

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

In the Matter of:)
)
OXFORD TRADING GROUP, INC.)
(NFA ID #414318),)
)
FRANCIS R. ZOFAY)
(NFA ID #397655),)
)
SIMON S. WELDS)
(NFA ID #315202),)
)
JOSEPH G. GIBBS)
(NFA ID #399708),)
)
ERIC CLARY)
(NFA ID #410258),)
)
and)
)
SETH GOLDBERGER)
(NFA ID #404828),)
)
Respondents.)

FILED

AUG 10 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NFA Case No. 10-BCC-020

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee issues this Complaint against Oxford Trading Group, Inc. ("OTG"), Francis R. Zofay ("Zofay"), Simon S. Welds ("Welds"), Joseph G. Gibbs ("Gibbs"), Eric Clary ("Clary") and Seth Goldberger ("Goldberger").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, OTG was an introducing broker ("IB") NFA Member. As such, OTG was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Zofay and Welds were principals and associated persons ("APs") of OTG and NFA Associates. As such, they were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. OTG is liable for violations of NFA Requirements committed by Zofay and Welds in the course of their activities on behalf of OTG.
3. At all times relevant to this Complaint, Gibbs, Clary and Goldberger were APs of OTG and NFA Associates. As such, they were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. OTG is liable for violations of NFA Requirements committed by Gibbs, Clary and Goldberger in the course of their activities on behalf of OTG.

BACKGROUND

4. OTG has been an IB Member of NFA since September 25, 2009 and is located in Delray Beach, Florida. NFA initiated an unannounced examination of OTG in January 2010 due to concerns raised by the firm's high commission rates and previous affiliations of its principals and APs with former disciplined firms and/or other firms with sales practice issues.

5. As of the time of NFA's audit, OTG had seven APs. Zofay is OTG's sole owner and its president as well as an AP and listed principal of the firm. Welds was also a listed principal and AP of the firm at the time of the audit. Zofay had primary authority over the firm's operations and Welds supplemented him in supervising the day-to-day sales activities and trade recommendations made by OTG's sales force. Welds has previously been employed by two firms that are on NFA's list of firms that have been permanently barred from the industry for fraudulent sales practices.
6. OTG charged commissions and fees of \$99 per round turn per option contract. As of January 2010, OTG had 41 customer accounts, all but one of which was broker assisted. NFA's analysis of all of OTG's customer accounts, from the firm's initial registration on September 25, 2009 through January 31, 2010, determined that its customers appeared to be paying an inordinate amount of their invested capital in commissions. Specifically, the customers had invested a total of \$653,577 into their trading accounts and, as of January 31st, they had lost approximately \$397,000 of that amount overall. Further, \$136,000, or 34%, of those losses were due to commission and fee charges.
7. OTG's APs used a lead list to identify prospective customers and, if a prospect appeared interested, Zofay or Welds would contact them. Zofay and OTG's other APs purportedly conducted research to develop recommendations for the customers who had broker assisted accounts. Either Zofay or Welds would review the recommendations before they could be passed along to OTG's

customers. OTG's customers primarily traded spread option contracts in various markets.

8. NFA's analysis of OTG's trade recommendations indicated that they were far more geared toward maximizing commissions than toward giving OTG's customers a reasonable chance to experience a profit. Daily account statements and customer interviews revealed that when a customer deposited funds into their account or increased available funding through liquidation of existing trades, OTG quickly urged them to make trades that utilized virtually all available funds that, in turn, generated more commissions. The recommended trades were often in bull call spreads with very high breakeven points that made it highly unlikely that the customer would ever achieve a profit. NFA's analysis of trading statements revealed that the customers' breakeven points to overcome commissions routinely exceeded 30%, with some in excess of 40%.
9. NFA also interviewed a sample of OTG's customers. Those interviews indicated that OTG APs Goldberger, Clary and Gibbs engaged in misleading solicitation tactics in an effort to entice individuals to open and/or enlarge their accounts. Specifically, their solicitations were unbalanced in their presentation of profit and loss potential and highlighted profitable returns that had no relationship to the actual performance experienced by the firm's customers. OTG's APs also failed to make adequate risk disclosure and/or to disclose the impact of OTG's commission structure on the likelihood of achieving profits.
10. In view of the systemic abuse engaged in by OTG's personnel, it is apparent that OTG, Zofay and Welds failed in meeting their obligation of diligent supervision.

APPLICABLE RULES

11. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
12. NFA Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
13. NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
14. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(a)(1) AND 2-4: MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS AND FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

15. The allegations contained in paragraphs 1 through 3, 5 through 7 and 11 through 13 are realleged as paragraph 15.
16. Gary Baldwin ("Baldwin") was contacted by OTG AP Goldberger in November 2009. Goldberger's initial sales pitch included investment ideas in the soybean market. Goldberger told Baldwin that soybeans would be a good investment because there was a problem with the harvest and the price would increase

substantially. At one point Goldberger transferred Baldwin to Zofay who Goldberger referred to as "the boss". Zofay built up Goldberger by saying things like, "[Goldberger] is the top guy, the person you want, and who will take care of your money."

17. Goldberger made numerous claims to Baldwin to the effect that his account would be worth \$70,000-\$75,000 in a few months and \$100,000 a bit farther down the road. Despite the overwhelmingly unprofitable trading in OTG's customer accounts, Goldberger also told Baldwin that, "OTG has consistently made money for its clients."
18. Goldberger failed to adequately explain OTG's commission structure to Baldwin or to discuss the impact that commissions could have on Baldwin's chances of making a profit. In fact, when Baldwin opened his account, he was led to believe that he would pay \$99 in commissions and fees per trade. When he eventually found out that it was actually \$99 per contract and complained to OTG, an unidentified OTG employee told him that they also need to make money and that it was necessary to charge that commission rate.
19. Baldwin made a modest initial investment of \$3,000 on November 4, 2009. However, Goldberger repeatedly urged him to deposit more money and to pull money from his IRA and 403(b) retirement accounts. Goldberger told Baldwin that he would earn a higher rate of return with OTG than he was currently making in the retirement accounts. Although Baldwin contacted OTG to check on the performance of his account on various occasions, he rarely received any actual

numerical values. Rather, he was told that the actual numbers were not available but that his account was making money.

20. Goldberger and OTG's solicitation to Baldwin was deceptive and misleading in that it was unbalanced in the presentation of profit and loss potential and highlighted profitable returns that had no relationship to the actual performance experienced by OTG's customers. In fact, Goldberger represented that OTG customers consistently made money when the reality was exactly opposite of that claim. In addition, Goldberger failed to make adequate risk disclosure and/or to disclose the impact of OTG's commission structure on the likelihood of achieving profits to Baldwin.
21. In addition to making misleading and deceptive sales solicitations to Baldwin, Goldberger and OTG also recommended trades to Baldwin that were not in Baldwin's best interest and were apparently motivated to maximize commissions for OTG and Goldberger.
22. Baldwin did not initiate any trades on his own and always went along with what was recommended by Goldberger and OTG. He made four deposits, totaling \$43,000, between November 4th and November 20, 2009. By January 19, 2010, when Baldwin closed his account, he had lost more than \$29,500 – more than \$16,000 of which was attributable to commissions and fees. During the life of the account, he made a total of six trades through OTG, all of which were bull call spreads and all of which were consistent with OTG's commission maximizing strategy.

23. One example of OTG's strategy occurred on November 18th when, acting on Goldberger's advice, Baldwin purchased a 15 lot Mar 10 Soybean spread that cost over \$7,000 in premiums and nearly \$3,000 in commissions, requiring a return of 41.7% in order to break even on the trade.
24. Another illustration of Goldberger's self-serving advice to Baldwin occurred on December 22nd. Entering into the trading day, Baldwin's account contained four active spread trades and a little over \$800 in cash. Acting on the advice of Goldberger, Baldwin liquidated three of his spread trades at a realized loss in order to free up equity to enter into a new spread. Specifically, Baldwin liquidated a 3 lot Mar 10 Heating Oil spread at a loss of more than \$2,500 (including over \$600 in commissions), a 16 lot Mar 10 Corn spread with a loss of over \$7,000 (including over \$3,000 in commissions) and a 14 lot Mar 10 Canadian Dollar spread with a loss of more than \$6,000 (including over \$2,500 in commissions). He used the equity resulting from the liquidation to purchase a 10 lot May 10 Gasoline spread, thereby generating nearly \$2,000 in added commissions for OTG and Goldberger.
25. In order to break even on the commissions and fees charged on the six spread trades that were recommended to him by Goldberger, Baldwin needed a total return of approximately 34.2%, with the breakeven point on individual trades ranging between 26.2% and 41.7%.
26. Goldberger and OTG's conduct in recommending trades to Baldwin that maximized commissions for Goldberger and OTG without regard for the best

interests of Baldwin constituted a gross breach of their obligation to uphold high standards of commercial honor and just and equitable principles of trade.

27. Allen Dollarhide ("Dollarhide") was first contacted in October 2009 by OTG AP Clary. During the initial conversation, Clary pitched Dollarhide on the potential profit he could make from investing in futures and options on futures. Clary claimed that he, "had made many clients large profits and that all of his accounts on average made profits of 140%." In addition, Clary never explained the risk of loss that Dollarhide was undertaking trading with OTG at any time during their relationship nor did he give Dollarhide a clear explanation of the commissions that would be charged and their impact on the possibility of achieving profit.
28. Dollarhide made his initial investment in late October 2009. After the initial deposit, Clary continually asked for additional funds and insisted that Dollarhide should wire more money into his account. Clary stressed the need to invest immediately and implied that a failure to do so would cause Dollarhide to miss highly profitable opportunities. Clary was very adamant and on several occasions told Dollarhide that things were moving so quickly that he might be out of the recommended trade by the end of the week.
29. After Dollarhide invested additional funds, Clary recommended that he should buy options on wheat. Clary cited news reports that referred to an infestation of locusts in South America as support for the recommendation. Clary told Dollarhide that the last time this had happened the price of wheat had gone up because farmers in South America did not have the same technology or access to pesticides as American farmers. While Argentina was indeed suffering

something of a locust problem at the time, its consequences were already reflected in the market as there had been numerous news reports on the problem for at least a month before Clary made his pitch to Dollarhide. Further, although Clary was marketing options, he cited a substantial historical move in the cash wheat market but did not inform Dollarhide that cash and options prices do not necessarily move in tandem. In addition, Clary failed to mention that the "last time that this had happened" was more than 30 years earlier.

30. Clary and OTG's solicitation to Dollarhide was deceptive and misleading in that it was unbalanced in the presentation of profit and loss potential and highlighted profitable returns that had no relationship to the actual performance experienced by OTG's customers. In fact, Clary represented that his customers averaged returns of 140% on their investments despite the fact that virtually all of OTG's customers actually suffered significant losses. He also used a well-known news event to suggest that it could be exploited to Dollarhide's financial advantage and featured an historical price move in the cash wheat market to solicit for options trading. In addition, Clary failed to make adequate risk disclosure and/or to disclose the impact of OTG's commission structure on the likelihood of achieving profits to Dollarhide.
31. In addition to making misleading and deceptive sales solicitations to Dollarhide, OTG, Clary and Welds also recommended trades to Dollarhide that were not in Dollarhide's best interest and were apparently motivated to maximize commissions for OTG, Clary and Welds.

32. Dollarhide made three deposits to his account totaling \$53,000 between October 30th and November 10, 2009. By the end of February, he had lost more than \$41,500 – nearly \$27,000 of which was attributable to commissions and fees. Acting on Clary's advice, Dollarhide made a total of five trades through OTG, all of which were bull call spreads that were consistent with OTG's commission maximizing strategy. Sometime in December, Dollarhide's account was taken over by Welds without any explanation as to why Clary was no longer servicing the account. Rather than bull call spreads, Welds recommended straight futures trades to Dollarhide; however, the results for Dollarhide were the same as they had been with Clary in that Welds' recommendations only generated more losses and more commissions.
33. Dollarhide made an initial deposit into his account of \$3,000 on October 30th. Clary immediately had Dollarhide use the deposit to purchase a 3 lot spread on Mar 10 Heating Oil. The spread cost Dollarhide nearly \$2,300 in premiums and \$600 in commissions and required a 26.2% return to just recoup the commission cost. By February, the spread had expired worthless and Dollarhide lost nearly his entire initial investment.
34. One of the most glaring examples of Clary giving advice that was not in Dollarhide's best interest occurred on November 30, 2009. On that day, Clary recommended the purchase of a 40 lot spread on Mar 10 Wheat, citing the aforementioned South American locust infestation as support for likely profits. The spread cost Dollarhide \$28,000 in premiums and almost \$7,500 in commissions. It required a 26.5% return to just overcome the commission cost.

On December 21st, acting on the advice of Welds, Dollarhide offset the positions with a loss of nearly \$25,000 including commissions.

35. Between December 22, 2009 and February 5, 2010, Dollarhide day-traded futures contracts based on advice provided by Welds. Welds' advice was also geared towards maximizing commissions, using the remaining equity left in Dollarhide's account to generate \$3,500 in commissions while Dollarhide incurred over \$8,000 in trading losses.
36. Clary, Welds and OTG's conduct in recommending trades to Dollarhide that maximized commissions for Clary, Welds and OTG without regard for the best interests of Dollarhide constituted a gross breach of their obligation to uphold high standards of commercial honor and just and equitable principles of trade.
37. Thaddeus Dykier ("Dykier") was contacted by OTG AP Gibbs in October 2009. Gibbs presented Dykier with an investment strategy which Gibbs represented would require very little capital and could make a lot of money in a short period of time. Gibbs repeatedly told Dykier that he would get Dykier's account up to the \$60,000 to \$70,000 level so that Dykier could participate in a managed futures program.
38. Dykier opened a joint account with his wife Darla and made a \$3,000 initial investment on November 3, 2009. Gibbs' discussion of commissions left Dykier with the understanding that his commission rate was \$95 per trade rather than \$95 per contract.
39. Gibbs called Dykier constantly to request more money and Dykier sometimes acquiesced. After Dykier had increased his investment, Gibbs recommended a

32 lot bull call spread in the gasoline market. Gibbs told Dykier that the value of this trade would easily double and make a minimum of \$15,000 and added that the trade was placed every year and that it worked because gasoline always goes up in the summer.

40. Gibbs and OTG's solicitation to Dykier was deceptive and misleading in that it was unbalanced in the presentation of profit and loss potential and highlighted profitable returns that had no relationship to the actual performance experienced by OTG's customers. Gibbs also used a well-known seasonal trend in gasoline to suggest that it could be exploited to Dykier's financial advantage. In addition, Gibbs failed to make adequate risk disclosure and/or to explain the impact of OTG's commission structure on the likelihood of achieving profits to Dykier.
41. In addition to making misleading and deceptive sales solicitations to Dykier, OTG and Gibbs also recommended trades to Dykier that were not in Dykier's best interest and were apparently motivated to maximize commissions for OTG and Gibbs.
42. The Dykiers made four deposits into their account, totaling \$25,000, between November 3rd and November 19, 2009. They traded their account entirely based on Gibbs' recommendations and made a total of four trades through OTG, all of which were bull call spreads. These trades were consistent with OTG's commission maximizing strategy as is clearly illustrated by the fact that, as of January 8, 2010, the positions in the account had actually increased in value by \$7,500; however, the Dykiers had suffered a net loss of \$3,500 when the \$11,000 in commissions that they had paid were taken into account.

43. Although the Dykiers did not make their initial deposit of \$3,000 until November 3rd, they purchased a 3 lot spread on Mar 10 Heating Oil on October 27th – before the account was even funded. The spread cost the Dykiers over \$2,200 in premiums and \$600 in commissions and required a 26.9% return to just recoup their commission cost. In addition, the account was charged \$175 in fees because it was underfunded for an extended period of time while their check *appeared to have been misdirected*, adding to the cost of the transaction. Despite the fact that Gibbs had told Dykier that “Oxford would take care of it,” no adjustment for the fees was ever made. By the end of December, the spread had unrealized losses of nearly \$1,400.
44. Another example that illustrates OTG’s commission maximizing strategy occurred on November 24th when Gibbs recommended the purchase of a 32 lot spread on May 10 Gasoline which cost nearly \$19,000 in premiums and generated over \$6,000 in commissions and fees. As a result of the high commission costs, the Dykiers needed to achieve a 31.8% return just to break even on the trade. By the end of December, this spread had suffered unrealized losses of over \$3,300.
45. Perhaps the most egregious of the trades recommended to the Dykiers by Gibbs occurred on November 6th when, acting on Gibbs’ advice, they purchased a 14 lot spread on Mar 10 Soybeans that cost over \$6,500 in premiums and nearly \$3,000 in commissions.
46. As a result of the four spread trades that were recommended by Gibbs and OTG, the total return that the Dykiers needed to cover the commissions and fees was

32.5%, with breakeven points on individual trades ranging between 24.8% and 41%.

47. Gibbs and OTG's conduct in recommending trades to the Dykiers that maximized commissions for Gibbs and OTG without regard for the best interests of the Dykiers constituted a gross breach of their obligation to uphold high standards of commercial honor and just and equitable principles of trade.
48. By reason of the foregoing acts and omissions, OTG, Goldberger, Gibbs and Clary are charged with violations of NFA Compliance Rules 2-2(a) and 2-29(a)(1) and OTG, Zofay, Welds, Goldberger, Clary and Gibbs are charged with violations of NFA Compliance Rule 2-4.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.

49. The allegations contained in paragraphs 1 through 3 and 14 are realleged as paragraph 49.
50. Zofay was OTG's sole owner and had primary responsibility for supervising all areas of OTG's operations. In addition, Welds supplemented Zofay's efforts in several ways. He was responsible for supervising the firm's APs in Zofay's absence. He contacted customers to "explain risk" before they opened accounts and he had authority to approve the trade strategies that were used by OTG APs to make recommendations to customers.
51. The duty to diligently supervise, in part, requires Members and Associates who have supervisory duties to initiate effective procedures to ensure that the Member's employees comply with NFA Requirements in all aspects of their

futures-related activities, including sales practices and recommending trades that are in the best interests of their customers.

52. The allegations contained in paragraphs 5 through 7, 21 through 26, 31 through 36 and 41 through 47 are realleged as paragraph 52.
53. OTG, Zofay and Welds failed in their obligation of diligent supervision with regard to OTG's trading strategy in that Zofay and Welds personally reviewed and approved trade recommendations that maximized commissions without regard for the best interests of OTG's customers.
54. The allegations contained in paragraphs 16 through 20, 27 through 30 and 37 through 40 are realleged as paragraph 54.
55. Zofay and Welds failed in their obligation of diligent supervision with regard to sales practices in that they presided over a sales force that employed solicitations that were unbalanced in the presentation of profit and loss potential, suggested profitable returns that had no relationship to the actual performance of the firm's customers' accounts and failed to make adequate risk disclosure and/or disclosure of the impact of OTG's commission structure on the likelihood of achieving profits. APs under their supervision also used well-known seasonal trends and news events to suggest that customers could use the information to make profits.
56. By reason of the foregoing acts and omissions, OTG, Zofay and Welds are charged with violations of NFA Compliance Rule 2-9(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;

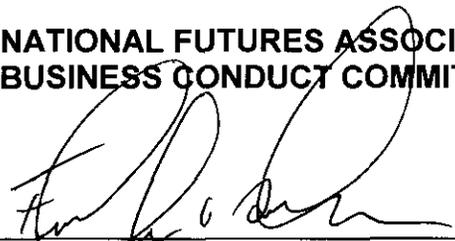
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("CFTC") Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 8-10-10

By: 
Chairperson

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on August 10, 2010, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Joseph G. Gibbs
825 Egret Circle
#409
Delray Beach, FL 33444

Eric Clary
255 Evernia Street
West Palm Beach, FL 33401

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2022 Alta Meadows Lane
Apt. 611
Delray Beach, FL 33444
Attn: Francis R. Zofay

Seth Goldberger
2412 Bimini Lane
Ft. Lauderdale, FL 33312

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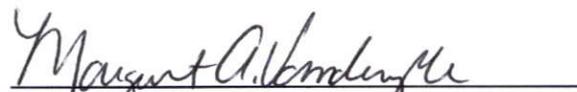
and also by sending such copy by regular mail, first-class delivery and messenger service to:

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130 E. Randolph Drive
Suite 3800
Chicago, IL 60601



Nancy Miskovich-Paschen

Subscribed and sworn to before me on this 10th day of August 2010.



Notary Public

