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

PINOY SPRINGBOARD INC.,
Appellant,

SEC En Banc Case No. 12-09-182

-versus-

NON-TRADITIONAL SECURITIES AND INSTRUMENTS DEPARTMENT,
Appellee.

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DECISION

For consideration is the Memorandum on Appeal filed by Pinoy Springboard Inc. (PSI) on 02 December 2009 appealing the alleged directive from the Non-Traditional Securities and Instruments Department (NTD) dated 15 October 2009, urging PSI to defer the marketing of E-Protect, a scheme which accords members with memorial service upon death and/or insurance coverage.

FACTS OF THE CASE

PSI formulated and offered for sale to the general public a product known as "E-Protect", whereby, for a fee of Php999.00, a member is given an E-Protect Card which entitles a member's heirs to bereavement assistance and/or additional cash benefits in the event of a member's death or total permanent disability due to accident.

In a letter dated 15 October 2009, NTD informed PSI that based on an initial evaluation of E-Protect, the same seems to fall within the purview of "a pre-need plan" considering that there are features of E-Protect that are similar or analogous to a pre-need life plan. Thus, NTD directed PSI to submit proof that the said product does not fall within the confines of "doing pre-need business" and further urged PSI to defer the marketing of the said product until sufficient proof to the contrary is shown.

On 02 December 2009, PSI filed an appeal before this Commission assailing the aforesaid letter of NTD. PSI considered the aforesaid letter as an order deferring the marketing of E-Protect. It further alleged that E-Protect is a personal accident insurance product and not a pre-need life plan.

On 18 December 2009, NTD filed its Reply Memorandum alleging that the aforesaid letter does not partake of the nature of an order deferring the marketing of E-Protect, but rather only serves as a warning that in the event NTD comes up with a finding that E-Protect is indeed a pre-need product, PSI shall be liable for violation of the Pre-Need Rules. Moreover, NTD claims that it has not yet made any conclusive and definitive ruling as to the nature of E-Protect. Thus, NTD prays that the appeal be dismissed for lack of legal basis.

ISSUE

The sole issue in the present appeal is whether NTD's letter to PSI dated 15 October 2009 constitutes an "order" that is appealable before this Commission.

RULING

The answer is in the NEGATIVE.

Section 1-2, Rule I of the 2006 Rules of Procedure ("The Rules") of the Securities and Exchange Commission provides for the definition of an "order" as follows:

> "***SEC. 1-2. Definitions.*** – *For purposes of these Rules, the following terms shall mean:*
>
> *xxx xxx xxx*
>
> *g. Order – any directive, other than a Decision of a Hearing Panel or Officer.*
>
> *xxx xxx xxx*

The foregoing means that for a certain issuance to be considered as an "order", the same must amount to a command or directive authoritatively given[1], i.e., it must impose a corresponding obligation upon the person to whom the same is addressed.

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[1] *See* Black's Law Dictionary, 6th Edition *citing* Brady v. Interstate Commerce Com., 43 F.2d 847.

In the present case, the aforesaid letter of NTD cannot be considered as an "order" deferring the marketing of E-Protect since the same imposes no obligation upon PSI. The same merely advises PSI to postpone the marketing of the said product until sufficient proof is shown that the said product does not constitute a pre-need plan.

The following lines from the aforesaid letter indicate that NTD's statements are mere advisory and not obligatory:

> *"Please be advised that* ***you are hereby urged to defer*** *the marketing of E-Protect unless and until sufficient proof to the contrary is hereby shown to the satisfaction of Commission."* (emphasis supplied)

Moreover, Section 11-1, Rule XI of The Rules likewise provides for the matters that can be appealed to the Commission *En Banc*, to wit:

> *"**SEC. 11-1. Ordinary Appeal.** – An appeal to the Commission En Banc may be taken from a decision, order, or resolution issued by an Operating Department if there are questions of fact, of law, or mixed questions of fact and law."*

When the aforesaid provision speaks of "order" in the phrase "decision, order, or resolution", it ought to refer, under the rule of *ejusdem generis*, to orders that are final and appealable.[2]

In the present case, the aforesaid letter of NTD does not demonstrate finality. The following lines from the aforesaid letter indicate that NTD has not yet made any definitive finding as to the nature of E-Protect:

> *"Please be informed, that based on our* ***initial evaluation*** *of the terms and conditions of EProtect,* ***there seems to be some indicia*** *that the product falls within the purview of "a pre-need plan" considering that there are features in EProtect that are similar or analogous to a pre-need life plan.xxx"* (emphasis supplied)

Thus, the present appeal is premature considering that the aforesaid letter of NTD contains no conclusive ruling that E-Protect indeed constitutes a pre-need plan.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for being premature.

SO ORDERED.

Mandaluyong City, 04 February 2010.

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[2] *See* Moreno's Law Dictionary, 2000 Edition, *citing* Pasion v. Magat, SP-19113, March 13, 1990.

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FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner