

OVERVIEW OF CERTAIN LEGAL ISSUES AND RESPONSIBILITIES

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

Claire H. Topp, Esq.

Dorsey & Whitney LLP
50 South Sixth Street
Minneapolis, MN 55402
612-343-8278
topp.claire@dorsey.com

2023



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 as an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1986 **as a public charity**
- 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 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-SA 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 - Generally

- Must act in the best interests of the IEEE, which at the SA includes protecting the IEEE from consequences resulting from unauthorized actions or inactions and/or unethical conduct by Standards Association participants.
 - Conflicts of Interest
 - Confidentiality

Fiduciary Duties: Loyalty – Conflicts of Interest

- It is the responsibility of all IEEE members and volunteers in any elected, appointed, or other decision-making position of an IEEE activity to consider each item of business **they have a vote or decision-making authority** to determine if an actual, perceived, or potential conflict of interest may exist. *IEEE Policy 9.9 (B)*
- 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. *IEEE Policy 9.9 (D)*

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: Loyalty - Confidentiality

- 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.
 - IEEE has a Guide to Classification of Documents which sets forth guidelines on confidentiality.

https://www.ieee.org/content/dam/ieee-org/ieee/web/org/about/whatis/information_disclosure_policy_guide.pdf

Fiduciary Duties: Obedience

- Carry out specific objectives of IEEE
 - Cannot divert corporate resources to other goals
 - Act consistent with the decisions of the IEEE Board once made
 - Comply with laws
 - Follow IEEE procedures – Constitution, Bylaws, Policies
 - U.S. state and federal laws 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 but mandatory if conditions of I-300.3 met.
 - 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?