the planholder's rights must be protected.

Section 34. Terms and Conditions of a Trust Fund.

(a) A trust fund must be established separately for each type of pre-need plan with the trust department of a trust company, bank or investment house doing business in the Philippines. No trust fund shall be established by a pre-need company with an affiliate trust entity subject to Section 38 hereof.

(b) The trust agreement shall be submitted to the Commission for approval before execution and shall contain the following salient provisions, among others:

- i. The manner in which the trust fund is to be operated;
- ii. Investment powers of the trustee with respect to trust deposits, including the character and kind of investment;
- iii. Auditing and settlement of accounts of the trustee with respect to the trust fund;
- iv. Basis upon which the trust fund may be terminated;
- v. Provisions for withdrawals from the trust fund;
- vi. That the trustee shall submit to the power of the Commission to examine and verify the trust fund;
- vii. An undertaking by the trustee that it shall abide by the rules and regulations of the Commission with respect to the trust fund; and
- viii. An undertaking by the trustee that it shall submit such other data or information as may be prescribed by the Commission.

Section 35. Responsibilities of the Trustee.

The trustee shall:

- (a) Administer and manage the trust fund with utmost good faith, care and prudence required by a fiduciary relationship.
- (b) The trustee shall have the exclusive management and control over the funds and the right at any time to sell, convert, invest, change, transfer or otherwise change or dispose of the assets comprising the funds within the parameters prescribed by the pre-need company and provided these parameters are compliant with the Commission's regulations.
- (c) Not use the trust fund to invest in or extend any loan or credit accommodation to the pre-need company, its directors, officers, stockholders, and related interests as well as to persons or enterprises controlling, owned or controlled by, or under common control with said company, its directors, officers, stockholders and related interests except for entities which are direct providers of pre-need companies.

Section 36. Investment of the Trust Fund.

To ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and likewise obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund/s of a pre-need company shall be limited to the following and subject to limitations to wit:

- (a) Fixed income instruments. – These may be classified into short term and long term instruments. The instrument is short term if the maturity period is three hundred sixty five (365) days or less. This category includes:
 - i. Government securities which shall not be less than ten percent (10%) of the trust fund amount;
 - ii. Savings/time deposits and unit investment trust funds maintained with and managed by a duly authorized bank with satisfactory examination rating as of the last examination by the Bangko Sentral ng Pilipinas;
 - iii. Commercial papers duly registered with the SEC with a credit rating of "1" for short term and "AAA" for long term based on the rating

scale of an accredited Philippine Rating Agency or its equivalent at the time of investment.

The maximum exposure to long-term commercial papers shall not exceed fifteen percent (15%) of the total trust fund amount while the exposure to each commercial paper issuer shall not exceed ten percent (10%) of the allocated amount; and

iv. Direct loans to corporations which are financially stable, profitable for the last three (3) years and have a good track record of paying their previous loans.

These loans shall be fully secured by a real estate mortgage up to the extent of sixty percent (60%) of the zonal valuation of the property at the time the loan was granted.

The property shall be covered by a transfer certificate of title registered in the name of the mortgagor and free from liens and encumbrances.

The maximum amount to be allocated for direct loans shall not exceed five percent (5%) of the total trust fund amount while the amount to be granted to each corporate borrower shall not exceed ten percent (10%) of the amount allocated.

The maximum term of the loan should be no longer than four (4) years.

Direct loans to planholders are exempt from the limitations set forth under this Section: *Provided*, That such loans to planholders shall not exceed ten percent (10%) of the total trust fund amount.

(b) Equities. – Investments in equities shall be limited to stocks listed on the main board of a local stock exchange. Investments in duly registered collective investment instruments such as mutual funds are allowed hereunder: *Provided*, That such funds are invested only in fixed income instruments and blue chips securities, subject to the limitations prescribed by laws, rules and regulations.

These investments 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. Notwithstanding the prohibition against transactions with directors, officers, stockholders and related interests, the trustee may invest in equities of companies related to the trustee provided these companies comply with the foregoing criteria provided in this paragraph for equity investments.

The amount to be allocated for this purpose shall not exceed thirty percent (30%) of the total trust fund while the investment in any particular issue shall not exceed ten percent (10%) of the allocated amount. The investment shall be recorded at the aggregate of the lower of cost or market.

Existing investments which are not in accordance herewith shall be disposed of within three (3) years from the effectivity of the Pre-need Code.

(c) Real Estate. – These shall include real estate properties located in strategic areas of cities and first class municipalities. The transfer certificate of title (TCT) shall be in the name of the seller, free from liens and

encumbrances and shall be transferred in the name of the trustee in trust for the planholders unless the seller/transferor is the pre-need company wherein an annotation to the TCT relative to the sale/transfer may be allowed. It shall be recorded at acquisition cost.

However, the real estate shall be appraised every three (3) years by a licensed real estate appraiser, accredited by the Philippine Association of Real Estate Appraisers, to reflect the increase or decrease in the value of the property. In case the appraisal would result in an increase in the value, only sixty percent (60%) of the appraisal increase is allowed to be recorded in the books of the trust fund but in case of decline in value, the entire decline shall be recorded. Appraisal increment should not be used to cover-up the required monthly contribution to the trust fund.

The total recorded value of the real estate investment shall not exceed ten percent (10%) of the total trust fund amount of the pre-need company. In the event that the existing real estate investment exceeds the aforesaid limit, the same shall be leveled off to the prescribed limit within three (3) years from the effectivity of the Pre-need Code. Investment of the trust fund, which is not in accordance with the preceding paragraphs, shall not be allowed unless the prior written approval of the Commission had been secured:

Provided, further, That no deposit or investment in any single entity shall exceed fifteen percent (15%) of the total value of the trust fund: Provided, finally, That the Commission is authorized to adjust the percentage allocation per category set forth herein not in excess of two percentage (2%) points upward or downward and no oftener than once every five (5) years.

The first adjustment hereunder may be made no earlier than five (5) years from the effectivity of the Pre-need Code. The pre-need company shall not use the trust fund to extend any loan to or to invest in its directors, stockholders, officers or its affiliates.

Section 37. Valuation of Reserve Liabilities of the Pre-Need Company.

(a) To determine the sufficiency and adequacy of the fund, an annual pre-need reserve valuation report establishing the reserve requirement and contractual liabilities of the pre-need company shall be made and submitted to the Commission, within one hundred twenty (120) days from end of the calendar year. The valuation report shall contain the assumptions, methodology, formulas used, a summary of the pre-need plans that were subject of valuation, and the results of such valuation.

(b) The report shall be duly certified to by a professional or an actuary as may be determined by the Commission and duly accredited by it as defined in these rules. Upon approval by the Commission of the reserve computation, any deficiency in the fund shall be covered by the pre-need company, in the manner as may be prescribed by the Commission.

(c) In case of an excess of the fund over the reserve liability, the excess shall be credited for future deposit requirements.

Section 38. Trust Fund Deficiencies.

(a) Upon approval by the Commission of the pre-need reserve computation submitted in the preceding section, any deficiency in the trust fund, when compared to the reserve liabilities as reported in the pre-need reserve valuation report, shall be funded by the pre-need company within sixty (60)

days from such approval unless otherwise allowed by the Commission under these rules.

(b) Failure to cover the deficiency in an appropriate manner within the time required shall subject the pre-need company to the payment of a penalty, in addition to other remedies exercisable by the Commission, as provided in the Pre-need Code or these rules. *Provided*, however, that in case the deficiency is caused by or occurs at a time of serious national or global economic crisis, the Commission shall have the authority to extend regulatory leeway to the pre-need company with trust fund deficiencies such as, but not limited to, allowing a period longer than sixty (60) days within which additional deposits must be made by the pre-need company or by allowing installment payments of such deficiencies. Any regulatory leeway extended by the Commission under this provision shall be subject to conditions which it may deem necessary.

(c) Any excess of the trust fund over the actuarial reserve liabilities may be credited to future deposit requirements.

Section 39. Liquidity Reserve.

(a) The trustee shall at all times maintain a liquidity reserve which shall be sufficient to cover at least fifteen percent (15%) of the trust fund but in no case less than one hundred twenty-five percent (125%) of the amount of the availing plans for the succeeding year. For this purpose, the pre-need company shall timely submit to the trustee a summary of benefits payable for the succeeding year.

(b) The following shall qualify as investments for the liquidity reserve:

- i. Loans secured by a hold-out on assignment or pledge deposits maintained either with the trustee or other banks, or of deposit substitute of the trustee itself or mortgage and chattel mortgage bonds issued by the trustee;
- ii. Treasury notes or bills, other government securities or bonds, and such other evidences or indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;
- iii. Repurchase agreements with any of those mentioned in Item "b" above, as underlying instruments thereof; and
- iv. Savings or time deposits with government-owned banks or commercial banks.

Section 40. Trustees.

Upon approval of the Commission or when the Commission requires for the protection of planholders, the pre-need company shall entrust the management and administration of the trust fund to any reputable bank's trust department, a trust company, an investment house, financial institution or any entity authorized to perform trust functions in the Philippines: *Provided*, That no director and/or officer of the pre-need company shall at the same time serve as director and/or officer of the affiliate or related trust entity: *Provided*, further, That no trust fund shall be established by a pre-need company with a subsidiary, affiliate or related trust entity. However, such may be allowed, provided that the following conditions are complied with:

- (a) A written approval of the Commission has been previously obtained; and
- (b) Public disclosure of the affiliation with the trust entity be included in all materials in whatever form.

RULE 9
ACTUARIES FOR PRE-NEED COMPANIES

Section 41. Accreditation of Actuary.

The Commission shall have the power to set standards for the accreditation of actuaries directly responsible for the preparation and certification of the viability study of the pre-need plan submitted by the pre-need company for registration or amendment with the Commission. It shall further have the power to define the obligations and liabilities of actuaries accredited by it.

No actuary engaged by a pre-need company shall at the same time be a stockholder or serve as a director of the board, chief executive officer or chief financial officer of the company or any such position that the Commission may determine to have an inherent conflict of interest to the position of an actuary.

Section 42. Disaccreditation of an Actuary.

Upon notice and hearing an actuary shall be disaccredited by the Commission on the following grounds:

- (a) Failure to adequately perform his required functions and duties under these rules;
- (b) Failure to meet the requirements of Section 11 of these rules;
- (c) Failure to disclose conflict of interest;
- (d) Failure to comply with the Code of Conduct of the Actuarial Society of the Philippines; or,
- (e) Such other grounds that may be determined by the Commission.

Section 43. Required Actuarial Reports.

(a) The following documents which are from time to time submitted to the Commission by a pre-need company shall be duly certified by an Insurance Commission accredited actuary:

- i. Actuarial valuation of all liabilities pertaining to pre-need contracts;
- ii. Asset share studies when applying for approval of new products or enhancement or repricing of existing products;
- iii. Accounts in the financial statement of the pre-need company pertaining to actuarial reserve liabilities and other actuarial reserve items;
- iv. Financial projections showing the probable income and reserve requirements, enumerating the actuarial assumptions and bases of projections; and
- v. Such other reports as may be required by the Commission.

(b) It shall be the duty of an actuary to immediately report to the Commission any matter contained in, arising out of, or in relation to the above reports requiring intervention of the Commission to protect the interests of planholders: Provided, That the actuary shall not be liable to the pre-need company for any acts done under this paragraph, unless there is a clear showing of bad faith, malice or gross negligence.

RULE 10
REPORTS AND EXAMINATION

Section 44. Annual Pre-need Reserve Valuation Report.

(a) Every pre-need company shall annually determine its reserve requirement and contractual liabilities, and submit to the Commission an annual pre-need reserve valuation report within one hundred twenty (120) days from the end of the fiscal year of the pre-need company.

(b) The valuation report shall contain the assumptions, methodology, formulas used, a summary of the pre-need plans that were the subject of the valuation and the results of such valuation. The report should be duly certified by an actuary accredited by the Commission in the case of contingent plans such as memorial/life plans and by the pre-need company's external auditors or by a qualified actuary in the case of scheduled-benefit plans such as pre-need pension and education plans, the liabilities of which are not actuarial in nature.

(c) The reserving formula, bases and limits of the assumptions to be used in the valuation of reserves shall be prescribed by the Commission.

(d) The Commission may require any pre-need company to submit an interim pre-need reserve valuation report if any of the following events occurred:

- i. When there is sufficient evidence that a subsequent event or transaction occurred after the end of the fiscal year and such event would materially affect the computation of the pre-need reserve valuation report submitted; and
- ii. When the company ceased operation six (6) months after the end of the fiscal year.

Section 45. Annual Audited Financial Statements.

(a) Every pre-need company shall terminate its fiscal period on the thirty-first (31st) day of December every year. Within one hundred twenty (120) days after the calendar or fiscal year, the pre-need company shall render to the Commission annual financial statements signed and sworn to by its chief executive officer, chief finance officer and external auditors in accordance with a uniform accounting system that shall be prescribed by the Commission, showing in such form and details the exact condition of its affairs.

(b) The audited financial statements should be accompanied by the Statement of Management's Responsibility signed under oath by the company's chairman of the board, chief executive officer and chief financial officer, containing the following declaration:

"The management of (name of the pre-need company) is responsible for all information and representations contained in the financial statements for the year(s) ended (date). The financial statements have been prepared in conformity with rules and regulations of the Commission on accounting and reflect amounts that are based on the best estimates and informed judgment of management with an appropriate consideration to materiality."

"In this regard, management maintains a system of accounting and reporting which provides for the necessary internal controls to ensure that transactions

are properly authorized and recorded, assets are safeguarded against unauthorized use or disposition and liabilities are recognized. The management likewise discloses to the company's audit committee and to its external auditor: (i) all significant deficiencies in the design or operation of internal controls that could adversely affect its ability to record, process, and report financial data; (ii) material weaknesses in the internal controls; and (iii) any fraud that involves management or other employees who exercise significant roles in internal controls."

"The board of directors reviews the financial statements before such statements are approved and submitted to the stockholders of the company."

"The (name of the auditing firm), the independent auditors appointed by the stockholders, has examined the financial statements of the company in accordance with generally accepted auditing standards in the Philippines and has expressed its opinion on the fairness of the presentation upon completion of such examination, in its report to the board of directors and stockholders."

(c) Any material omission of disclosures, misstatement or misleading information found in the financial statements, whether interim or annual, shall constitute a violation of these rules and the officer signing such statement shall, after due notice and hearing, be subject to the penalty provided for under these rules and such other sanctions as may be imposed by the Commission.

Section 46. Annual Statement of Trust Fund.

(a) Every pre-need company shall file with the Commission an annual statement of its trust fund for each type of plan. Such statement shall be in a form prescribed by the Commission and shall include details as to all of the income, disbursements, assets and liability items of and associated with the said trust fund accounts. Said statement shall be made under oath by two (2) officers of the company and shall be filed simultaneously with the annual statement required by the preceding section.

(b) Where the trust fund is managed and administered by a trustee as provided under Section 30 of these rules, an annual statement of trust fund for each type of plan shall instead be filed with the Commission. It shall include details such as the income, disbursements, assets and liability items, and shall be certified under oath by at least two (2) of the highest ranking officers of the trustee.

Section 47. Publication of Annual Statement.

(a) Within thirty (30) days after receipt of the annual statement approved by the Commission, every pre-need company shall publish in two (2) newspapers of general circulation a full synopsis of its annual financial statements, including the trust fund annual statement showing fully the conditions of its business, and setting forth its resources and liabilities in a standardized format to be designed by the Commission.

(b) The Commission may require pre-need companies to create and maintain a website wherein its planholders may readily access updated information pertaining to the status of financial condition and results of

information of the company. The sufficiency and truthfulness of the contents of such website shall be the responsibility of the company.

Section 48. Keeping of Records.

The Commission shall require every pre-need company to keep its books, records, accounts and vouchers in such manner that the Commission's authorized representatives may readily verify the company's annual statements and ascertain whether the company is solvent and has complied with the provisions of these rules or the circulars, instructions, rulings or decisions of the Commission.

Section 49. Examination.

The Commission shall, at least once a year and whenever it considers that the public interest so demands, cause an examination to be made into the affairs, financial condition and method of business of every pre-need company, and of any other person, firm or corporation managing the Fund or affairs and/or property of such pre-need company.

RULE 11 FINANCIAL ACCOUNTING STANDARDS

Section 50. Accounting Rules and Regulations for Pre-need Plans.

The Commission shall have the authority to make, amend and rescind such accounting rules and regulations applicable for pre-need companies. The Commission may prescribe, among other things, the form or forms in which required information shall be set forth, the items or details to be shown in the components of the financial statements, and the recognition and measurement basis to be adopted for each account, after considering the nature of the operation of the pre-need industry. Pre-need companies shall strictly comply with such accounting rules and regulations as prescribed by the Commission.

RULE 12 SUSPENSION OR REVOCATION OF AUTHORITY

Section 51. Suspension; Grounds.

(a) If the Commission is of the opinion, upon examination or other evidence, that any pre-need company is in an unsound condition, or that it has failed to comply with the provisions of law or regulations, or that its condition or method of business is such as to render its proceedings hazardous to the public or to its planholders, or that its paid-up capital stock is impaired or deficient, the Commission is authorized to suspend or revoke all certificates of authority granted to such pre-need company, its officers and agents, after due notice or hearing. No new business shall thereafter be done by such company or for such company by its agent in the Philippines.

(b) The Commission may not lift the order of suspension or revocation of the said authority until the concerned pre-need company shall have submitted a viable business plan showing the company's estimated receipts and disbursements, as well as the basis therefor for the next succeeding three (3) years

RULE 13 CONSERVATORSHIP AND PROCEEDINGS UPON INSOLVENCY

Section 52. Appointment of Conservator.

(a) If at any time before or after the suspension or revocation of the license of a pre-need company as provided in Section 51 hereof, the Commission finds that such company is in a state of continuing inability or unwillingness to comply with the requirements of the Code and/or orders of the Commission, a conservator may be appointed to take charge the assets, liabilities, and the management of such company, collect all moneys and debts due the company and exercise all powers necessary to preserve the assets of the company, reorganize its management, and restore its viability.

(b) The conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the said company, any provision of law, or of the articles of incorporation or by-laws of the company, to the contrary notwithstanding, and such other powers as the Commission shall deem necessary.

(c) The conservator may be another pre-need company, by officer or officers of such company, or any other competent and qualified person, firm or corporation. The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the pre-need company.

(d) The conservator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

(e) The conservator appointed shall report and be responsible to the Commission until such time as the Commission is satisfied that the pre-need company can continue to operate on its own and the conservatorship shall likewise be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the pre-need company would be hazardous to planholders and creditors, in which case the provisions of Section 53 shall apply.

Section 53. Proceedings Upon Insolvency.

(a) Whenever, upon examination or other evidence, it shall be disclosed that the condition of any pre-need company is one of insolvency, or that its continuance in business would be hazardous to its planholders and creditors, the Commission shall forthwith order the company to cease and desist from transacting business and shall designate a receiver to immediately take charge of its trust fund, assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its planholders and creditors, and exercise all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the pre-need company.

(b) The Commission shall thereupon determine within thirty (30) days whether the pre-need company may be reorganized or otherwise placed in such condition so that it may be permitted to resume business with safety to its planholders and creditors and shall prescribe the conditions under which such resumption of business shall take place as well as the time for fulfillment of such conditions. In such case, the expenses and fees in the collection and administration of the pre-need company shall be determined by the Commission and shall be paid out of the assets of such company.

(c) If the Commission shall determine and confirm within the said period that the pre-need company is insolvent, as defined hereunder, it shall, if the public interest so requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan and implement it immediately.

(d) The Commission shall designate a competent and qualified person as liquidator who shall take over the functions of the receiver previously designated and, with all convenient speed, distribute the trust fund exclusively to the planholders in proportion to termination values of their respective pre-need plans, convert the assets of the pre-need company to cash, or sell, assign or otherwise dispose of the same to the planholders, creditors and other parties for the purpose of settling the liabilities or paying the debts of such company and he may, in the name of the company, institute such actions as may be necessary in the appropriate Court to collect and recover accounts and assets of the pre-need company, and to do such other acts as may be necessary to complete the liquidation as ordered by the Commission.

(e) The provisions of any law to the contrary notwithstanding, the actions of the Commission under this Section shall be final and executory, and can be set aside by the Court upon petition by the company and only if there is convincing proof that the action is plainly arbitrary and made in bad faith. The Commission shall then file the corresponding answer reciting the proceeding taken and praying for the assistance of the Court in the liquidation of the company. No restraining order or injunction shall be issued by the Court enjoining the Commission from implementing his actions under this Section, unless there is convincing proof that the action of the Commission is plainly arbitrary and made in bad faith and the petitioner files a bond in favor of the Commission with the Court in an amount fixed by it. The restraining order or injunction shall be refused or, if granted, shall be dissolved upon filing by the Commission, if he so desires, of a bond in an amount twice the amount of the bond of the petitioner conditioned that it will pay the damages which the petition may suffer by the refusal or the dissolution of the injunction.

(f) The Court shall give preference to all proceedings under this rule. The Commission shall not be required to pay any fee to any public officer for filing, recording, or in any manner authenticating any paper or instrument relating to the proceedings.

(g) As used in this rule the term "Insolvency" shall refer to the financial condition of a pre-need company that is generally unable to pay its liabilities as they fall due in the ordinary course of business or that has liabilities that are greater than its assets.

(h) In case of liquidation of a pre-need company, after payment of the cost of the proceedings, including reasonable expenses and fees incurred in the liquidation to be allowed by the Court, the Commission shall pay all allowed claims against such company, under order of the Court, in accordance with their legal priority.

(i) The receiver or the liquidator, as the case may be, designated under the provisions of this rule shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in

good faith in the exercise, or in connection with the exercise, of the powers conferred on such receiver or liquidator.

Section 54. Commission's Power to Assume Trustee Functions.

In cases where the Commission has ordered the liquidation of the pre-need company, the Commission may immediately take custody of the trust fund established by the pre-need company, and the pre-need company shall forthwith deliver custody and an accounting of the same. Henceforth, the Commission shall have the full power and control over the Fund to satisfy the pre-need company's obligations to planholders.

Section 55. Liquidation.

(a) In cases where the Commission determines that the pre-need company shall be liquidated, it shall have the power to commence insolvency proceedings in the appropriate court which shall have jurisdiction over the assets of the pre-need company, excluding trust fund assets that have been established exclusively for the benefit of planholders.

(b) Proceedings in court shall proceed independently of proceedings in the Commission for the liquidation of claims, and creditors of the pre-need company shall have no personality whatsoever in the Commission proceedings to litigate their claims against the trust funds.

(c) In liquidating claims of planholders, the Commission shall ensure that all planholders receive an equitable distribution of their claims, considering the amounts each has paid into their plans, the termination values due each planholder, the present value of their claims and other equitable considerations. The only other claims which may be satisfied by the Commission out of the trust funds are the claims for trustees' fees which are reasonable and can be shown to have been incurred in the administration of the trust fund, and taxes incurred under trust.

RULE 14

ADMINISTRATIVE SANCTIONS AND CRIMINAL PENALTIES

Section 56. Administrative Sanctions.

(a) The Commission, after proper notice and hearing, may impose any or all of the sanctions provided in subparagraph (b) of this section for the following offenses:

- i. the making of any untrue statement of a material fact in a registration statement, information brochure and its supporting papers and other reports required to be filed with the Commission;
- ii. the failure to disclose any material fact required to be stated therein;
- iii. the refusal to permit any lawful examination into its affairs; and
- iv. any violation of the Pre-need Code or this Implementing Rules and Regulations.

(b) The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individual responsible for the violation:

- i. Cease and Desist Order. – The Commission may, motu proprio or upon verified complaint by any party, issue a cease and desist order

(CDO) against any pre-need company upon proof, after due notice and hearing, of violation of any provision of the Pre-need Code and these rules: Provided, That such CDO may be issued ex parte if the violation is clearly apparent, injurious to a number of planholders and requires immediate intervention by the Commission. The CDO shall specifically enjoin the pre-need company from performing certain activities and shall impose fines and state the required remedial actions. All proceedings before the issuance of the CDO shall be confidential;

ii. Suspension of License. – The Commission shall issue a suspension order against the pre-need company if it fails to comply with the CDO within thirty (30) days from issuance thereof;

iii. Revocation of License. – The Commission may issue a revocation order of the license of the pre-need company under suspension for a period of ninety (90) days;

iv. A fine of not less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

v. Disqualification from being an officer, a member of the board of directors or principal stockholders of a pre-need company; or

vi. Other penalties within the power of the Commission under existing laws.

(c) The unauthorized sale of pre-need plans shall subject the issuer to a fine as follows:

(1) First violation – thirty percent (30%) of the aggregate gross pre-need price of the plans sold;

(2) Second violation – forty percent (40%) of the aggregate gross pre-need price of the plans sold; and

(3) Third violation – suspension or revocation of license.

Failure to pay fines within three (3) months from receipt of notice to pay will cause the Commission to issue a suspension order.

Section 57. Criminal Penalties.

The following acts are criminal in nature:

(a) Selling or offering to sell a pre-need plan by unregistered persons shall be penalized by imprisonment of one (1) year and a fine equivalent to triple the contract price;

(b) Selling or offering to sell an unregistered pre-need plan or any product that has pre-need plan features shall be penalized by imprisonment of one (1) year and a fine equivalent to triple the indicated price;

(c) Soliciting, selling or offering to sell a pre-need plan by means of false or misleading representation and other fraudulent means shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00);

(d) Any negligent act or omission that is prejudicial or injurious to the planholder shall be penalized by imprisonment of one (1) year and one (1) day to six (6) years and a fine in the amount of Fifty thousand pesos (P50,000.00) to Five hundred thousand pesos (P500,000.00);

(e) Any fraudulent act or omission that is prejudicial or injurious to the planholder shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of One hundred thousand pesos (P100,000.00) to One million pesos (P1,000,000.00); and

(f) Willful violation of the provisions of these rules or orders of the Commission: Provided, That repeated violations shall constitute prima facie evidence against the offender and shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of One hundred thousand pesos (P100,000.00) to One million pesos (P1,000,000.00).

Any person who violates any other provisions of the Pre-need Code or the rules and regulations promulgated by the Commission under authority thereof shall, upon conviction, be punished by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than one (1) year nor more than fourteen (14) years, or both, at the discretion of the court. Should the offense be committed by a juridical person, the penalty may, in the discretion of the court, be imposed on such juridical entity and upon the officer or officers of the juridical entity responsible for the violation. If such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

RULE 15 MISCELLANEOUS PROVISIONS

Section 58. Claims.

(a) The Commission shall have the primary and exclusive power to adjudicate any and all claims involving pre-need plans. If the amount of benefits does not exceed One hundred thousand pesos (P100,000.00), the decision of the Commission shall be final and executory.

(b) The Commission shall encourage mediation or conciliation as a means to expedite resolution of claims.

Section 59. Review of Commission Orders or Decisions.

Any person aggrieved by an order or decision of the Commission, whether in relation to its settlement of a claim of a planholder or in the exercise of its regulatory authority, may appeal the order or decision to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

Section 60. Transitory Provisions.

(a) Any pre-need company who at the time of the effectivity of the Pre-need Code has been registered and licensed to sell pre-need plans and similar contracts, shall be considered registered and licensed under the provision of the Pre-need Code and these Implementing Rules and Regulations and shall be subject to and governed by the provisions hereof: Provided, however, That compliance for all sections with the exception of Section 21,

may be deferred for such reasonable time as the Commission may determine but not to exceed one (1) year unless otherwise specifically provided in the Pre-need Code.

(b) With respect to Chapter IV, compliance will cover all new plans sold one hundred twenty (120) days after the effectivity of Pre-need Code. Violations committed prior to the effectivity of the Pre-need Code shall be punished in accordance with the provisions of the laws then in force.

(c) The Commission shall constitute forthwith a special team of experts to handle all matters related to the pre-need industry and shall secure and transfer all the files and records of the SEC to the Commission within ninety (90) days after the effectivity of the Pre-need Code.

(d) Notwithstanding any provision to the contrary, all pending claims, complaints and cases filed with the SEC shall be continued to its full and final conclusion. The Commission shall also assist the Department of Justice in criminal cases involving matters related to the pre-need industry. Pre-need companies which are, upon approval of the Pre-need Code of the Philippines, under corporate rehabilitation or insolvency proceedings shall continue to be subject to the jurisdiction of the Regional Trial Courts.

Section 61. Duty of the Commissioner to Issue Circulars.

The Insurance Commissioner shall, from time to time, issue circular letters to supplement these rules. The Commission's existing one-circular-one-subject matter rule shall apply. Such circulars shall be sent to all existing pre-need companies, licensed sales counselors and other parties affected by the specific circular at the time of issuance. Each circular shall take effect after fifteen (15) days from the date of issuance unless otherwise stated in the said circular. It shall also be posted in the Commission's official website. Hence, all pre-need companies are hereby required to regularly visit the commission's official website for circular updates. The commissioner may devise such other circular distribution methods as he may deem effective and speedy. He may accredit industry associations as official representatives of their members for the purpose of receiving the pre-need circulars.

Section 62. Effect on Existing Law.

Any person, natural or juridical, or pre-need plan, authorized, licensed or registered by the SEC under the Securities Regulation Code shall be deemed to have been licensed or registered under the provisions of the Pre-need Code. Such person or plan shall, unless otherwise herein provided, be given a period of one (1) year from the effectivity of the Pre-need Code within which to comply with the same. The rights and remedies provided by the Pre-need Code and these rules shall be in addition to any and all other rights and remedies that exist under existing laws.

Section 63. Separability Clause.

Should any provision of these rules or the application thereof to any person or circumstance be held invalid, the other provisions or sections of these rules shall not be affected thereby.

Section 64. Effectivity.

These rules shall take effect after fifteen days upon its last publication, which publication shall be done once a week for two (2) consecutive weeks in two newspapers of general circulation in the Philippines.

DONE in the City of Manila this 8th day of March 2010.


SANTIAGO JAVIER KANADA
Insurance Commissioner

