

OVERVIEW OF CERTAIN LEGAL ISSUES AND RESPONSIBILITIES

A Presentation to the IEEE Standards Association Standards Board and Committees New Member Orientation

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Corporate Structure

- IEEE is:
 - A NY not-for-profit corporation – governed by NY law for corporate governance issues (Articles, Constitution, Bylaws, policies, resolutions of the Board, Operations Manual)
 - A U.S. corporation governed by U.S. law
 - IEEE is also subject to applicable laws in those countries where IEEE conducts activities
 - A member organization - no shareholders
 - Governed by the IEEE Board of Directors (Article IX, Section 1 of Constitution)



Tax Structure

- IEEE is exempt from tax under Section 501(c)(3) of the U.S. Internal Revenue Code of 1986
- IEEE must operate “exclusively” for “educational and scientific” purposes by serving the global needs of industry, government and the public
 - Can engage in an **insubstantial** amount of activity to promote the professional *business* interests of the professions represented by its membership
 - Not a trade association which shares the same Section 501(c)(6) tax status for industry standard developing organizations



Basic Governance – IEEE-SA's Relationship to IEEE

- IEEE-SA is an integral part of IEEE
 - No independence or autonomy to act separately from IEEE
 - Subject to direction and control of IEEE Board of Directors who have delegated responsibility for oversight of the Standards Association to IEEE-SA's Board of Governors
 - IEEE's Board of Directors is ultimately responsible for actions taken or omitted by IEEE-SA's Board of Governors, the SASB and its committees.

Basic Governance – Fiduciary

- Each Standards Association participant serving on a governing board (e.g., BOG, SASB, and their committees) has fiduciary duties to the IEEE
- The rules pertaining to governance (as opposed to technical standards development activities) do not require openness, consensus-building, or inclusion of non-SASB members in the decision-making process
- Fiduciary duties include duty of care, duty of loyalty and duty of obedience

Fiduciary Duties: Care

- **Prudent Person Rule:** should 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 (NPCL Section 717)
- **Business Judgment Rule:** good faith and full disclosure
 - You can rely on information, opinions and reports from others including experts (e.g., law firm, CPA firm, M&A consultants) and Staff
 - If there is a reason for suspicion – make an inquiry

Fiduciary Duties: Care (continued)

- Diligence (also known as “duty of attention”)
 - Attend meetings regularly - be informed as to minutes and agenda and attachments
 - Spend sufficient time and energy to be reasonably familiar with matters requiring board or committee attention
 - Review sufficient information necessary to make decision
 - Monitor delegated activities
 - Ask questions at the meetings
 - Make your decisions based on your “informed” knowledge and experience
 - Treat information as confidential that has been designated as such

Fiduciary Duties: Loyalty

- Must act in the best interests of the IEEE, which at the SASB includes protecting the IEEE from consequences resulting from unauthorized actions or inactions and/or unethical conduct by Standards Association participants.
- Requires that you exercise your powers in the best interests of IEEE as a whole, not in your own interest or the interest of your employer or any entity with whom you are otherwise affiliated.
- Requires that you keep information about your work on behalf of IEEE-SA confidential where directed to do so, including from your employer or any entity with whom you are otherwise affiliated.

Fiduciary Duties: Loyalty

- Conflicts of interest (see *IEEE Policies Section 9.8*)
 - Be aware of the potential
 - Act with candor and care
 - Not automatically illegal or dishonest but must be disclosed, so they can be dealt with appropriately

Fiduciary Duties: Loyalty

- Involved parties should not participate in any activity that creates or gives the appearance of a conflict of interest between their personal interests and the interests of IEEE. (Details of Principles of Business Conduct)
- Defined as any situation in which a participant's decisions or votes could substantially and directly affect the participant's professional, personal, financial or business interests. (IEEE Policy 9.8)
- IEEE standards development participants satisfy the responsibility for conflict of interest disclosure by adhering to the disclosure of affiliation policy and procedures and by completing the IEEE Conflict of Interest Disclosure Statement when required to do so.

Examples of Conflict

- Being a consultant to, or a director, officer, or employee of an outside business that:
 - Markets products or services in competition with or supplies products or services to IEEE
 - Purchases products or services from IEEE
 - Has any financial interest in any entity with which IEEE does business
- Being a consultant to, or a director, officer, volunteer, or employee of an outside business if the responsibilities of the outside business would be in conflict with the director's, officer's, volunteer's, or employee's responsibilities for IEEE

Fiduciary Duties: Conflict of Interest Policy

- Conflict of interest procedure requires disclosure and abstention/recusal where there is conflict
- Conflict of interest procedure applies where board/committee has authority to make decision not just recommendation.

Fiduciary Duties: Conflict of Interest Process

- You must consider each item of business where you are asked to take action and determine whether you have a conflict of interest with the interests of the IEEE.
- Must disclose potential conflict before discussion or presentation to the board 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 the IEEE.
- Duty of governing body's non-conflicted members to determine existence of a conflict
- Conflicted person will be removed from the numerator and the denominator for the purposes of quorum.

Fiduciary Duties: Obedience

- Carry out specific objectives of IEEE
 - Cannot divert corporate resources to other goals
 - Support decisions of the IEEE Board, the IEEE-SA BOG and IEEE SASB once made
- Comply with laws
 - Follow IEEE procedures – Constitution, Bylaws, Policies
 - State, federal and non-U.S. laws (where applicable)

Liability – Protection of Volunteers

- Federal and state law provide protection for negligent acts taken or omitted while acting within the scope of his/her volunteer responsibilities.
- Indemnification by IEEE
 - Permitted by New York law - mandatory if defense is successful
 - Section 6.3.2 of the SA Operations Manual states: “The IEEE-SA follows the IEEE policies for indemnification as outlined in IEEE Bylaw I-300.3.”
 - Bylaw I-300.3 - when acting as an officer or director, IEEE will defend and pay, if “not found by the Board of Directors to have been taken in bad faith or in a manner inconsistent with the purposes or objectives of IEEE . . .”
- Directors & Officers Liability Insurance Coverage



Questions?