

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

WHOLE FOODS MARKET, INC.

a corporation.

Docket No. 9324

**PETITION OF DIVESTITURE TRUSTEE FOR APPROVAL  
OF PROPOSED DIVESTITURE TO A-M HOLDINGS, LLC**

Pursuant to Section 2.41(f) of the Federal Trade Commission (the "Commission") Rules of Practice and Procedure, 16 C.F.R.2.41(f), and Paragraph II.C of the Decision and Order in the above-captioned matter (the "Decision and Order"), The Food Partners, LLC ("TFP"), divestiture trustee, hereby petitions the Commission to approve the divestiture of select Assets To Be Divested (as defined in the Decision and Order) to A-M Holdings, LLC ("A-M").

**I. DECISION AND ORDER AND PROPOSED SALE TO A-M HOLDINGS, LLC**

On March 5, 2009, the Commission accepted for public comment an Agreement Containing Consent Orders ("Consent Agreement") requiring the divestiture of 19 non-operating stores, 12 acquired Wild Oats stores, one Whole Foods Market store and the Wild Oats associated intellectual property and related assets ("Assets To Be Divested"). The Commission also approved The Food Partners, LLC as the Divestiture Trustee. In addition, the Consent Agreement included an Order to Maintain Assets, which requires Whole Foods to continue to operate the open stores and maintain the viability, marketability and competitiveness of the Assets To Be Divested until a buyer is identified and approved by the Commission and final closing of the purchase occurs or until the Assets To Be Divested are no longer subject to the Decision and Order. After placing the Consent Agreement on the public record for comment, the Commission approved the final Consent Agreement on May 28, 2009.

On September 8, 2009 and September 25, 2009, the Divestiture Trustee submitted letters to the Commission requesting a six-month extension of time to complete negotiations on a total of six open and two closed stores as well as the Wild Oats Associated Intellectual Property pursuant to Paragraph II.C.2. of the Decision and Order based on the receipt of good faith offers from select potential purchasers. On October 26, 2009, the Commission granted the Divestiture Trustee's request and extended the divestiture period until March 8, 2010, to allow the Divestiture Trustee to complete negotiations with those buyers who submitted good faith offers prior to September 8, 2009.

This Petition describes the principal terms of the Agreements (as defined below) by which Whole Foods plans to sell certain Assets To Be Divested to A-M and explains why the Agreements satisfy the purposes of the Decision and Order.

## **II. THE TRANSACTION DOCUMENTS**

Whole Foods and A-M have executed Agreements for the divestiture of certain Assets To Be Divested, subject to the approval of the Commission. The Agreements are embodied in the Asset Purchase Agreement and Intellectual Property Asset Purchase Agreement (collectively the "Agreements"). Copies of the Agreements, attachments, exhibits and schedules (the "Transaction Documents") are attached to this Petition as Confidential Appendix A.

In essence, the Agreements provide that A-M will acquire the Whole Foods Market store at 1651 Broadway in Boulder, Colorado ("Boulder (Broadway)") as well as the intellectual property pertaining to Alfalfa's Markets. Other than the contingent liability associated with the lease assignment, there will be no on-going entanglements between Whole Foods and A-M. As described below, requiring Whole Foods to divest of the Boulder (Broadway) store and the intellectual property pertaining to Alfalfa's would increase competition in the marketplace.

Whole Foods requests that the Transaction Documents and other information provided in the confidential appendices be treated by the Commission as strictly confidential and not be made available to the public. The terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

## **III. THE PROPOSED ACQUIRER**

### **A. Background and Relevant Experience**

A-M owners and founding principals, Mark Retzloff and Barney Feinblum, have lived, worked and succeeded as entrepreneurs in Boulder, Colorado for over 30 years. They believe that they are in a better position than a national chain or multi-store operator to determine and meet the needs of the customers of the Boulder (Broadway) store. Through their longstanding ties to the area as businessmen, neighbors and friends, they want to create a community market that serves the local consumer's needs. Retzloff and Feinblum believe they can effectively compete against Whole Foods and other retail grocers offering organic and premium natural products because of (i) their involvement in past enterprises that successfully competed with Whole Foods and other retailers, (ii) their extensive experience in and knowledge of the organic and natural foods industry, and (iii) their substantial and longstanding ties to the Boulder community. Retzloff and Feinblum have had leadership roles with numerous companies in competition with Whole Foods:

- Retzloff was the co-founder, CEO and Chairman of Alfalfa's Markets, Inc. over the course of his eleven year tenure with the company (1982 to 1993). Alfalfa's Markets was the first natural and organic foods supermarket in the Boulder area and the company won numerous awards and recognition for its groundbreaking work. Moreover, Retzloff actively helped Alfalfa's Markets to develop and operate the Boulder (Broadway) store.
- Retzloff is familiar with the Asset To Be Divested and signed the original lease for the Boulder (Broadway) site, which was eventually acquired by Wild Oats.
- Prior to establishing Alfalfa's Markets, Retzloff co-founded and managed Rainbow Grocers, which owned and operated five natural food stores in Colorado.
- Retzloff also served as a director on the board of Wild Oats from January 2003 through May 2006.

- Feinblum was a director of Alfalfa's Markets from 1983 to 1996 and a director of Wild Oats from 1996 to 1998.
- Feinblum was also a founding partner and served on the board of directors of Fresh & Wild in London, which Whole Foods acquired in 2004.

Retzloff and Feinblum also have lengthy experience and broad ties to the organic and natural foods industry. They were among the co-founders and remain actively involved with an investment fund focusing on early-stage companies in the "Lifestyles of Health and Sustainability market." The fund's past and present portfolio companies include:

- Blue Horizon Seafood Company (a seafood business that supplies sustainably caught, wild, and organically farmed seafood products to the North American market while helping protect the health of aquatic ecosystems)
- Bossa Nova Beverage Group (a marketer of all-natural antioxidant acai beverages)
- IZZE Beverage Company (a marketer of all-natural sparkling fruit juice beverages that PepsiCo., Inc. acquired in September 2006)
- Little Dish (produces and markets a range of innovative, pediatrician-designed, refrigerated, fresh food for toddlers made from 100% natural ingredients with no additives or preservatives and no added salt or sugar)
- Mary's Gone Crackers, Inc. (a producer of wheat- and gluten-free crackers and other baked organic products)
- Eco-Products (manufacturer of biodegradable and compostable food service products made from renewable resources and a full line of health- and ecoconscious home cleaning products)

Finally, both Retzloff and Feinblum have maintained professional and personal ties to former employees of Wild Oats and Whole Foods whom they believe are available and interested to help manage the business.

### **Mark Retzloff**

Retzloff is a natural products industry veteran, entrepreneur and private investor. Retzloff is currently Chairman and Chief Organic Officer of Aurora Organic Dairy. His past experience includes:

- Chairman and Chief Organic Officer of Aurora Organic Dairy
- Co-founder and President International Operations of Horizon Organic Dairy
- Co-founder and CEO of Alfalfa's Markets
- Co-founder of Eden Foods
- Founding board member of the Center for Organic Education and Promotion. He currently serves on the boards of Aurora Organic Dairy, Traditional Medicinals, Organic Bouquet, Rapunzel Pure Organics, Blue Horizon Seafood Company, Boulder Waldorf Foundation and Growing Gardens. He also serves on the investment committee for Greenmont Capital Partners. He holds a B.S. degree in Conservation and Resource Planning from the University of Michigan.

### **Barney Feinblum**

Feinblum is a seasoned natural products industry veteran and successful private investor. He is a Managing Director of Greenmont Capital Partners and serves on its Investment Committee. His current and past experience includes:

- Founder and President of Organic Vintners
- President, Chief Executive Officer and a Director of Horizon Organic Dairy
- President of Natural Venture Partners, a private investment company
- Chairman, Chief Executive Officer, President, Chief Operating Officer and Vice President of Finance of Celestial Seasonings
- Mr. Feinblum is currently a director of Gaia, and he previously served as a director on the boards of White Wave Foods, Wild Oats, Pharmaca, Allegro Coffee, Alfalfa's Markets, Fresh & Wild, Bossa Nova and Seventh Generation. He received a B.S. degree from Cornell University and an M.B.A. from the University of Colorado.

**Other Members of A-M Include:**

**Hugo van Seenus**

van Seenus has worked extensively in the natural and organic food industry, both domestically and abroad, since the early seventies.

- Founding partner of the first two natural organic food stores in Amsterdam.
- Founding partner in 1974 of what became Bread and Circus, one of the premier and pioneer retail outlets for natural and organic foods.
- Developed Hugo's Natural Foods Market in Washington, D.C., which he owned and successfully operated from 1978 until selling the store in 1990.
- Founded and developed Lazy Acres Market in 1990 in Santa Barbara, California, which came to be recognized as one of the nation's most successful stores in the natural foods industry and was sold to Bristol Farms in 2005.
- Early and active member of The Network, an organization of founders and owners of stores in the natural foods industry created by Doug Greene.
- Currently an investor, consultant and coach in the natural foods industry.

**Tim Overlie**

Overlie has spent his entire working life in the food business, with 30-plus years in the natural and organic retail industry. He served in management/leadership positions at Alfalfa's Market from inception to its acquisition by Wild Oats, and then continued with Wild Oats in similar key management and leadership positions. Overlie held various positions ranging from buyer, department general manager, purchasing manager, store director, category manager, director of operations, and regional director, and in these roles had responsibilities for mentoring, product development, purchasing, operations, merchandising, strategic planning, and financial management.

**Dale Kamibayashi**

Kamibayashi is an organic natural food industry veteran who has been involved in many facets of this industry for 30 years. Kamibayashi has been involved at many management levels - store manager, purchasing director, Vice President of sales/marketing, industry consultant, brand manager, product development advisor and President/Vice President of companies.

- 1979 – 1984 – Kamibayashi and his wife owned their own small retail grocery store in Nederland, Colorado
- 1983 - 1990 – Store Manager in Alfalfa's Market's first store
- 1990 – 1995 – Grocery Purchasing Director – Alfalfa's Market
- 1995 – 1999 – Grocery Purchasing Director – Wild Oats

- 1999-2002 – Director of Specialty Markets – Small Planet Foods / General Mills
- 2002 – 2006- Vice President and Director of Sales and Marketing - Rapunzel Pure Organics
- 2006 – 2007 – Special Project Manager for Retail – Ceres Organics
- 2007 – Current – Vice President – Vantage Organics, Inc.

**Marcus Christopher**

Christopher has been involved in the natural food and organic retail industry since 1976. Over this period, he has served as a Grocery Manager and Assistant Store Manager, but the majority of his time was spent as a Human Resources Director for Alfalfa's Market. Christopher was also a key start-up person in Fresh & Wild Ltd., in London, and served for three years as Store Manager and Training Director.

**B. Financial Capability**

A-M's founders are successful entrepreneurs with longstanding ties to the Boulder business community and the organic and premium natural foods industry.

A-M's principals intend to invest their own funds and potentially additional monies from their friends and colleagues in the Boulder community with ties to the organic and premium natural foods industry. A-M may also seek bank financing, although buyer's ability to implement its business plan is not dependent on obtaining commercial financing. (Projections and a detailed business plan are attached to this Petition as Confidential Appendix B.)

**IV. CONCLUSION**

The proposed divestiture to A-M of the Broadway (Boulder) store and Alfalfa's intellectual property will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition. A-M has the financial capability and relevant experience to ensure that the Assets To Be Divested will be used so as to become a viable and effective competitor to Whole Foods. Accordingly, the Divestiture Trustee requests that the Commission approve the proposed divestiture and acquirer.

Dated: February 23, 2010

Respectfully submitted,



---

Matthew S. Morris  
The Food Partners, LLC  
Divestiture Trustee

Appendix A  
Redacted