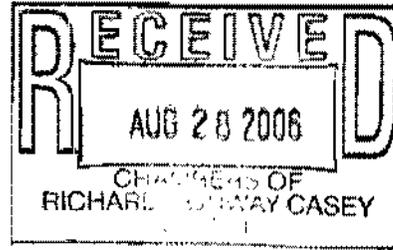


IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



U.S. Commodity Futures Trading Commission,

04 CV 4293

Plaintiff,

v.

Axess Trading Co., Inc.

**CONSENT ORDER OF
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF**

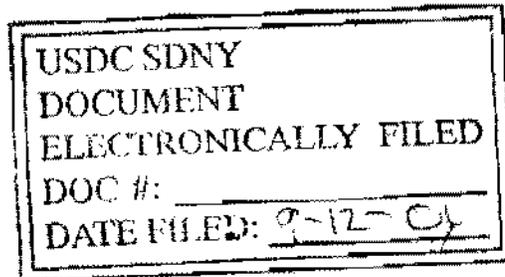
Defendant.

On June 7, 2004, plaintiff Commodity Futures Trading Commission ("Commission") filed an *ex parte* complaint against defendant Axess Trading Co., Inc. ("Axess") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2004). On September 28, 2004, the Court issued a Consent Order of Preliminary Injunction and Other Equitable Relief against Axess.

I. CONSENT AND AGREEMENT

To effect settlement of the matters alleged in the Complaint in this action without a trial on the merits or any further judicial proceedings, Axess:

1. Consents to the entry of this *Consent Order of Permanent Injunction and Other Equitable Relief* ("Order").
2. Affirms that it has read and agreed to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.



4. Admits that this Court has jurisdiction over it and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

6. Waives:

a. The entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as set forth below in Section II;

b. All claims which may be available under the Equal Access to Justice Act, 5 U.S.C. § 504 (2002) and 28 U.S.C. § 2412 (2002), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, to seek costs, fees and other expenses relating to, or arising from, this action;

c. Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any relief; and

d. All rights of appeal from this Order.

7. By consenting to the entry of this Order, Axxess neither admits nor denies the allegations of the Complaint and the Findings of Fact contained in this Order, except as to jurisdiction and venue. However, Axxess agrees, and the parties to this Order intend, that the allegations of the Complaint and all of the Findings of Fact made by this Court shall be taken as true and correct and be given preclusive effect without further proof in any proceeding in bankruptcy, or to enforce the terms of the Order. Axxess shall provide immediate notice to this Court and Commission via certified mail, of any bankruptcy filed by, on behalf of, or against Axxess.

8. Axess agrees that neither it nor any of its agents, servants, employees, contractors or attorneys shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Axess's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Axess shall take all necessary steps to ensure that all of its agents, servants, employees, contractors and attorneys understand and comply with this agreement.

9. Axess consents to the continued jurisdiction of this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with the Order.

II. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

A. Findings of Fact

The Axess Investment

1. From at least September 2003 until June 2004, Axess solicited and accepted at least \$600,000 in funds from at least twelve retail investors to speculatively trade off-exchange foreign currency futures contracts.

2. Axess solicited prospective customers via personal solicitations, emails and its website located at www.axesstrade.com. In addition, Axess entered into service provider

agreements with at least two Mexican trading firms, one called World Trade Capital Market, S.C. ("WTCM"), and another called Interglobal Capital, S.A. These companies found prospective customers for Axxess.

3. Axxess instructed prospective customers to fill out and return account opening documents directly to Axxess. Customers were further instructed to send their investment funds directly to a bank account in Axxess's name at J.P. Morgan Chase Manhattan Bank in New York City, New York.

4. After their Axxess account was open, customers were allowed to place trades online through the Axxess trading platform.

Axxess's Representation Concerning Its Trading

5. Axxess advised customers that their funds would be used to trade off-exchange foreign currency in the "spot" or "interbank" market as a means of profiting on price fluctuations in foreign currencies.

6. Axxess informed customers that it could act as the counterparty to the customers' trades, or that Axxess could, at its own discretion, choose to place the trades with other counterparties, banks, banking institutions, or "sophisticated institutional participants."

Axxess's Fraudulent Solicitation of Customers

7. To establish its credibility, Axxess made repeated references to the Commission and the National Futures Association ("NFA") in its solicitations.

8. These references were used to create the false impression that Axxess was subject to full regulation of both the Commission and NFA.

9. Axxess was never registered in any capacity with the Commission, nor has it ever been a member of the NFA.

10. In its solicitations, Axess also led customers to believe they would be afforded certain protections and remedies only available to customers of registered firms or firms conducting on exchange futures transactions. For example, the Axess Customer Agreement made the following material misrepresentations:

- a. Any controversy between Trader and AXESSTRADE, arising out of or relating to Trader's account shall be, except as provided below, resolved by arbitration in accordance with Part 180 of the Commodity Exchange Act as amended;
- b. If you believe a violation of the Commodity Exchange Act is involved and if you prefer to request a Section 14 "Reparations" proceeding before the CFTC, you have 45 days from the date of such notice in which to make that election;
- c. The rights of AXESSTRADE are subject to the applicable requirements for the segregation of Trader funds and property under the Commodity Exchange Act, as amended; and
- d. The CFTC has issued Regulation 21.03 requiring AXESSTRADE, foreign brokers and foreign traders to respond to special calls made by the CFTC for information regarding their futures and options trading. AXESSTRADE is also required by this regulation to notify all foreign brokers and foreign traders of the requirements of this regulation.

11. These statements are false in that:
 - a. Part 180 of the Commission's Regulations, 17 C.F.R. § 180, dealt with the Commission's arbitration process and was removed and reserved by Congress on August 10, 2001. The Commission's arbitration process is now included in Commission Regulation 166.5 and is only available to customers of firms that are duly registered with the Commission. Since Axess has never been registered with the Commission in any capacity, the Commission's arbitration process would be unavailable to Axess's customers;
 - b. Pursuant to Section 14 of the Act, 7 U.S.C. § 18 (2002), the Commission's reparations program is only available to customers of entities that are duly registered with the Commission;
 - c. Paragraph 10(c) refers to obligations imposed upon duly registered firms, or firms that are engaged in on-exchange trading; and
 - d. Paragraph 10(d) also refers to obligations imposed upon duly registered firms, or firms that are engaged in on-exchange trading.
12. In making these false representations, Axess intended that each person solicited would rely on these representations.
13. Most, if not all, of Axess's customers relied on Axess's fraudulent misrepresentations in deciding to invest.

Axess's Foreign Currency Transactions

14. Axess did not conduct its foreign currency futures transactions on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

15. Axxess did not execute or consummate its contracts by or through a contract market, and the contracts are not evidenced by a record in writing, as required.

16. Section 2(c)(2)(B)(i) and (ii) of the Act provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, so long as the contract is "offered to, or entered into with, a person that is not an eligible contract participant" (meaning the person is a retail customer) unless the counter-party, or the person offering to be the counter-party, is a regulated entity, as enumerated in the Act. Defendant is not a proper counterparty for retail foreign currency transactions.

17. Section 1a(12)(A)(xi) of the Act, as amended by the CFMA, 7 U.S.C. § 1, defines an eligible contract participant as an individual who has total assets in excess of: a) \$10 million; or b) \$5 million, and who enters the transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred. At least some, if not all, of Axxess's forex futures transactions were offered to or entered into with persons who were not eligible contract participants.

B. Conclusions of Law

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

2. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002) confers upon the Commission jurisdiction over certain retail transactions in foreign currency for future delivery, including the transactions alleged in the Complaint.

3. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendant is found in, inhabits, or transacts business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

4. This Court has personal jurisdiction over Axxess, which acknowledges service of the Complaint and consent to the Court's jurisdiction over it.

5. The Commission and Axxess have agreed to this Court's retention of continuing jurisdiction it for the purpose of enforcing the terms of this Order.

6. By the conduct described in Section IIA above, Axxess violated Section 4(a) of the Act, 7 U.S.C. §§ 6(a) (2002) in that they, among other things, offered to enter into, entered into, executed, confirmed the execution of, or conducted any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity future; (b) such contracts have not been executed or consummated by or through such contract market; and (c) such contracts are not evidenced by a record in writing as required by Section 4(a) of the Act.

7. By the conduct described in Section IIA above, Axxess violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002), and Regulation 1.1(b)(1) and (3), 17 C.F.R. §§ 1.1(b)(1) and (3) (2004), in that it misrepresented, among other things, that Axxess was subject to the full regulation of the Commission and the NFA, creating the fiction to

prospective customers that they would be able to avail themselves of the protections offered to customers of actual Commission registrants and NFA members.

III. ORDER FOR PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

1. Axxis is permanently restrained, enjoined and prohibited from directly or indirectly:

a. Offering to enter into, entering into, executing, confirming the execution of, or conducting any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (i) such transactions have not been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity future, and (ii) such contracts have not been executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 § U.S.C. 6(a)(2002);

b. Cheating or defrauding or attempting to cheat or defraud or willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract or sale of any commodity for future delivery, made or to be made, for or on behalf of any person if such contract for future delivery is or may be used for (i) hedging any transaction in interstate commerce in such commodity or the products or by products thereof; (ii) determining the price basis of any transaction in interstate commerce in such commodity; or (iii) delivering any such commodity sold,

shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii)(2002), and Section 1.1(b)(1)-(3) of the Commission Regulations, 17 C.F.R. § 1.1(b)(1) and (3) (2004);

2. Access is permanently restrained, enjoined and prohibited, from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- b. Soliciting, receiving, or accepting any funds in connection with the purchase or sale of any futures contract or option on a futures contract;
- c. Engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency options account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- d. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004). This includes, but is not limited to, soliciting, accepting or receiving any funds, revenue or other property from any person, giving commodity trading advice for compensation, except as

provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2004), or soliciting prospective customers, related to the purchase or sale of any commodity futures, security futures, options, options on futures, or foreign currency futures.

3. The injunctive provisions of this Order shall be binding on Axxess, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Axxess, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Axxess.

IV. ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT DEFENDANTS SHALL PAY RESTITUTION AND A CIVIL MONETARY PENALTY:

1. **RESTITUTION:** Axxess shall be liable for restitution to investors in the amount of \$329,437.79. Pre-judgment interest in the amount of \$33,941.38, plus post-judgment interest after the date of this Order until the restitution is paid in full, shall be paid at the interest rate set forth in 28 U.S.C. §1961. Attachment A to this Order includes the names of the investors to whom restitution shall be made pursuant to this paragraph, together with the amount of restitution payable by Axxess to each of them (not including required interest) and the *pro rata* distribution percentage by which each investor shall be paid. All payments made pursuant to this Order by Axxess shall be considered restitution payments and dispersed on a *pro rata* basis until those amounts (including interest) are fully satisfied. All payments after satisfaction of the restitution shall be applied to the civil monetary penalty described below.

2. **RESTITUTION REDUCTION:** Axxess's obligations to make restitution under this paragraph shall be reduced by any amounts paid to the investors listed in Attachment A

pursuant to any restitution ordered in any other legal proceeding or pursuant to any collateral agreement, subject to the conditions as set forth in Section IV, paragraph 9 below.

3. MONITOR: Restitution payments shall be sent to the National Futures Association ("Monitor"), which will monitor the distribution of any restitution payments to customers. Payments shall be sent to the following address: National Futures Association, 200 W. Madison Street, #1600, Chicago, Illinois 60606, Attn: Dan Driscoll, and made payable to the Axxess Settlement Fund. The Monitor shall distribute restitution payments to customers on a *pro rata* basis unless, at its sole discretion, based upon the amount of funds available for distribution, the Monitor decides to defer distribution.

4. CIVIL MONETARY PENALTY: Judgment is hereby entered ordering defendant to pay a civil monetary penalty of \$240,000, plus post-judgment interest. Interest after the date of this Order until the civil monetary penalty is paid in full shall be paid at the post-judgment interest rate set forth in 28 U.S.C. § 1961. Axxess shall pay such civil monetary penalty by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies Axxess and the name and docket number of the proceeding; Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, DC 20581.

5. PARTIAL PAYMENTS: Any acceptance by the Commission of partial payment of Axxess's restitution and/or civil monetary obligations shall not be deemed a waiver of their

obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

6. **THIRD-PARTY BENEFICIARIES:** Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the individuals identified in Attachment A is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendant, to ensure continued compliance with any provision of this Order and to hold Defendant in contempt for any violations of any provision of this Order.

7. **COLLATERAL AGREEMENTS:** Defendant shall immediately notify the Commission and Monitor if it makes or has previously made any agreement with any investor obligating it to make payments outside this Order. Axxess shall also provide immediate evidence to the Commission and the Monitor of any payments made pursuant to such agreement. Upon being notified of any payments made by Axxess to investors outside of this Order, and receiving evidence of such payments, the Monitor will have the right to reduce and offset Axxess's obligation to specified investors and to make any other changes in the restitution distribution schedule that he deems appropriate.

8. **TRANSFER OF ASSETS:** Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession, or control of any other person for the purpose of concealing such funds from the Court, the Commission, or any investor until the restitution amount has been paid in full. Defendant shall transfer to the territory of the United States and deliver to the Monitor all funds, documents, and assets located in foreign countries which are (1) titled in the name individually or jointly of such Defendant; or (2) held by any person or entity, for the benefit of Defendant; or (3) under Defendant's direct or indirect control, whether jointly

or singly. Defendant shall provide the Commission access to all records of accounts or assets of the Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

V. MISCELLANEOUS PROVISIONS

1. NOTICES. All notices required by this Order shall be sent by certified mail, return receipt requested, as follows:

- a. Notice to Plaintiff Commission: Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st St., N.W.
Washington, DC 20581
- b. Notice to the Monitor:
Vice President, Compliance
National Futures Association
200 West Madison Street
Chicago, IL 60606
- c. Notice to Defendant Axxess Trading Co., Inc..
Vivian Drohan, Esq.
150 East 58th Street
New York, NY 10155

2. ENTIRE AGREEMENT, AMENDMENTS AND SEVERABILITY. This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

3. SUCCESSORS AND ASSIGNS. This Order shall inure to the benefit of and be binding on the defendant's successors, assigns, heirs, beneficiaries and administrators.

4. JURISDICTION. This Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Equitable Relief Against Defendant Axess Trading Co., Inc.

IT IS SO ORDERED.

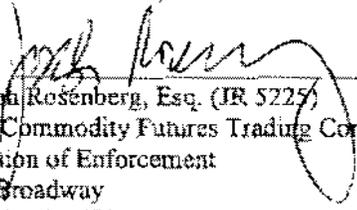
Dated: September 10, 2006
New York, NY



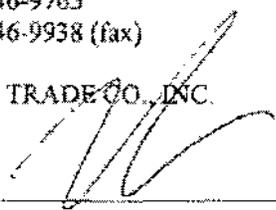
Richard Conway Casey
United States District Judge

CONSENTED TO AND APPROVED BY:

U.S. COMMODITY FUTURES TRADING COMMISSION

By: 
Joseph Rosenberg, Esq. (JR 5225)
U.S. Commodity Futures Trading Commission
Division of Enforcement
140 Broadway
New York, NY 10005
(646) 746-9765
(646) 746-9938 (fax)

AXESS TRADE CO., INC.

By: 
Vivian Drohan, Esq.
Drohan & Drohan, LLP
150 East 58th Street
New York, NY 10155
(518) 753-5644
(212) 317-2946

Attachment A

Customers	Invested	Returned	Owed	% Share
WTCM Customers				
Ana Paula Marin Brito, #29	\$18,576.21	\$16,992.00	\$1,584.21	0.480882901 0.000303547
Individual Investors				
Lilia Campos, #139	\$5,000.00	\$0.00	\$5,000.00	1.517737233
María del Pilar Valdes, #145	\$5,110.00	\$5,386.66	-\$256.66	-0.077908488
Jose Adan Miranda Romero, # 146	\$2,645.00	\$2,651.00	-\$6.00	-0.001821285
Marc Philippe Daniel	\$0.00	\$0.00	\$0.00	0
Arturo Rodrigez Martinez	\$3,669.30	\$5,036.03	-\$1,366.73	-0.414867402
Martha Urrutia Solorzano, #34	\$945.05	\$0.00	\$945.05	0.286867515
Interglobal Customers				
Interglobal total transactions (Jose Magno Gonzalez, Marc Prunier)	\$654,272.00	\$364,234.08	\$290,037.92	88.04027006
Other Investors				
Gerardo Palmerin	\$5,000.00	\$0.00	\$5,000.00	1.517737233
Margarito Chaves Vargas	\$20,000.00	\$0.00	\$20,000.00	6.070948934
Norma Teresa Garcia Andrade	\$8,500.00	\$0.00	\$8,500.00	2.580153297
Total owed customers:			\$329,437.79	

Axess Trade customer balances -- trading records

Customers	Invested	\$ Returned	\$ Owed	% Share
WTCM				
Alejandro Gonzalez Martinez, #28 or #1105(?)	\$5,828.00		\$5,828.00	2.730356367
Ana Paula Marin Brito, #29	\$18,576.21	\$16,992.00	\$1,584.21	0.742185632
Gerardo Rojas Prieto, #30			\$0.00	0
Josc Santana Rangel, #32	\$8,000.00		\$8,000.00	3.747915398
Raciel Hernandez Vazquez, #33			\$0.00	0
Jose Arnulfo Urrutia, #80	\$30,000.00	\$20,287.28	\$9,712.72	4.550306605
Carlos Alberto Ortega Bassot, #117	\$6,000.00	\$5,384.00	\$616.00	0.288589486
				0.000468489
				0.000468489
Unknown (individual?) Investors				
Lilia Campos, #139	\$5,000.00	????		0.000468489
Maria del Pilar Valdes, #145(?) - trading agent: Jesus Balbin	\$5,110.00	\$5,366.66	-\$256.66	-0.120242496
Jose Adan Miranda Romero, # 146(?)	\$2,645.00	\$2,651.00	-\$6.00	-0.002810937
Marc Philippe Daniel			\$0.00	0
Arturo Rodrigez	\$3,669.30	\$5,036.03	-\$1,366.73	-0.640298551
Martha Urrutia Solorzano, #34	\$945.05		\$945.05	0.442745931
				0.000468489
				0.000468489
Interglobal				
Interglobal total transactions (Interglobal investors: Jose Magno Gonzalez, Marc Prunier)	\$585,172.00	\$396,776.60	\$188,395.40	88 26125257
		Total owed customers:	\$213,451.99	

Totals from Bank balance

Customers

WTCM

Ana Paula Marin Brito, #29	\$4,000.00	\$0.00
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Unknown (individual?) Investors

Lilia Campos, #139

Maria del Pilar Valdes, #145(?) - trading agent: Jesus Balbu

Jose Adan Miranda Romero, # 146(?)

Marc Philippe Daniel

Arturo Rodrigez Martinez	\$4,841.00	\$5,034.03
	\$987.00	
	\$5,828.00	\$5,828.00

Martha Urrutia Solorzano, #34	\$3,479.66	
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Interglobal

Interglobal total transactions (Interglobal investors: Jose Magno Gonzalez, Marc Prunier)