



**FEDERATED RURAL ELECTRIC
INSURANCE EXCHANGE**

Legal Issues for Boards

ARECA Insurance Exchange Workshop

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Insuring the Power of Community

Overview

- *Board structure*
- *Fundamental responsibility*
- *Fiduciary duties*
- *Role of Board officers*
- *Governance Issues*
 - *Cyber Liability*
 - *Enterprise Risk Management*



AIE Board of Trustees

- ***ARECA Insurance Exchange***
 - ***An inter-insurance exchange whose subscribers inter-insure one another by exchanging contracts of insurance through an attorney-in-fact***
 - ***An insurance exchange is similar to, but different than, a mutual insurance company***
- ***Two separate entities***
 - ***Reciprocal inter-insurance exchange***
 - ***Attorney-in-fact (AIM)***



AIE Board of Trustees

- ***Board of Trustees***
 - ***Subscribers advisory committee (a/k/a Board of Trustees)***
 - ***Composed of one person selected by each member that elects to choose a Trustee***
 - ***Terms are for four (4) years***
 - ***If a member elects not to select a person to serve on the Board, then it must be notified at least once every two years of its right to do so***



Fundamental Responsibility

- ***AIE Board of Trustees charged with:***
 - ***Supervision of finances***
 - ***General oversight of operations***
 - ***Procure audits/review investments***
 - ***Review surplus requirements / adjust surplus accounts***
 - ***Choosing/monitoring attorney-in-fact***
- ***AIE Board – matters of policy***
- ***AIE Management – day-to-day***



Duty of Care (Diligence)

- *Must act with the care that a reasonably prudent person in a similar position would use in similar circumstances*
- *Perform duties in good faith*
- *Attentive to the best interests of the cooperative and the membership*
- *Seek all material information reasonably available prior to making a decision*



Duty of Loyalty



- *In your role as a board member, your allegiance is to AIE not your local cooperative*
- *Required to refrain from engaging in personal activities which would injure or take advantage of the Exchange*
- *Undivided and unselfish loyalty to Exchange*
- *May not compete to the detriment of the system or usurp an Exchange opportunity*



Conflict of Interest



- ***Importance of a policy***
 - ***Applies to directors and employees***
 - ***Disclosure of financial and other business interests***
 - ***Training and annual review***
 - ***Consistent enforcement***
 - ***Annual written statements***



Confidential Information



- ***Importance of a policy***
 - ***Applies to directors and employees***
 - ***Exclusive property of the Exchange***
 - ***Definition – all information and any ideas in whatever form pertaining in any manner to the business of the Exchange***
 - ***Duty to keep confidential***
 - ***Duty to return upon resignation or retirement***



Duty of Obedience



- *Required to perform duties in accordance with applicable statutes, regulations, ordinances, charter, bylaws, policies*
- *Keep the organization within the stated bounds of its mission*
- *Ultra vires acts are those which exceed the legal powers of the Exchange – voidable by law and may result in personal liability*



Role of the Board Chair

- ***AIE General Bylaw provisions:***
 - ***Preside at all meetings of members and the Board***
 - ***Sign documents as authorized by the Board or required by law***
 - ***Ex officio member of all standing committees***
 - ***Perform all duties incident to the office of Chair and such other duties as assigned by the Board***
 - ***Appoints members of Executive***



Role of the Board Vice-Chair

- ***AIE General Bylaw provisions:***
 - ***In the absence or disability of the Chair, the Vice Chair shall perform all the duties of (and be subject to all of the restrictions upon) the Chair***



Role of the Board Secretary

- ***AIE General Bylaw provisions:***
 - ***Keep a record of minutes of all meetings of the Board, both regular and special***
 - ***Document the names of those present at Trustees' meetings and the number of members present at members' meetings***
 - ***If a special meeting is called, the Secretary must record how the meeting was authorized and the manner and time of notice given***



Nomination/Election of Board of Trustees

- ***One member, one vote***
- ***Each member selects a representative to the subscribers' advisory committee also known as the AIE Board of Trustees***
- ***Four year terms***
- ***If member chooses not to select Trustee, they must be notified at least every 2 years***



Executive Committee



- ***Appointed by Chairperson of the Board***
- ***Consists of seven persons, including Chair***
- ***May include individuals who are not Trustees, but no more than two***
- ***EC has power of Board of Trustees while Board not in session (with limitations)***

• ***Serves as the Board of APECA***



Governance Issues -- Cyber Security



- ***Data breaches have become commonplace***
- ***Safeguard customer data***
 - ***Cost of notice to customers***
 - ***Price of credit monitoring***
- ***Protect against interruption of service***
- ***Enterprise Risk Management --
perform an audit of your IT risk
profile***



Questions to ask



- *Does our organization have a social media policy and what does it cover?*
- *Is there a designated person in the organization to manage social media?*
- *Do we monitor social media internally, or is the function outsourced?*



Questions to ask

- Does our organization have a cyber incident response plan to mitigate reputational damage from a cyber incident?*
- What role would the board have in responding to a cyber incident, and is that role clearly defined?*
- Where does the responsibility for risk and crisis management lie with the board?*



Governance Issues -- Risk Management



- ***Identification of risk factors***
- ***Review of key business controls***
- ***Periodic review of external vendors***
 - ***Auditors***
 - ***Attorneys***
 - ***Actuaries***
 - ***Consultants***
- ***Conflicts of interest***



Questions to ask



- *Does our organization have a strategy that we believe will enable us to achieve its goals?*
- *Does our organization have the resources necessary to achieve our objectives?*
- *Does our board have the right qualifications for the current environment?*



Questions to ask

- *What is the board's working relationship with management?*
- *Is there a constructive, positive dialogue among directors and management regarding strategic choices?*
- *Are we confident management and the board are "on the same page" regarding strategy?*



Questions to ask

- How aligned is our organization's risk appetite with its strategic choices?*
- Are we too risk averse to consider and fully explore alternative strategy alternatives?*
- Or is our risk appetite so great that we are in danger of making unsound strategic choices?*



Questions to ask

- *Does the board hold strategic retreats or meetings? How often?*
- *Does each retreat build upon the prior retreats, so the board progressively expands its knowledge and understanding of strategic issues?*



Summary



- ***Fiduciary duties***
 - ***Duty of care, loyalty, obedience***
- ***Role of Board officers***
- ***Governance issues***
 - ***Cyber Liability***
 - ***Enterprise Risk Management***



APPENDIX



- ***AIM Board Structure***
- ***AIM Board Responsibilities***
- ***More information re director compensation (for your home cooperative)***



Fundamental Responsibility



- ***AIM Board has broadly defined powers***
 - ***“...shall have control and management of the affairs and business of the corporation...”***
- ***AIM Board is “attorney-in-fact” of AIE***
- ***AIM Board – matters of policy / general oversight functions***
- ***AIE Management – day-to-day***



Role of the Board President



- ***General Bylaw provisions:***
 - ***Preside at all meetings of members and the Board***
 - ***Fix the compensation of all employees and agents of the corporation, subject to approval***
 - ***Sign documents as authorized by the Board or required by law***
 - ***Perform all duties incident to the office of President and such other duties as assigned by the Board***



Role of the Board President



- ***Providing leadership***
- ***Making procedural decisions***
- ***Setting the agenda for Board meetings***
- ***Running an efficient meeting***
- ***Encouraging Board members to voice their views***
- ***Operating within the parameters established by the Board***



Role of the Board President



- ***Lead the Board, not the CEO***
- ***Lead the Board to define its own job***
- ***Lead the Board to design its discipline***
- ***Lead the Board to evaluate its performance***
- ***Take responsibility for the agenda***
- ***Run participative but efficient meetings***
- ***Take the long view – build capability***



Role of the Board Secretary



- ***General Bylaw provisions:***
 - ***Preparing the minutes of the Board meetings***
 - ***Authenticating the corporation's records***
 - ***Fixing the cooperative's seal to any document authorized by the Board***
 - ***Keep records of all shareholders, including number and class of shares***
 - ***Performing all other duties as assigned***



Role of the Board Secretary



- ***Seeing that all notices are duly given as required by bylaws or by law***
- ***Safekeeping of the corporate books and records***
- ***Keeping a register of the names and post office addresses of all members***
- ***File of complete copy of Article of Incorporations and Bylaws, including amendments***
 - ***Furnishing copies to each member***



Role of the Board Secretary



- ***Minutes***
 - ***Denoting adequate discussion***
 - ***Recording votes***
 - ***Ensuring an adequate file is kept of all documents and other information available to the Board***
 - ***More than a minimalist approach***
 - ***Less than a tape-recorded approach***
 - ***Notes and other documents***



Role of the Board Treasurer



- General Bylaw provision – custody of all corporate funds and securities and the receipt, deposit or investment of all corporate monies***
- Sign and endorse on behalf of the corporation all checks, drafts, notes, or other payment***
- Keep accurate books of account and other financial records***
- Report on the condition of finances at each regular Board meeting***



Role of the Board Treasurer



- ***Review in light of increasing roles of CEO's and CFO's***
- ***Transformation to chairman of the Audit Committee***
- ***Primary Board contact for the outside auditor***



Governance Issues

- ***Nomination and election of directors***
- ***Director compensation***
- ***Performance expectations***
 - ***Board self-evaluation***
 - ***Director education and development***
 - ***CEO evaluation***
 - ***Attorney evaluation***
 - ***Auditor evaluation***



Director Compensation

- *Three components to determining director compensation*
 - *What are directors being paid to do?*
 - *How are directors being paid?*
 - *How much should directors be paid?*
- *AIE Board of Trustees*
 - *No compensation for service other than reimbursement for expenses incurred in conformance with Board policy*



Director Compensation

NACD principles:

- 1. Director compensation should be determined by the Board and disclosed completely to the members*
- 2. Director compensation should be aligned with the long-term interest of the members*
- 3. Compensation should be used to motivate director behavior*



Director Compensation

NACD principles:

4. Directors should be adequately compensated for their time and effort.

5. Director compensation should be approached on an overall basis, rather than as an array of separate elements.



Director Compensation

- *Legal authority*
 - *State statutes*
 - *Cooperative bylaws*
 - *Board policy*
- *Methodology*
 - *Reliance on comparable data*
 - *Review prior to making determination*
 - *Concurrent documentation (minutes)*



Performance Expectations



- *Board self-evaluation*
- *Director education and development*
- *CEO evaluation*
- *Attorney evaluation*

