

**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 TRADER JOE'S EAST, INC.**

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 Trader Joe's East, Inc. ("Trader Joe's").

I. DECISION AND ORDER AND PROPOSED SALE TO TRADER JOE'S EAST, INC.

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 Agreement (as defined below) by which Whole Foods plans to sell certain Assets To Be Divested to Trader Joe's and explains why the Agreement satisfies the purposes of the Decision and Order.

II. THE TRANSACTION DOCUMENTS

Whole Foods and Trader Joe's have executed an Agreement for the divestiture of certain Assets To Be Divested, subject to the approval of the Commission. The Agreement is embodied in the Asset Purchase Agreement (the "Agreement"). Copies of the Agreement, attachments, exhibits and schedules (the "Transaction Documents") are attached to this Petition as Confidential Appendix A.

In essence, the Agreement provides that Trader Joe's will acquire the Whole Foods Market store at 87 Marginal Way in Portland, Maine ("Portland, Maine"). Other than the contingent liability associated with the lease assignment, there will be no on-going entanglements between Whole Foods and Trader Joe's. As described below, requiring Whole Foods to divest of the Portland, Maine store would increase competition in the marketplace. This is particularly true for the Portland, Maine store as the location is not currently operating.

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

Trader Joe's East, Inc. is a wholly owned subsidiary of Trader Joe's Company, headquartered in Monrovia, California. The company operates 338 stores in Arizona, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia, Washington, Wisconsin and Washington, DC. Trader Joe's began in 1958 as a chain of convenience stores in Southern California known as Pronto Markets. In 1967, Pronto Markets were converted to Trader Joe's, which became a chain of small grocery stores. The company has evolved into an industry leader in providing its customers with private label, value-oriented products in stores that focus on the customer's shopping experience. Over the past 40 years, Trader Joe's has become a national chain of true neighborhood grocery stores which offer many natural and organic products. The company is lead by Dan Bane, Chairman and CEO and its future plans call for the on-going development of new, one-of-a-kind food items at value prices and continued expansion throughout the country.

Trader Joe's currently has 24 stores across New England but none in the Portland, Maine community. Moreover, as there are a limited number of grocery stores in this trade area, Trader Joe's will offer more choice and be one of the only grocery stores to offer quality foods at a good value.

Recent examples of Trader Joe's accolades are the May 2009 issue of Consumer Reports that ranked Trader Joe's the second-best supermarket chain in the nation and in June 2009 MSN Money released its third annual Customer Service Hall of Fame survey results: Trader Joe's ranks 2nd in customer service. Trader Joe's philosophy is to bring its customers the best food and beverage values

and the information to make informed buying decisions with the more than 3,000 unique grocery items.

B. Financial Capability

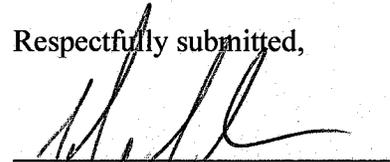
100% of the company's transaction financing will be from Trader Joe's working capital and cash reserves. According to The Nielsen Company's Trade Dimensions publication, the company had an estimated \$6.0 billion in sales in 2008. (Additional information pertaining to Trader Joe's is attached to this Petition as Confidential Appendix B.)

IV. CONCLUSION

The proposed divestiture to Trader Joe's of the Portland, Maine store will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition. Trader Joe's 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: March 4, 2010

Respectfully submitted,



Matthew S. Morris
The Food Partners, LLC
Divestiture Trustee

**Appendix A
Redacted**

**Appendix B
Redacted**