

CODE OF CONDUCT FOR

THE MUSEUM OF MODERN ART

THE MUSEUM OF MODERN ART CODE OF CONDUCT

I. GENERAL STATEMENT

As the preeminent preserver and presenter of modern and contemporary art and design, The Museum of Modern Art (the "Museum") is always in the public eye. The Museum is an educational resource deemed worthy of tax-exempt status. Its donors know that their financial support will be used in furtherance of the Museum's stated mission; its Trustees, staff and volunteers believe that their efforts on behalf of the Museum are well spent. The issue of public trust demands that in all activities, Museum staff act with integrity and in accordance with the most stringent ethical principals, as well as the highest standards of objectivity. The Museum is committed to integrity as the fundamental guiding principle for its Trustees, officers and committee members (hereinafter collectively referred to as "Trustees") and for its employees, volunteers and others who act on its behalf (hereinafter collectively referred to as "employees"). The Museum has prepared this Code of Conduct to reaffirm this commitment.

The guidelines contained in this Code are designed to assist you in making the right choices when confronted with difficult situations. In such instances, this Code requires that you not rely solely on your own judgment but instead discuss the matter in full with your supervisor if you are an employee, or, in appropriate circumstances, with the Office of the General Counsel. Full and timely disclosure of the facts in such instances is essential. It shall, of course, be the responsibility of all those having supervisory authority to assure consistent adherence to this Code and any procedures developed pursuant to it, in letter and spirit, and, when appropriate, to obtain legal or other advice through normal channels.

The Code imposes requirements that are often more exacting than those mandated by law, reflecting the Museum's goal of conducting itself with the highest level of integrity. The willingness of each of us to raise ethical and legal concerns is essential. Ultimately, the responsibility for ethical behavior rests with each of us in the exercise of our independent judgment.

The Museum also expects its Trustees/employees to recognize and avoid activities and relationships that involve or might appear to involve conflicts of interest, and behavior that may cause embarrassment to the Museum or compromise its integrity.

The following principles are intended to guide Trustees/employees in recognizing these situations:

- The Museum and its Trustees/employees will abide by the letter and spirit of all applicable laws and regulations and will act in such a

manner that the full disclosure of all facts related to any activity will reflect favorably upon the Museum.

- The Museum and its Trustees/employees will adhere to the highest ethical standards of conduct in all activities and will act in a manner that enhances the Museum's standing as a vigorous and ethical contributor within the community.
- The Museum will deal fairly and honestly with those who are affected by its actions and treat them as we would expect them to treat us if the situation were reversed.
- The Museum will undertake only those activities that will withstand public scrutiny and not pursue any course of action that involves a violation of the law or these principles.
- The Museum will promote relationships based on mutual trust and respect and provide an environment in which individuals may question a practice without fear of adverse consequences.
- Each of us will abide by the Museum's Conflict of Interest Policy (see Section II of this Code), will disclose any potential conflict of interest we may have regarding our responsibilities to the Museum and will remove the conflict as required.

We expect outside colleagues, e.g., vendors, consultants and others whose actions could be attributed to the Museum, to adhere to the same standards in their dealings with us and with others on our behalf.

A Trustee/employee who has a question regarding the application or interpretation of the Code should use the procedure specified in Section II, *Compliance with the Code*.

II. CONFLICTS OF INTEREST; COMMITMENT TO THE MUSEUM

Conflicts of Interest

Employees owe their first professional loyalty to the Museum and their primary energies to fulfilling conscientiously the responsibilities of their Museum employment. Trustees also owe a duty of loyalty to the Museum which requires that they act with undivided allegiance to the mission of the Museum and without regard to personal interests. Trustees/employees should never abuse their official positions or their contacts within the museum community or with the public. Trustees/ employees should disclose and, where required, refrain from any activity which might conflict or appear to conflict, with the interests of the Museum. It is the responsibility of all Trustees/employees of the Museum to familiarize themselves with the Museum's Conflict of Interest Policy, to comply with its requirements and, in appropriate cases, to

assure that members of their families and friends are fully familiar with and do not violate the policy. It is contrary to Museum policy:

(1) For a Trustee/employee, or his/her "Family Members" ("Family Members" being defined as a spouse, domestic partner, parent, child, friend or any other person or entity with whom the Trustee/employee is closely identified) to hold a financial or management interest in, or maintain a relationship with (i) a supplier or customer of the Museum, (ii) any enterprise which extends financing accommodations to, or receives such accommodations from, the Museum, or (iii) any other entity that does business with the Museum, unless such interest is fully disclosed, in the case of Officers and Trustees, to the Office of the General Counsel, and in the case of staff, to the Deputy Director of Policy, Planning and Administration, and the Trustee/employee is able to remove himself or herself from any position capable of influencing or affecting the business relationship between the Museum and the entity in which or with whom the Trustee/employee has the interest or relationship. A Trustee/employee shall not be deemed to have an interest in or relationship with any corporation, firm, association or other entity whose securities are publicly traded solely because such person together with such person's parents and spouse, and all descendants of either such person's parents or such person's spouse, own in the aggregate, or have an aggregate beneficial equity interest, less than 5 percent of the such company's shares.

(2) For a Trustee/employee, or any Family Member, to have any interest in or relationship with another museum or a company engaged in enterprises similar to the Museum, unless such interest or relationship has been fully disclosed and approved in writing by the Director of the Museum.

(3) For a Trustee/employee to do business with or hire a Family Member (or a company with which a Family Member is associated) on behalf of the Museum unless the facts are disclosed and written approval is received in advance from the Director of the Museum.

You should avoid situations in which a conflict of interest, or the appearance of a conflict, could arise.

Outside Work

While the Museum requires members of its staff to devote their working day to performing their job responsibilities, it recognizes that it may be in its best interests for staff to participate in certain outside activities. However, it is the Museum's policy that, during normal working hours, staff shall not engage in "outside employment," except for scholarly activity as outlined below. "Outside employment" is an activity, including self-employment and paid consulting activities, which is similar or related to the work staff perform for the Museum.

Staff is encouraged to pursue "scholarly activity" independent of Museum duties, provided that such activity is approved in advance by the relevant Department Head or

Deputy Director and does not interfere with the staff member's performing Museum responsibilities. "Scholarly activity" includes teaching or lecturing, serving on committees or juries for art exhibitions or competitions, writing books or articles other than those requested through the Museum [advising on acquisition of works of art, or on architecture and design projects, filmmaking, etc.], with or without remuneration. Teaching one course at an institution of higher learning is encouraged, provided that the commitment is not beyond a specific course in a semester. Should a staff member undertake a project that involves writing on a subject within the scope of employment, the text must be offered to the Museum first, which will have the option to exercise its publication rights.

Staff may engage in outside employment provided that it is undertaken during off-duty hours and in accordance with the following guidelines:

- Outside employment must not interfere with a staff member's ability to perform assigned Museum work nor may it reflect adversely on the Museum's reputation.
- Staff is expected to exercise reasonable judgment regarding the appropriateness and/or propriety of outside employment. Outside employment should not be accepted if it creates a conflict of interest or the appearance of a conflict of interest. In particular, conflicts may be presented by employment offered by art dealers, auction houses, collectors seeking to catalogue their collections or otherwise seeking professional advice, museums, publishers, manufacturers or consultants to such entities. Staff should carefully contemplate the potential for conflicts of interest between such employment and service to the Museum. These issues must be discussed with the appropriate Deputy Director and must be approved by the Director before undertaking the outside employment.
- Staff shall not use the Museum's name in connection with outside employment. The Museum does not permit its name to be used in advertisements or endorsements of commercial products, equipment or services except with the advance written approval of the Director of Communications.
- The relationship between Trustees and staff is naturally close and mutually beneficial to the Museum. Nonetheless, Trustees should not use their position to obtain unreasonable or excessive services or expertise from the staff of the Museum. Trustees should not retain staff to perform personal services, and staff shall not provide services to Trustees for which they receive compensation, unless approved in writing by the Director of the Museum.
- Outside employment conducted on the Museum's premises is not permitted without advance approval by the Deputy Director of Policy, Planning and Administration. There should be neither the fact nor the perception that any staff member is conducting a separate business for which he or she is using the Museum's facilities or equipment. The use of Museum equipment and facilities by independent contractors for outside employment is not permitted under any circumstances.

- The use of Museum materials (office supplies, office services, telephone, e-mail address postage, etc.) for outside employment or personal use is not permitted. The Museum will not be responsible for any loss or damage that may occur while staff is engaged in outside employment, either inside or outside of the Museum.

Approval of any outside employment or activity is effective only until revoked and may be revoked by the Museum at any time. If you fail to secure and retain approval, you may be subject to disciplinary action, up to and including discharge.

Outside Associations and Activities

The Museum encourages employees to participate in the activities of voluntary and professional organizations. Such activities are strongly encouraged in the interests of service to the public and the development of the individual. However, in situations of possible controversial or sensitive nature, all members of the Museum are expected to seek the guidance of the appropriate Deputy Director before making commitments that may be potentially harmful to the Museum's interest.

It is not the intent of this Code to discourage participation by members of the organization in civic, welfare, political and similar activities. However, you may not work or solicit for such organizations on Museum time nor may you use Museum materials, equipment, facilities, name or reputation for the benefit of such organizations, except with the prior written approval of the appropriate Deputy Director.

Endorsement of products or services is prohibited unless authorized in writing by the Director of the Museum.

Personal Collecting

The acquiring, collecting and owning of objects can enhance professional knowledge and judgement. However, the acquisition, maintenance and management of a personal collection by a Trustee/employee can create an ethical question. Extreme discretion is required whenever a Trustee/employee collects objects similar to those collected by the Museum. No Trustee/employee or Family Member may knowingly compete, directly or indirectly, with the Museum for the purchase of works of art that are, or may be, of interest to the Museum.

Similarly, no Trustees/employees or their Family Members may knowingly purchase deaccessioned works of art directly or indirectly from the Museum or at auction if consigned by the Museum. No Trustee/employee or family member may, directly or indirectly, sell works of art to the Museum except at a price substantially below fair market value, as determined by an independent appraisal, and upon terms approved by the appropriate Acquisition Committee. Notwithstanding the foregoing, in rare instances, the Museum may purchase a work of art owned by a Trustee/employee

indirectly at an auction, upon the recommendation of the Director, after full disclosure of the facts and circumstances surrounding such sale and approval of the Executive Committee and/or the Board of Trustees without the presence and vote (in the case of a Trustee) of the Trustee/employee in question.

Gifts

Conflicts of interest may arise in the areas of gifts and entertainment. Giving or accepting gifts and entertainment can sometimes be construed as an attempt to unduly influence a relationship. All gifts to the Museum, including gifts of any kind to curatorial departments, must be processed through the Director of Development, and, if relevant, in accordance with the Museum's Collections Management Policy. No personal gifts should be offered or received where the gift could be viewed as intended to influence a person in the exercise of proper business or professional judgment. In order to avoid conflicts of interest and the appearance of impropriety, you must obtain the consent of the appropriate Deputy Director before accepting gifts of any kind from individuals or organizations doing business or wishing to do business with the Museum. This includes, but is not limited to, artists, dealers, auction houses, press, and suppliers of goods or services to the Museum. Museum staff may not accept gifts valued, individually or in combination with other gifts from the same source, at more than \$100 in any calendar year. Works of art or other materials left with the Museum for exhibition or study may not be retained by museum staff without specific approval from the Director. Gifts of money are never permissible.

Attending occasional lunch or dinner meetings hosted by others may be necessary when conducting Museum business. However, you are reminded that you must exercise extreme discretion in accepting invitations to dinners, lunches or other forms of entertainment offered by individuals or organizations doing or wishing to do business with the Museum. Your judgment should tell you when an invitation to such a meeting or event is improper and should be refused to prevent embarrassment and to avoid what may be an unintentional violation of this policy or the law.

As a Museum employee, you may have the opportunity to work closely with artists in planning exhibitions and publications or through other Museum-related activities. While an artist may wish to acknowledge a Museum employee's efforts through a gift of artwork to the employee, these gifts present another area of potential conflict. In such situations, the employee must promptly disclose the gift to his or her Department Head (or, if the gift is made to a Department Head, to the Director), who will determine whether the work in question is of nominal value and may be accepted or if it warrants presentation to the relevant Museum acquisition committee.

Federal and state laws restrict the ability to give a gratuity to government employees, including politicians. These laws specifically prohibit giving a gratuity to a government employee in connection with a business transaction. The giving of a gratuity is not permitted even if done without the intent to influence some official action.

III. CONDUCTING THE MUSEUM'S BUSINESS

Proper Use of the Museum's Funds

The Museum's activities involve hundreds of financial transactions each day, requiring strict rules to guard against fraud or dishonesty and guidelines for addressing possible problems that may arise. All managers should establish appropriate internal controls over all areas of their responsibility to ensure the safeguarding of the Museum's assets and the accuracy of financial and all other records and reports. Established accounting practices and procedures must be followed to assure the complete and accurate recording of all transactions. All employees, within their areas of responsibility, are expected to adhere to these established controls.

If you become aware of any improper use of the Museum's resources, you should report the matter immediately. To be certain the Museum's policies on proper use of resources are carried out, you are expected to observe the following longstanding accounting rules:

- Make outside payments only with a Museum draft or check or through other properly documented sources. No payment on behalf of the Museum should be approved or made without adequate supporting documentation or with the intention or understanding that any part of the payment is to be used in any way other than as described in the supporting documents.
- Do not establish any undisclosed or unrecorded corporate account, fund or asset for any purpose.
- Get proper authorization before opening any new account, either on the Museum's books or with an outside agency, such as a bank.
- Do not use any account for a misleading purpose or to conceal the existence or use of any corporate resource.
- Record every payment to and every transaction with an outside party on the Museum's books promptly, accurately and through normal financial reporting channels.

If you are involved in or accountable for any such transaction, you are expected to make sure a prompt and accurate accounting is made.

You are also expected to select the Museum's business partners solely on their merits, in the best interest of the Museum, and without regard to non-business-related

considerations. The following is an example of the kinds of relationships with business partners that is prohibited:

Personal financial involvement or ownership of a substantial interest that has not been disclosed and approved in accordance with this Code in organizations with which the Museum does business, such as vendors, suppliers, agents, customers, contractors, licensees or sponsors.

Museum policy with regard to conflicts of interest is described in greater detail above in Section II.

Anything that would constitute improper or questionable behavior on the part of an employee is also unacceptable if engaged in through a related third party, such as a spouse, domestic partner, other family member, friend or any other person or entity with whom the employee is closely identified or in which he or she has any significant ownership or financial interest or position.

If you detect or suspect that an employee or agent of the Museum, or any person with whom the Museum deals, is behaving in a manner inconsistent with this Code or the law, you should report it immediately so that the appropriate investigation is initiated.

If evidence of a violation of this Code is established, any involved employee or agent is subject to discipline up to and including termination. Any such evidence will be reviewed by the Deputy Director of Policy, Planning and Administration and, if necessary, the Office of the General Counsel. When appropriate, the Museum will refer matters to the authorities for prosecution.

Fundraising

As a charity, the Museum relies heavily on contributions from donors to support its many activities. Trustees/employees are encouraged to support this fund raising effort but must coordinate all activities with the Director of External Affairs. Monies or other items received on behalf of the Museum as gifts should be deposited immediately in Museum accounts.

Charitable contributions from vendors to the Museum may raise issues implicating federal and state laws, and may also present tax-related concerns. All such contributions should be reviewed by the Development Department and accepted on behalf of the Museum by the Deputy Director for External Affairs. Care should be taken when soliciting or receiving such contributions that the contributor not be led to believe, either directly or indirectly, that the contribution will affect the Museum's professional judgment regarding the goods or services it purchases, recommends or provides.

Tax

The Museum is exempt from taxation by the federal, state and local governments. In order to maintain this exemption, which is critical to the Museum's mission and continuing operations, the Museum must operate for the benefit of the public and must avoid violating the tax code by using its funds for the unjust enrichment of any individual or entity at the organization's expense. Violation of the tax law can give rise to criminal penalties as well. Questions on tax issues should be referred to the Office of the General Counsel.

Care must also be taken that the Museum's sales tax exemption is used only for legitimate Museum activities. Personal items must not be purchased through the Museum even if the Museum is reimbursed by the Trustee/employee.

IV. POLITICAL PARTICIPATION.

It is understood that Trustees/employees can and do participate in political campaigns in their individual capacities, on their own time and without any use of Museum resources. However, such persons must take steps to ensure that their individual participation will not be attributed to the Museum or make use of Museum resources. The Museum does not endorse political candidates or participate in political campaign activities. No Museum Trustee, Officer, staff member or volunteer may participate in any political campaign on behalf of the Museum or engage in any other activity that would lead an outsider to believe that the Museum is supporting or opposing a candidate for public office. This prohibition covers activities such as making campaign contributions, organizing or encouraging the purchase of tickets to political fundraising events, using Museum facilities or resources for campaign-related activities, and publishing, making, or distributing statements for or against any candidate, where such activities are -- or may appear to be -- undertaken on behalf of the Museum.

Certain Museum activities are supported, in part, with funds received from the City of New York, New York State and the Federal Government. The Museum has elected officials, Ex-Officio, on its Board of Trustees. Nothing in this policy is intended to limit the Museum's ability through its Trustees, Officers, staff members, or volunteers to seek and accept governmental support, or prohibit elected officials from participating in the Museum's governance and activities. Any Trustee/employee who has questions regarding this policy should consult the Office of the General Counsel.

It is important to distinguish between personal and organizational political activities. As a responsible citizen, the Museum occasionally will speak out on issues of importance to it. Senior management is responsible for developing the Museum's position on relevant legislative and regulatory issues. Unless you are specifically requested by the Museum to represent it before legislative or other governmental bodies, be sure you clearly label any personal communication with legislators as your own beliefs. If you are contacted by legislators or regulators regarding the Museum's position on public issues, you should refer them to the Public Affairs Department.

Any Museum Trustee, Officer, staff member or volunteer who has questions

should consult The Museum of Modern Art Policy on Political Activity or the Office of the General Counsel.

Lobbying

Certain management personnel may periodically be called upon by the Museum to make contact with members of city, county, state or federal legislative bodies and other officials to set forth and advocate for the Museum's positions on issues. These persons are expected to abide by all applicable laws at all times. Any person who attempts to influence any legislative, executive or other governmental action, official or employee on behalf of the Museum may be required to register as a lobbyist and file certain reports concerning his or her activities. There are also registration and reporting requirements as well as explicit limitations on lobbying that apply to the Museum. In addition, some laws provide rules of conduct for lobbyists. With respect to lobbying, it is the Museum's policy that no gifts, meals or gratuities be given to government personnel without prior authorization from the Director's Office. To assure that these laws and policies are fully complied with, it is expected that no Trustee/employee will engage in lobbying without authorization from the Director of the Museum.

The Museum also periodically engages lobbyists or lobbying firms to help promote its interests, and has established internal controls to assure that all activities are legal. Written authorization must be obtained from the Director of the Museum prior to engaging any lobbyist, outside legal counsel or consultant to lobby for or otherwise promote the Museum's interests on any legislative, regulatory or other governmental issue.

V. MUSEUM INFORMATION

Ownership of Assets and Intellectual Property

The objects in the Museum's collections, their documentation and all additional documentation developed subsequent to or in connection with their acquisition or maintenance are the property of the Museum. Any and all materials or items developed, written, designed, drawn, painted, constructed or installed by employees while carrying out their responsibilities as employees of the Museum are the property of the Museum. Unless otherwise agreed in writing by both the employee and the Director of the Museum, the Museum is the sole owner of any materials written, designed or produced by an employee in the scope of his or her employment by the Museum, or through the use of Museum equipment and/or assets, including all copyrights and other intellectual property rights in and to these materials.

Confidentiality of Museum Information

One of the Museum's most valuable assets is its body of confidential information. The widespread use of computer terminals and computer systems has caused information about the Museum's collections, donors, projects and similarly

sensitive matters to be accessible to many employees. Failure to protect this information adequately can lead to the loss of highly confidential data that may place the Museum legally at risk. Because of this risk of harm to the Museum, no employee shall, without the written consent of the Museum during or subsequent to the term of employment, use for the benefit of such employee or others or disclose to others any confidential information obtained during the course of employment. Of course, these same principles apply to the safeguarding by Trustees of the Museum's confidential information.

Confidential information includes the Museum's methods, processes, techniques, computer software, equipment, servicemarks, copyrights, research data, marketing and sales information, personnel data, donor lists, member lists, non-public information about the collection, financial data, plans and all other know-how and trade secrets which are in the possession of the Museum and which have not been published or disclosed to the general public.

As a Trustee/employee, you are responsible and accountable for the integrity and protection of the Museum's proprietary information and must take steps to protect information that has been entrusted to you. For example, you must not make inappropriate modifications of information or destroy or disclose information except as authorized. Documents containing sensitive data should be handled carefully by employees during work hours and must be properly secured at the end of the business day. Particular attention must be paid to the security of data stored on the computer system. If you observe unknown individuals using terminals in your area, immediately report this to your supervisor.

Information Owned by Others

Like the Museum, other organizations and individuals have intellectual property they want to protect. Like the Museum, these other parties are sometimes willing to disclose their confidential information for a particular purpose. If you are on the receiving end of another party's confidential information, you must proceed with caution to prevent any accusations that you or the Museum misappropriated or misused the information.

To avoid the risk of you or the Museum being accused of misappropriating or misusing someone's confidential or restricted information, there are certain steps you should take before receiving such information. The receipt of confidential or restricted information, whether oral or in writing, must not take place until the terms of its use have been formally agreed to by the Museum and the other party in a written agreement approved by the Office of the General Counsel. Furthermore, unless otherwise delegated, establishing such an agreement for the receipt of confidential or restricted information of another party will require the prior written approval of a Deputy Director. Once another party's confidential or restricted information is properly in your hands, you must not use, copy, distribute or disclose that information unless you do so in accordance with the terms of the agreement.

In any case, do not take the status of information for granted. If you have information in your possession that you believe may be confidential to a third party or may have restrictions placed on its use, you should consult with the Office of the General Counsel.

VI. STAFF MANUAL

The Museum's Staff Manual addresses many of the issues addressed in the Code, as well as a number of other policies not directly addressed in the Code, but of equal importance. Familiarity with and adherence to the Staff Manual is a responsibility of each employee. In the event of any conflict or inconsistency between the Staff Manual and the Code, the Code shall take precedence and be controlling.

VII. COMPLIANCE WITH THE CODE

Questions Regarding the Code

The Office of the General Counsel, with the assistance of the staff of the Department of Human Resources, is responsible for implementation of the Code and the Conflict of Interest Policy that is incorporated within the Code. An employee who has a question regarding the applicability or interpretation of the Code should direct the question to the Deputy Director of Policy, Planning and Administration, to whom the Department of Human Resources reports. Correspondence relating to the Code should be addressed to the Deputy Director for Policy, Planning and Administration and marked "CONFIDENTIAL." Trustees with questions concerning the Code should raise them with the Office of the General Counsel.

Reporting of Violations

As part of its commitment to ethical and legal conduct, the Museum expects its employees to bring to the attention of the Deputy Director of Policy, Planning and Administration or the Office of the General Counsel information regarding suspected improper conduct under the Code. Suspected violations of the policies contained in the Staff Manual, such as, but not limited to, the Non-Discrimination and Anti-Harrassment Policies must be reported in accordance with the procedures set forth in the Staff Manual. Employees are required to come forward with any such information, without regard to the identity or position of the suspected offender. ***We emphasize the importance of reporting. Failure to report knowledge of wrongdoing may itself result in disciplinary action against those who fail to report. There will be no reprisals for good faith reporting of actual or possible violations of the Code. Where possible, the identity of the employee making the report will be kept confidential.***

Investigation of Violations

All reported violations of the Code will be promptly investigated by the Museum and will be treated confidentially to the extent consistent with the Museum's interests and its legal obligations.

All investigations by the Museum of wrongdoing will be directed by the Office of the General Counsel in coordination with the Department of Human Resources. Employees are required to cooperate in the investigation of an alleged violation of the Code. If the result of the investigation indicates that corrective action is required, the Museum will decide what steps it should take to rectify the problem and avoid the likelihood of its recurrence.

Discipline for Violations

Disciplinary actions may be taken for:

- Authorization of or participation in actions that violate the Code.
- Failure to report a violation of the Code or to cooperate in an investigation.
- Failure by a violator's supervisor(s) to detect and report a violation of the Code if such failure reflects inadequate supervision or lack of oversight.
- Retaliation against an individual for reporting a violation or possible violation of the Code.

Disciplinary action may, when appropriate, include dismissal. With respect to disciplinary action, principles of fairness will apply, including, when appropriate, review of a disciplinary decision.

Evaluation of Conflicts of Interest

Conflict of Interest Questionnaires must be completed by all Trustees and designated employees (see below) on an annual basis. These, and all reports of actual or potential conflicts of interest, will be reviewed and evaluated initially by the Office of the General Counsel. **Conflicts or potential conflicts identified in accordance with this Code will be handled as follows:**

Employees. The General Counsel shall forward to the Deputy Director of Policy, Planning and Administration the name and the conflict or potential conflict identified for each employee accompanied by a copy of the completed Questionnaire. When necessary, an investigation shall be conducted to determine the facts and circumstances surrounding the conflict or alleged conflict and for recommendation of action warranted, if any. All employees shall have an obligation to answer inquiries in this regard. Such investigations shall be kept confidential, if possible, and no action

shall be taken against an employee based upon his/her participation in such an investigation, in the absence of willful misrepresentation.

Recommendations may include but are not limited to the following: that no action be taken; that the individual identified not be involved in decision making situations relative to those companies or individual(s) listed by the employee; that the individual be requested to resolve the conflict to the satisfaction of the Museum; that disciplinary action be taken, etc. The Director of Human Resources shall notify the supervisors of those employees with identified conflicts and the action to be taken, if any.

Trustees. The General Counsel shall forward to the Nominating Committee of the Board of Trustees the name, the conflict or potential conflict identified for each Trustee and a proposed recommendation for action. Such recommendation shall include but is not limited to the following: that no action be taken; that any conflict or potential conflict involving a Trustee be disclosed to the Board; that the involved Trustee be excused from voting on the pertinent matter; that the individual be requested to resolve the conflict; that the Trustee be requested to resign from the Board, etc.

The Nominating Committee of the Board shall make a recommendation to the Chairman of the Board for decision by the Board at its next regularly scheduled meeting as to the action, if any, to be taken by the Board.

Acknowledgment of Compliance: Conflict of Interest Questionnaire

The Museum requires that all Trustees, Deputy Directors and their equivalents, department heads, purchasing supervisors, finance department supervisors and other selected employees with job tasks or positions of a sensitive nature, as determined by the Director, sign an acknowledgement confirming that they have read the Code and understand it. These individuals must also complete a Conflict of Interest questionnaire annually. Other employees must acknowledge receipt of a copy of the Code.

VIII. INDIVIDUAL JUDGMENT

The foregoing guidelines are to help all of us better understand what we believe to be in the best interest of our Trustees, employees, those with whom we do business and the public at large.

You may need to exercise your individual judgement in deciding on a correct course of action. As you contemplate a particular situation, consideration of the following factors may help you arrive at a satisfactory answer:

Is my action consistent with Museum practices?

Could my action give the appearance of impropriety?

Will the action bring discredit to any Trustee, employee or to the Museum if disclosed fully to the public?

Can I defend my action to my supervisor, other Trustees/employees and to the general public?

Does my action meet my personal code of behavior?

Does my action conform to the spirit of this Code?

Remember always to use good judgment and common sense. This Code is intended to reflect the collective good judgment and common sense of all of us. Whenever you see a situation where this purpose does not appear to be served by the Code, you have the responsibility to bring your concern to the attention of the Deputy Director for Policy, Planning and Administration or the Office of the General Counsel.

Museum of Modern Art
Guidelines Concerning Purchase/Promised Gift Arrangements

From time to time the Museum of Modern Art (the "Museum") has the opportunity to purchase works of art on a joint basis with members of the Museum's Board of Trustees and other private persons, with such persons simultaneously making a binding legal commitment to contribute their interest in the work to the Museum at or before death. Such arrangements, which are referred to as "purchase/promise gift arrangements," may enable the Museum to acquire works of art that it otherwise could not afford. This is especially true in the context of a competitive market that has pushed the price of art to historic highs. These arrangements can be beneficial in that they permit the Museum to expand and diversify its collection while maintaining the flexibility to expend funds on other programs and activities that further its educational mission.

For these reasons, in appropriate circumstances, the Museum will undertake purchase/promised gift arrangements, provided they are entered into exclusively in furtherance of the educational mission of the Museum and are structured and approved in a manner consistent with applicable law and the fiduciary duties of the Trustees.

Accordingly, the following guidelines are adopted to guide the Board and staff of the Museum in the evaluation of whether a proposed purchase/promised gift arrangement is appropriate and advisable:

- 1) The Museum's participation in a purchase/promised gift arrangement must be exclusively in order to advance the curatorial and collecting objectives of the Museum.
- 2) At both the Board and committee level, the prospective purchaser/donor must recuse himself or herself from all decisions about the following questions (each of which should be addressed as part of the Museum's decision concerning a proposed purchase/promised gift arrangement):
 - whether the Museum should acquire a particular work;
 - whether it should acquire the work in a purchase/promised gift arrangement;
 - whether the Museum would be acquiring a sufficiently large undivided fractional interest in the work to make the arrangement worthwhile relative to the associated costs and burdens;
 - whether a particular person should be allowed to be the purchaser/donor;
 - if applicable, whether a particular work should be deaccessioned as part of the arrangement;
 - whether the terms of the proposed arrangement are appropriate in light of these guidelines; and
 - whether to proceed with the proposed arrangement.

- 3) All purchase/promised gift arrangements are subject to oversight and final approval by either the Board of Trustees or its Executive Committee, which must be informed of the circumstances in which the purchase/promised gift arrangement was proposed.
- 4) The Museum must consider the availability of reasonable alternatives for funding an acquisition in order for the Board to make a determination as to whether a purchase/promised gift arrangement is at least as beneficial to the Museum's overall best interests as the other alternatives identified.
- 5) The Museum must consider all relevant factors in order to ensure that the purchase/promised gift arrangement does not result in the purchaser/donor's receipt of value in excess of the cost to him or her of participating in the purchase/promised gift arrangement.
- 6) The Museum must seek and (to the extent feasible and not detrimental to the safety or security of the jointly purchased work) exercise all appropriate rights that will protect its interests as a joint owner and secure its rights as the beneficiary of the promised gift of the purchaser/donor.

Any questions about these guidelines should be referred to the Office of the General Counsel.

APPENDIX

ACKNOWLEDGEMENT

AND

CONFLICT OF INTEREST QUESTIONNAIRE

Please indicate that you have received, read and will abide by this Code of Conduct, and that you will cooperate with the Museum in implementing this statement of policy, by completing and dating the attached Acknowledgement and Questionnaire. Questionnaires are to be returned promptly to the Department of Human Resources, except that Trustees should return the Questionnaire to the Office of the General Counsel.

1. Have you read The Code of Conduct of The Museum of Modern Art (the "Code"), which is the Museum's statement of policy concerning compliance with law and policy concerning conflicts of interest, distributed with the memorandum of (date) addressed to employees?

YES ___ NO ___

2. Will you abide by the Code and communicate it to all employees and agents under your supervision?

YES ___ NO ___

CONFLICT OF INTEREST QUESTIONNAIRE AND DISCLOSURE FORM

1. Do you or does a Family Member (as defined in the Code) have any relationship with the Museum that may represent a conflict of interest, as defined by the letter or spirit of the Code?

yes____ no____

2. During the past 12 months, did you or a Family Member receive any gifts, gratuities or loans from any person, company, partnership or any other source from which the Museum buys goods or services or otherwise has business dealings?

yes____ no____

3. Do you or does any Family Member have any financial interest, direct or indirect, in any pending or incomplete transaction to which the Museum is, or is likely to be, a party?

yes____ no____

4. Do you or does any Family Member have any financial interest in or relationship with any company (other than ownership of less than 5% of companies whose securities are publicly traded), partnership or other enterprise which leases or sells equipment, supplies, real property, products or services to or otherwise does business with the Museum?

yes____ no____

5. Do you have knowledge of any transaction which, in view of the Code, you feel should be reported to the Museum's Office of the General Counsel?

yes____ no____

6. Do you have any knowledge of any misuse or theft of the Museum's assets or property by Museum staff or Trustees which has not been the subject of appropriate action?

yes____ no____

If the answer to any of the above questions is yes, please explain in the space below.
Add additional sheets as necessary.

I HEREBY CERTIFY THAT THE ANSWERS TO THIS QUESTIONNAIRE ARE TRUE
AND CORRECT.

Signature

Please print your name

Title

Date