

## FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions (FAQ) document provides detailed information about the proposed changes to the ANSI Constitution and By-Laws ("By-Laws"). Please review this FAQ to learn more about the background of this project, the process followed that resulted in the proposed changes and the rationale for the key changes being proposed.

### 1. Question: Why is ANSI proposing to amend its By-Laws?

**Answer:** The last comprehensive review of the ANSI governance structure took place in 2002. Since that time, much has changed in the standards and conformity assessment world and much has changed at ANSI as well. For example, ANSI recently completed an acquisition of ASQ's 50% share of the ANSI-ASQ National Accreditation Board, LLC (ANAB), making ANSI the 100% owner of this Wisconsin LLC. In addition, the New York Not for Profit Law, which controls ANSI's governance and operations, has been significantly revised over the past few years. And a number of members independently encouraged a review of the By-Laws. For all these reasons, the ANSI Officers brought those requests to the attention of the Executive Committee with the suggestion that a governance advisory task group (GATG) be formed to review the By-Laws, with Art Cote serving as its chair.

The Executive Committee agreed that it was time once again to take a high-level look at ANSI and asked that the GATG determine whether ANSI could be doing things more productively and effectively, and thereby better serve the needs of our members. The Executive Committee also asked that the GATG confirm that volunteers making decisions on behalf of ANSI are fiduciaries of ANSI and subject to appropriate conflict-of-interest requirements. Finally, the Executive Committee asked that the GATG reduce or eliminate ambiguity and redundancy in the By-Laws, better align the document with current practices, and develop a more robust code of conduct.

### 2. Question: Who participated in the GATG and how did they approach their task?

**Answer:** The GATG was comprised of the chairs of ANSI Policy Committees and Program Oversight Committees, along with other interested current and former Board members. To jumpstart the work of the GATG, the chair circulated a number of questions in advance of the first meeting addressing a variety of potential topics, including whether:

- the Board and the ExCo are the right size;
- the current governance structure properly captures the importance of various committees;
- ANSI's reporting structure should be simplified;
- ANSI's Program Oversight Committee chairs should be added to the ExCo and Board *ex officio*;
- the By-Laws should clarify that voting members of decision-making bodies of ANSI owe fiduciary duties to ANSI;
- ANSI's "code of ethics" should be replaced by a "code of conduct" that is expanded in scope to prohibit abusive behavior directed at other ANSI members or staff;

- the Policy Committees should be re-designated "Policy Advisory Groups" to refocus their purpose;
- jurisdictional issues between various committees exist and, if so, can be further clarified;
- the Copyright Group be separated from the IPRPC;
- the duties of the Conformity Assessment Policy Committee should be reframed in light of acquisition by ANSI of ASQ's 50% interest in ANAB and
- the scope of indemnification currently provided by the By-Laws is sufficient.

### 3. Question: Did the Executive Committee and Board review the work of the GATG?

**Answer:** Yes. The GATG met several times from August through late October during which the members reviewed and extensively discussed every paragraph of the existing By-Laws. The GATG's tentative thoughts were then incorporated into a series of drafts reflecting their proposed organizational changes and edits to the By-Laws. On October 31, 2018, the GATG met via a final teleconference at which time a consensus was achieved and the group expressed general satisfaction with and support for the final draft. The draft was then presented to the Executive Committee in November and approved with certain minor changes. It was then reviewed by the ANSI Board of Directors on December 5, 2018, and the Board recommended that the changes be distributed to ANSI members in accordance with the current By-Laws.

### 4. Question: What changes were made to ANSI's structure?

**Answer:** The proposed new By-Laws simplify and flatten ANSI's organizational structure. In the new structure, the four "Committees of ANSI," (*i.e.*, the Executive Standards Council (ExSC), the Board of Standards Review (BSR), the ANSI ISO Council (AIC) and the USNC Council) will all report to the Executive Committee. While this is the case for the AIC and USNC Council under the current By-Laws, it will now also be true for the ExSC and BSR under the proposed new By-Laws. In other words, the ExSC and BSR will no longer report to the National Policy Committee but, instead, report directly to the ExCo.

### 5. Question: Have the roles of the four Committees of ANSI changed?

**Answer:** Fundamentally, the roles of the ExSC, BSR, AIC and USNC Council will remain the same. But the proposed new changes add clarity about the role and responsibilities of these four ANSI Committees and new language seeks to remove any ambiguity on the question of "who does what?" For example, questions have been raised about which committee at ANSI is ultimately responsible for the ANSI Patent Policy. The proposed By-Laws removes any ambiguity that the ExSC is responsible for the entirety of the Essential Requirements, including the ANSI Patent Policy, and will continue to look to the Intellectual Property Rights Advisory Group (IPRPAG) (*see below*) for guidance on issues relating to the ANSI Patent Policy.

### 6. Question: Why have the four Committees of ANSI been singled out for different treatment?

**Answer:** These Committees as well as the ExCo and Appeals Board are responsible for making decisions for ANSI. As a result, all members of these groups are fiduciaries of ANSI, subject to Conflict of Interest requirements, just like Board members. A fiduciary owes a duty of care and

loyalty to the party on whose behalf it is acting. A fiduciary is legally and ethically bound to act in that party's best interests. Under the law, ANSI must ensure that individuals who make decisions on its behalf are authorized to do so, have a legal responsibility to ANSI and are not otherwise motivated to act by commercial or other conflicting interests. Under the new By-Laws the members of these four Committees of ANSI, like ANSI Board members, must agree to abide by ANSI's new Conflict of Interest Policy.

**7. Question: What happens to the current ANSI Policy Committees?**

**Answer:** The proposed new By-Laws clarify that Policy Committees, now called Policy Advisory Groups (PAGs), are advisory in nature and that their members are not fiduciaries and not subject to Conflict of Interest requirements. The change in name, however, will not change the basic role that these PAGs will continue to play. With the exception of the CAPC (which will be removed because of the ANAB acquisition), the PAG Chairs will continue to provide key input on policy matters and sit on the ExCo and Board in an *ex officio* capacity.

**8. Question: What will the new PAGs do?**

**Answer:** The PAGs will: (i) provide a place for discussion, analyses and recommendations from experts and other parties who have an interest in the subject matter of the PAG; (ii) provide a mechanism for “early warning” of relevant trends within the expertise of the PAG; (iii) address issues of interest to the PAG; and (iv) identify broader-based issues and trends and, where appropriate, recommend that they be addressed by the Executive Committee. The next few FAQs address what each of the PAGs will do.

**9. Question: What will be the role of the National Policy Advisory Group (NPAG)?**

**Answer:** The NPAG will provide views and propose policies regarding national standards and conformity assessment issues, including related public policy issues. The NPAG will also respond to requests for input from time to time from the Board, Executive Committee, Committees of ANSI, Forums and other PAGs.

**10. Question: What will be the role of the International Policy Advisory Group (IPAG)?**

**Answer:** The IPAG will provide views and propose policies regarding regional and international standards and conformity assessment issues, including related public policy issues. The IPAG will also respond to requests for input from time to time from the Board, Executive Committee, Committees of ANSI, Forums and other PAGs.

**11. Question: What will be the role of the Intellectual Property Rights Policy Advisory Group (IPRPAG)?**

**Answer:** The IPRPAG will provide views and propose policies regarding the incorporation of essential patents or other proprietary intellectual property (such as trademarks and software) in national, regional or international standards. The IPRPAG will also provide views and propose policies regarding exploitation rights to the copyright in standards and the recognition of copyright

protection for standards by courts, legislation, regulatory bodies, industry and others. Finally, the IPRPAG will respond to requests for input from time to time from the Board, Executive Committee, Committees of ANSI, Forums and other PAGs.

**12. Question: What is the impact on the By-Laws of ANSI's recent acquisition of ASQ's 50% interest in ANAB?**

**Answer:** ANSI recently signed an agreement to acquire ASQ's 50% interest in what has been known as ANSI-ASQ National Accreditation Board, LLC (ANAB). ANSI and ASQ were previously 50% owners of ANAB. The acquisition creates a new legal entity with a new name but the same acronym, the ANSI National Accreditation Board (ANAB). The transaction is scheduled to officially close on December 28, 2018 and, at that time, ANSI's conformity-assessment accreditation employees, under the leadership of Lane Hallenbeck, will be blended into ANAB's workforce, with Lane taking the position of Executive Director of the new ANAB. The two brands (ANSI and ANAB) will continue business as usual in the near term while ANSI works to integrate its accreditation programs for conformity assessment bodies with ANAB's portfolio of services.

This means there is no longer a role for the Conformity Assessment Policy Committee (CAPC), at least not in its current form, and no longer the need for the CA-related accreditation committees involved in ANAB accreditation decisions to be described in the current By-Laws. Thus, among the new proposed changes to the By-Laws is eliminating reference to those accreditation committees and a redistribution of CAPC's duties to the National and International PAGs, as noted above, while ANSI separately undertakes an examination of what kind of forum or other body, if any, should be created at ANSI to address conformity assessment matters exclusively. In the meantime, the International Conformity Assessment Committee (ICAC), which is not a By-Laws-level committee, will continue to serve as the "mirror committee" (analogous to TC related Technical Advisory Groups) to ISO's Committee on Conformity Assessment (CASCO) as it has in the past, but under the auspices of the ExSC. (See Question 16 below.)

**13. Question: Why do the By-Laws include a new Code of Conduct?**

**Answer:** ANSI's current Code of Ethics was developed in a different, more civil, and less contentious era. It has been unable to keep up with the sort of challenges currently being experienced at ANSI and elsewhere. The GATG felt that a new and more robust Code of Conduct was necessary to set clear rules for minimum acceptable conduct by ANSI Participants and that it should be expressly referenced in and made an exhibit to the By-Laws

The proposed new Code of Conduct: (i) applies to all ANSI participants, including members of Committees of ANSI, Forums and PAGs; (ii) seeks to protect all ANSI participants, including staff from abusive behavior and/or unacceptable practices; (iii) provides specific guidance on how participants should and should not behave in specific situations; and (iv) has "teeth" – for the first time it contains a provision stating that violations "will result in disciplinary action, including termination of membership status at ANSI." The Board approved the new Code of Conduct at its meeting on December 5, 2018 and the document is currently in effect.

14. Question: How do the proposed new By-Laws deal with the issue of balance?

**Answer:** No changes are made to the text of the current By-Laws regarding the use of the word "balance," which is one of several factors the Board Nominating Committee considers when selecting new Board members.

The word "balance" is also used in the ANSI Essential Requirements, but means something different in that context. In the Essential Requirements, the word "balance" means that "no single interest category constitutes more than one-third of the membership of a consensus body dealing with safety-related standards or no single interest category constitutes a majority of the membership of a consensus body dealing with other than safety-related standards." *See* Essential Requirements at Section 2.3.

In the By-Laws, however, the word "balance" is not used in such a numeric fashion. The By-Laws use the word "balance" to convey a diversity of member input without dominance by any one group. "Balance" defined this way is considered by the Board Nominating Committee in selecting Board candidates, along with a number of specific characteristics, such as expertise, background, leadership skills, willingness to participate and inter-organizational relationships. "Balance" defined in this fashion is also one of the measures used in selecting new members to other committees of ANSI, in accordance with the operating procedures of those committees.

15. Question: Can you identify some of the other changes that are being proposed?

**Answer:** Yes, the By-Laws:

- include a "Basic member" category, which was created by the Board some time ago; basic members enjoy limited ANSI benefits and they are not entitled to vote;
- provide greater detail about the duties performed by the ExCo, including approving:
  - the Essential Requirements, International Procedures and USNC Statutes and Rules of Procedure;
  - recommendations originating with the ExSC, BSR, AIC and USNC Council, Policy Advisory Groups (PAGs) and Forums;
- clarify that certain member groups/forums are open to all while other committees are not open, unless approved by the committee chair;
- streamline the Nominating Committee procedures;
- update the Conflict of Interest Policy to better align that Policy with the New York Revitalization Act, as amended;
- clarify the By-Laws indemnification procedures;
- relocate the Appeals Board to the "Dispute Resolution" section of the By-Laws in recognition that it serves a specialized role; and
- generally update and refresh the By-Laws, removing unnecessary language and clarifying administration issues, such as changing the requirement that only the President is permitted to send notices, stating instead that the President can utilize staff to perform such administrative matters.

**16. Question: What about other ANSI Committees that are not mentioned in the By-Laws (current or proposed)?**

**Answer:** The By-Laws are comprehensive but they don't tell the entire story of ANSI or describe all of its operating groups. For example, our international staff administer technical advisory groups (TAGs), the International Conformity Assessment Committee (ICAC), and various groups that support bilateral and regional engagement. These groups are not included in the proposed new (or current) By-Laws. Similarly, ANSI hosts the ANSI ISO Forum, the Committee on Education, the Copyright Group and other like committees that do not appear in the proposed new (or current) By-Laws. All of these committees will continue as they always have. As noted above, the ICAC will continue to operate as it does now except that instead of reporting to the now-removed CAPC, it will be treated like other TAGs, pursuant to the International Procedures administered by the ExSC.

**17. Question: What are the next steps to approve the new By-Laws?**

**Answer:** Under Section 11 of the existing By-Laws, which addresses the manner by which ANSI's By-Laws are amended/approved, the proposed changes described in this FAQ have been published in "What's New" and sent to all ANSI Full Members for input and comment. During the next forty-five-day period (extended from 30 because of the holidays), you are invited to submit comments relating to these proposed amendments. These comments will be reviewed by the Executive Committee at its March 2019 meeting and by the Board at its May 2019 meeting. If the Board is satisfied with the resulting amendments, it may approve the new By-Laws for implementation in January 2020.

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For more information, please review the attached marked-up version of the By-Laws that reflect specific edits and provide explanatory annotations.