



# Legal and Fiduciary Responsibilities for IEEE SA Standards Board

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## AGENDA

- **IEEE Corporate and Tax Structure and Governance Hierarchy**
- **Roles and Accountabilities for SASB Members**
- **Fiduciary Duties of SASB Members**
- **Liability as an SASB Member**

# IEEE Corporate and Tax Structure and Governance Hierarchy



# IEEE's Purpose

## IEEE's 1963 Certificate of Incorporation and Mission Statement

- As stated in the IEEE Certificate of Incorporation:
  - “To engage **exclusively** in scientific and educational activities within the meaning of Section 501(c)(3).....for the benefit of the engineering community **and the general public.**”
    - IEEE Certificate of Incorporation, ARTICLE FIFTH Sec. 5(a) (emphasis added)
- IEEE Mission Statement:
  - “IEEE’s core purpose is to foster technological innovation and excellence for the benefit of humanity”

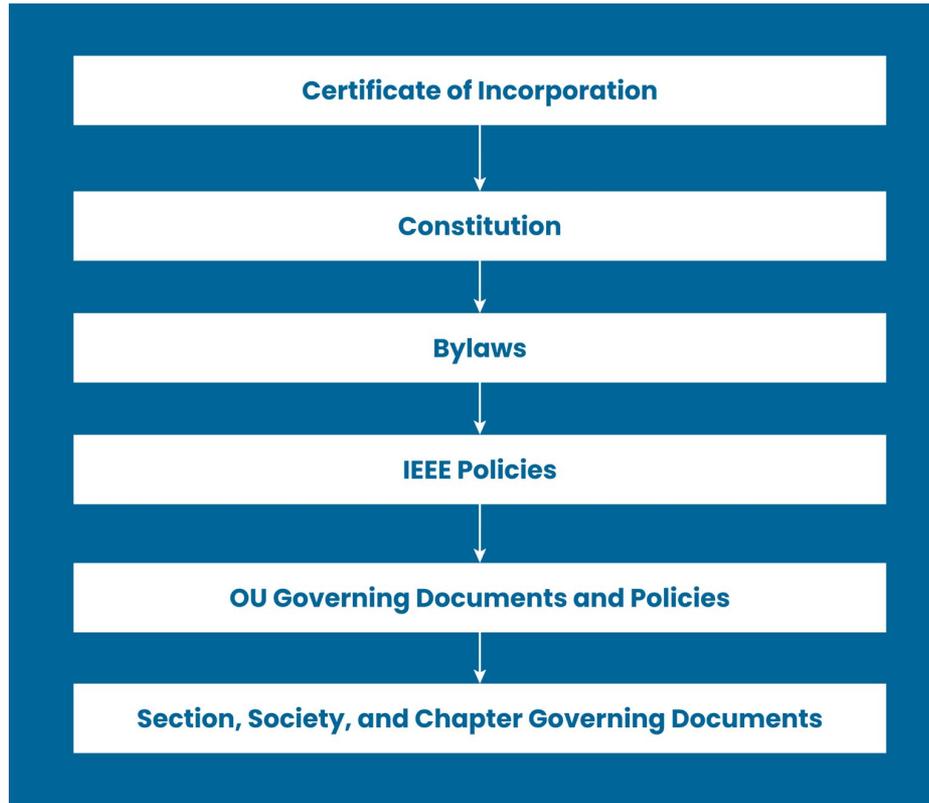


# Corporate Structure

- A New York Not-for-Profit Corporation
  - Certificate of Incorporation
    - filed with the New York Secretary of State
  - Constitution
    - sets forth the governance structure (members, BOD, assembly, officers)
  - Bylaws
    - governs the operations and administration of IEEE

# IEEE is a New York Not-for-Profit Corporation and a U.S. Public Charity

## IEEE Governing Documents



# IEEE Tax Status

- Exempt under Section 501(c)(3) of the U.S Internal Revenue Code
  - Entity that is exempt from United States federal income taxes because it is organized **and operated exclusively for charitable, educational, scientific and other tax-exempt purposes**
- In 1993 IEEE converted from a Section 501(c)(6) professional association (which is usually the tax status of an association of professionals, e.g., American Medical Association, American Bar Association or an industry standards development organizations) to a 501(c)(3) public charity
- IEEE is a public charity which is a type of Section 501(c)(3) organization given special tax advantages because it is treated as overseen by the public



## Section 501(c)(3) – United States Internal Revenue Code (IRC)

- Requirements for charitable tax exemption:
  - “Organized and operated”
  - **“Exclusively”**
  - “For educational and scientific purposes”
  - **“No part** of the **net earnings** of which inures to the benefit of any private shareholder or individual” (same as NY requirements)
    - Incidental benefit is permissible if it is a by product of the broad public benefit

## Section 501(c)(3) – United States Internal Revenue Code (IRC)

- A charitable organization may engage in an “insubstantial” amount of **“unrelated”** activities
  - **“Unrelated”** activity is an activity that doesn’t substantially further the organization’s charitable purposes
  - Rule of thumb: 5-15% of total resources (people, revenue and effort) can be spent on all **unrelated** activities
- Revenue from “unrelated activities” is still considered “unrelated” even if the charitable organization uses the revenue to fund related activities

# **Role and Accountability of SASB Members**

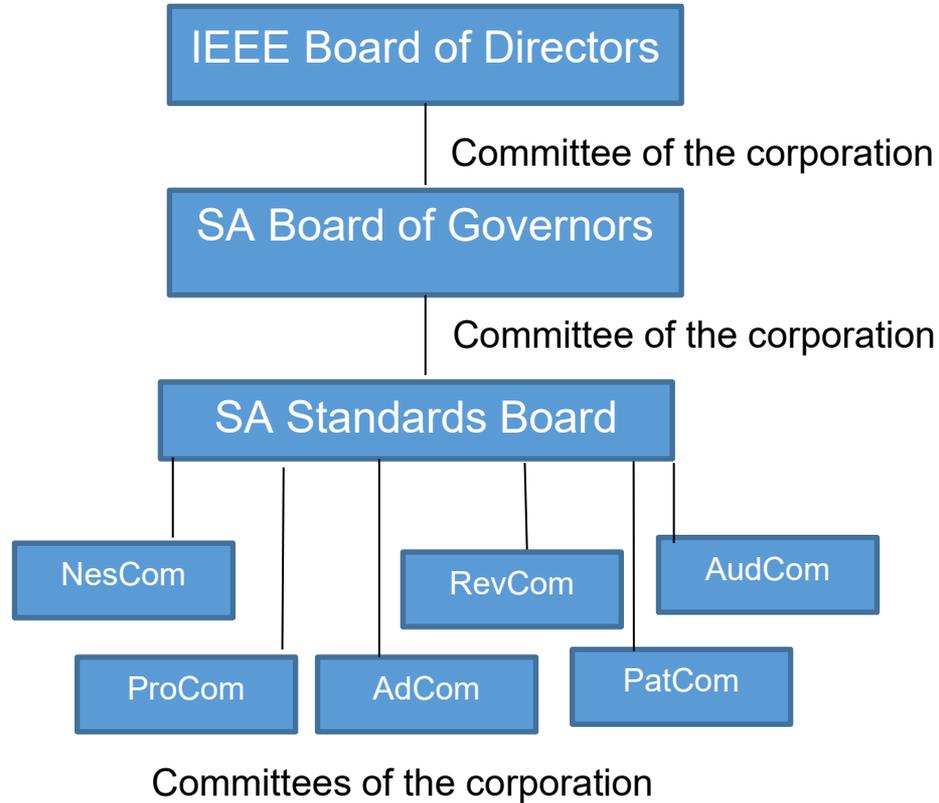
# IEEE Corporate Governance

## *Standards Association's Relationship to IEEE*

- The Standards Association is a Major Board/Organizational Unit (“OU”) which is not separate from IEEE and cannot act separately or independently of IEEE
- The BOG, SASB and other SA committees are each treated as a “committee of the corporation” subject to direction and control of IEEE Board of Directors, which can delegate certain responsibilities to it
- IEEE’s Board of Directors is ultimately responsible for actions taken or omitted by the Standards Association



## IEEE SA's GOVERNANCE WITHIN IEEE



# Relationship between BOG and IEEE Board of Directors

- ▶ New York law classifies committees
  - Committee of the Board – the committee can bind IEEE to a decision it has made and therefore has to have only have IEEE Board of Director members (e.g, Audit Committee, Executive Committee)
  - Committee of the Corporation – the committee cannot bind IEEE to a decision it has made and therefore may consist of individuals who don't also serve on the IEEE Board of Directors – as a result, its authority is limited:
    - ❖ subject at all times to direction and oversight of the IEEE Board of Directors
    - ❖ cannot have greater authority than the IEEE Board of Directors has
    - ❖ cannot represent IEEE in external bodies unless designated to do so



# Role of IEEE Board of Directors

- IEEE Board of Directors (Constitution, Article IX, Section 1):
  - Board of Directors is the “governing body of the IEEE”
  - The business and affairs of IEEE are **managed** under the **oversight** of the Board of Directors

# Role of IEEE Board of Directors and relationship to Executive Director

- ▶ IEEE Bylaw I-306 – the Board of Directors shall appoint an Executive Director who shall:
  - “Be the chief operating officer of the IEEE; shall be in charge of IEEE Headquarters, IEEE’s staff and operations” and shall be “responsible” for all IEEE property (I-306.2)
  - “Under the supervision of the [IEEE Treasurer], execute fiscal policies and operations” of IEEE (I-306.4)
  - “Have oversight responsibility for the implementation of the IEEE Strategic Plan” (I-306.7)

# Standards Association

- IEEE Bylaws I-303
  - The IEEE Standards Association shall be responsible to the Board of Directors for standards programs that enhance the strategic initiatives of IEEE. **The IEEE SA shall establish, coordinate, develop, approve, and revise IEEE standards and conduct other standards-related activities in fields of interest to IEEE. The IEEE SA shall be the IEEE interface in standards related matters with external bodies.** The IEEE SA Board of Governors shall be the governing body of the Standards Association, and it shall reflect the technical and global standards interests of IEEE



# Role of the IEEE SA Standards Board

## Section 1 of SASB Bylaws

The IEEE SA Standards Board is responsible on an Institute-wide basis for a) Encouraging and coordinating the development of IEEE standards b) Reviewing all proposed IEEE standards to determine whether the proposed standards conform to the requirements established by the IEEE SA Standards Board and whether consensus has been achieved for approval of the proposed standards

*Matters of standards policy, financial oversight, new directions in standardization, and other standards-related activities in fields of interest to the Institute as stated in the IEEE Constitution are the responsibility of the IEEE SA Board of Governors (BOG)*



# Fiduciary Duties of Directors

# Fiduciary Duties of SASB and its Committees

## *Duties of Care, Loyalty, and Obedience*

- Prudent Person Rule: Act in **good faith**, and with that degree of **diligence, care** and skill which an **ordinary prudent person** would exercise under similar circumstances in a like position
- Business Judgment Rule: Good faith and full disclose
  - You can **rely on information, opinions and reports** from others including experts (e.g., investment advisors, CPA firm, independent compensation consultants) and staff
  - If there is reason for suspicion, you should make an inquiry

# Fiduciary Duties (cont.)

## Care Dos



## Care Don'ts

- Spend sufficient time and energy to be reasonably familiar with matters requiring Board attention
- Access and review adequate information
- Rely on expert advice
- Monitor delegated activities
- Attend and ask questions at the meetings
- Make independent decisions based on “informed knowledge” and experience

- Don't delegate duties
- Don't engage in bloc voting
- Don't vote as representative of any constituency when acting as a Director
- Don't request information in the name of IEEE for your personal use

# Fiduciary Duties of (cont.)

**Duty of Loyalty: An undivided allegiance** to IEEE and its mission when using power of position or information about IEEE or its assets

## Loyalty Dos



## Loyalty Don'ts

- Exercise powers in the interest of IEEE as a whole
- Make sure benefit accrues only to the public and the overall organization
- Disclosure potential related party transactions
- Don't undermine Board decisions, regardless of the role you're playing (e.g., member of Major Board or IEEE member)

- Don't act individually
- Don't act in a manner that undermines a decision of the Board of Directors
- Don't seize IEEE opportunities for yourself
- Don't act on a related party transaction prior to approve by the independent directors
- Don't engage in a conflict of interest



# Fiduciary Duties (cont.)

## *Duty of Obedience:*

Directors must be faithful to the mission and purposes of IEEE

### Obedience Dos



### Obedience Don'ts

- Know the purposes of IEEE as stated in the Certification of Incorporation
- Be aware of the IEEE Mission
- Note whether proposed activity is consistent with stated IEEE purposes and the legislative framework
- Uphold decisions of the board

- Act in a manner that violates law or governing documents (including policies)

# Fiduciary Duties (cont.)

## *Duty of Loyalty – Conflict of Interest*

- What is a Conflict of Interest?
  - “any situation in which a member’s decisions or votes **could substantially and directly affect the member’s professional, personal, financial or business interests.**” N-PCL Section 715 and Bylaw I-300(2)
- Consider each item of business where you are asked to take action and determine **whether an actual, perceived, or potential conflict** exists with the interests of IEEE.

# Fiduciary Duties (cont.)

## *Duty of Loyalty - Conflict of Interest (cont.)*

- **Disclose conflict before discussion or presentation** to the SASB or committee and indicate whether you
  - Are recusing yourself from discussion or vote
  - Believe you are able to separate those interests from your obligation to act in the best interest of IEEE
- Duty of governing body's non-conflicted members to determine existence of conflict
- Conflicted person will be removed from the numerator and the denominator for purposes of quorum



# Fiduciary Duties (cont.)

## *Duties of Care, Loyalty and Obedience – Confidentiality*

- Confidentiality
  - Derived from Duties of Care, Loyalty and Obedience
  - Obligation to keep **Confidential Information** confidential
  - What is **Confidential Information**?

# Fiduciary Duties of Directors (cont.)

## *Duties of Care, Loyalty and Obedience – Confidentiality*

- What is Confidential Information?
- **Determined by** IEEE Guide to Information Classification and Disclosure (initially approved June 2015)/categories:
  - Not Classified (the norm)
    - Available to public – subject to fees, copyright
  - IEEE proprietary (common)
    - Available to IEEE staff and members
  - IEEE Confidential (rare)
    - Available to all IEEE staff and Authorized Volunteer Leaders
  - IEEE Confidential Controller Distribution (exceedingly rare)
    - Provided to those on the distribution list – may not be redistributed
  - Privileged and Confidential
    - Do not distribute to avoid breaching privilege



# Fiduciary Duties of Directors (cont.)

## *Duties of Care, Loyalty and Obedience – Confidentiality/Executive Sessions*

- Executive Sessions
  - **Discussions are confidential only to those in the session**
  - Agree on what will be reported out of session, if anything
  - Minutes are inherently “IEEE Confidential – Controlled Distribution” unless the executive session classifies them at a different level
  - Documents considered at executive session retain their classification
  - General rule: maintain a high degree of confidentiality until public disclosure

# Liability as a SASB Member



# Governing Members Liability

## *Lawsuits*

- SASB members can be sued by:
  - Third parties for violation of U.S. and non-U.S. laws
  - Members (including in a derivative suit representing 5% of membership (N-PCL Sec. 623))
  - New York Attorney General (N-PCL Sec. 720)
- If you receive a subpoena or other legal papers, call General Counsel
- Don't comment on ongoing litigation in your capacity as an SASB Member
- Note: IEEE is liable for actions of Standards Association



# Governing Members Liability (cont.)

- Volunteer Protection Act (VPA)
  - Enacted by U.S. Congress in 1997
  - Generally, a volunteer is not liable for negligent acts taken or not taken while acting within the scope of his/her volunteer responsibilities
  - Excludes tangential acts, such as auto accidents
  - Does not override fiduciary duty liability

# Governing Members Liability (cont.)

## *Indemnification*

- What is indemnification?
  - A guarantee against any loss which another might suffer
  - Permitted by New York law – mandatory if defense is successful
  - IEEE Bylaw I-300.3 – “against judgements, fines, amounts paid in settlement and reasonable expenses...in connection with the defense of any suit or proceeding”
- Actions of SASB members are indemnified if:
  - Duly authorized
  - Acted in good faith
  - Not inconsistent with purposes or objectives of IEEE
  - Believed in the best interest of IEEE
  - No reasonable cause to believe conduct was unlawful



# IEEE Insurance

## *D&O Liability Coverage*

- Primary Insurance Company: Federal Insurance Company (CHUBB)
- Current Policy Period: April 1, 2023 – March 31, 2024
- Territory: Worldwide
- Insured Organization: The Institute of Electrical and Electronics Engineers, Incorporated and its subsidiaries
- Insured Persons: Any natural person who was, now is or shall become a duly elected or appointed director, officer, committee member, volunteer or employee of any insured organization



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# THANK YOU