

1. Whole Foods is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 550 Bowie Street, Austin, Texas 78703.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Whole Foods” or “Respondent” means Whole Foods Market, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Whole Foods Market, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Wild Oats” means the former corporation Wild Oats Markets, Inc., which was organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1821 30th Street, Boulder, Colorado 80301, and which was acquired by Respondent Whole Foods.
- C. “Commission” means the Federal Trade Commission.
- D. “Closing Date” means the date on which Respondent (or the Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest any Asset To Be Divested pursuant to this Order.
- E. “Commission-approved Acquirer” means an entity that receives the prior approval of the Commission to acquire particular assets that the Respondent is required to divest pursuant to this Order.
- F. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of this Order to effectuate the divestitures required by this Order [as distinguished from interim monitor].
- G. “Assets To Be Divested” means:
 - 1. The name “WILD OATS,” all trademarks, trade dress, service marks, trade names, and other Wild Oats intellectual property associated with the Wild Oats stores (all hereinafter collectively “Wild Oats Associated Intellectual Property”);

2. The store locations listed on Appendix A of this Order;
 3. The store locations listed on Appendix B of this Order; and
 4. All assets, leases, fixtures, properties, government permits (to the extent transferable), tangible and intangible, related to or used in the stores operated at these locations at the Closing Date, but shall not include those assets consisting of or pertaining to any of Respondent's other (non "WILD OATS") trademarks, trade dress, service marks, or trade names, or any inventory, books and records, financial information, supplies or packaging related to or used in the stores operated at these locations.
- H. "Divestiture Agreement" means any agreement between the Divestiture Trustee and a Commission-approved Acquirer and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Assets To Be Divested that have been approved by the Commission to accomplish the requirements of this Order.
- I. "Interim Monitor" means a monitor appointed by the Commission pursuant to the Order to Maintain Assets in this matter.
- J. "Store Employees" means all employees of Whole Foods currently working at the store locations listed on Appendix A of this Order, or who have, within the past six (6) months, worked at any store location listed on Appendix A or Appendix B of this Order.
- K. "Third Party Consents" means all consents and waivers from any person other than the Respondent, including all landlords, that are necessary to effect the complete divestiture of the Assets To Be Divested to the Commission-approved Acquirer(s) and that are necessary for the continued operation of the stores by the Commission-approved Acquirer(s).

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Assets To Be Divested, at a price from each Commission-approved Acquirer not less than zero dollars, absolutely and in good faith, in a manner that receives the prior approval of the Commission and solely to an acquirer (or acquirers) that receives the prior approval of the Commission. Such divestiture (or divestitures) shall be accomplished exclusively by the Divestiture Trustee pursuant to Paragraph II of this Order.
- B. The Commission hereby appoints The Food Partners LLC as Divestiture Trustee to divest the Assets To Be Divested. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trustee agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

- C. Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested and to assure that Respondent has completed all of its obligations under Paragraph II.H. of this Order for any Asset To Be Divested.
 2. The Divestiture Trustee shall have six (6) months from the date the Commission approves the trustee agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six (6) month period, the Divestiture Trustee has received a good faith offer or offers for a particular store or stores, the divestiture period may be extended by the Commission as to such store(s) to allow the Divestiture Trustee to continue negotiations with such potential acquirer(s); *provided however*, the Commission may extend the divestiture period for any such store(s) only for a maximum of six (6) months; *provided further, however*, that if the Divestiture Trustee submits any proposed Divestiture Agreement(s) and proposed acquirer(s) to the Commission for approval before the end of the divestiture period for the particular store(s), as may be extended by the Commission, and if the Commission has not acted on such Divestiture Agreement(s), or the Closing Date has not occurred, by the end of the divestiture period, then the divestiture period for the store(s) covered by such Divestiture Agreement(s) shall automatically extend until the day after the Commission rejects such Divestiture Agreement(s) or the Closing Date(s) has occurred, whichever is the case; *provided further, however*, that the Divestiture Trustee's authority shall extend for such time until Respondent has completed all of its obligations under Paragraph II.H. of this Order for any particular Asset To Be Divested.
 3. The divestiture of the Assets To Be Divested may be made to one or more Commission-approved Acquirers, *provided, however*, that the Wild Oats Associated Intellectual Property shall be divested to only a single Commission-approved Acquirer; *provided further, however*, that any Commission-approved Acquirer of the Wild Oats Associated Intellectual Property may license, at its sole option, any other person(s) to use the Wild Oats Associated Intellectual Property at any location in any place in the United States.
 4. Respondent shall provide to the Divestiture Trustee the information listed in Appendix C within ten (10) days of the date the Commission approves the trustee agreement. The Divestiture Trustee shall have reasonable access to the facilities listed in Appendix A and Appendix B. Subject to any demonstrated legally recognized privilege, Respondent shall provide any additional information requested by the Divestiture Trustee that is directly related to the Assets To Be Divested and shall cooperate with the Divestiture Trustee, *provided however*, that Respondent shall not be required to provide income statement and balance sheet financial information (other than as listed in Appendix C and updated quarterly gross sales data by store); other information related to Whole Foods' operation of the store(s); vendor information; any sku-level data; and team

member (employee) information and files related to human resources, payroll or benefits. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission.

5. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at a price from each Commission-approved Acquirer not less than zero dollars. Each divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for a particular location listed on Appendix A or Appendix B of this Order, and if the Commission determines to approve more than one such acquiring entity for such location, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the relevant assets that are required to be divested by this Order.
7. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. The Divestiture Trustee shall notify Respondent immediately upon signing any letter of intent or other significant event relating to the sale of the Assets To Be Divested that is required to be revealed by Respondent to accurately reflect its financial statements.
 11. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- D. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- E. Any Divestiture Agreement that has been approved by the Commission between the Divestiture Trustee and a Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- F. Respondent shall:
1. from the date any Divestiture Agreement is signed, not interfere with the hiring or employing by each Commission-approved Acquirer of Store Employees, and shall remove any impediments or incentives within the control of Respondent that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of any employee; *provided further, however*, that nothing in this Order shall be construed to prohibit Respondent from providing any notice required by law or contract to any Store Employee who Respondent may transfer to another of Respondent's stores; and
 2. provide all Store Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including regularly

scheduled raises, bonuses and vesting of pension benefits (as permitted by law and for those Store Employees covered by a pension plan), offered by Respondent.

G. Prior to the each Closing Date, Respondent shall secure all Third Party Consents.

Provided however, that, if within twelve (12) months of the date the Commission approves the trustee agreement described herein, Respondent certifies to the Commission that a landlord is unreasonably withholding its consent to a transfer or assignment of the lease of a particular store location, then the divestiture period is tolled while the Commission reviews the matter. If Respondent demonstrates to the Commission's satisfaction that a landlord is unreasonably withholding its consent to a transfer or assignment of the lease of a particular store location, then, and only then, Respondent may remove that location from the definition of Assets To Be Divested and may substitute a store location to the definition of Assets To Be Divested from the list contained on Confidential Appendix D. Any substitutions of locations shall be made in the order in which the stores appear in Confidential Appendix D. If a substitution is made pursuant to this Paragraph, then the Divestiture Trustee shall have six (6) months from the date Respondent notifies the Divestiture Trustee of the substitution to accomplish the divestiture of the substituted store location, which shall be subject to the prior approval of the Commission. The Divestiture Trustee's period may be extended in the same manner as provided in Paragraph II.C.2.

Provided further, however, that Respondent may seek substitution for store locations only up to the number of stores contained in Confidential Appendix D;

Provided further, however, that Respondent may not seek further substitution for any store that has been added to the Assets To Be Divested from Confidential Appendix D;

Provided further, however, that Respondent shall notify the Divestiture Trustee of any substitution within three (3) days of Respondent's receipt from the Commission of the Commission's acceptance of such substitution;

Provided further, however, that all of Respondent's obligations as to the Assets To Be Divested, including its obligations under Paragraph II.C.4., shall apply to the substitute store as of the date Respondent notifies the Divestiture Trustee of the substitution.

H. Respondent shall make all commercially reasonable efforts to remove as soon as practicable any of Respondent's trademarks, trade dress, service marks, trade names, inventory, and all other proprietary information from the store locations listed in Appendix A of this Order after the Closing Date for each such location, during which time the location will not be open for business, pursuant to the following terms:

1. For a period of not more than ten (10) days after the Closing Date, Respondent shall have exclusive access to the store, during which period Respondent shall use all commercially reasonable efforts to remove as soon as practicable all confidential

business information, including all information technology and operating systems, all human resources, payroll and benefits records, all accounting and financial records, all company policies and directives, and all purchasing information. This exclusive access period shall end when Respondent has removed all confidential business information from the store. *Provided, however,* that Respondent shall also use commercially reasonable efforts to remove as soon as practicable any of Respondent's trademarks, trade dress, service marks, trade names, inventory, and all other proprietary information from the store during such exclusive access period.

2. For a period of not more than twenty (20) days after Respondent has removed the confidential business information from the store, Respondent shall have non-exclusive access to the store, during which period Respondent shall use all commercially reasonable efforts to remove as soon as practicable any remaining trademarks, trade dress, service marks, trade names, inventory, and all other proprietary information from the store. Respondent shall cooperate fully with the Commission-approved Acquirer to coordinate its removal efforts with the Commission-approved Acquirer's efforts to prepare the location for reopening.

Provided, however, that Respondent shall be responsible for all lease and utility costs associated with such store until it has completely removed its assets from such store.

Provided further, however, that Respondent shall not remove any of the Wild Oats Associated Intellectual Property identified in Paragraph I.G.1. of this order.

- I. The purpose of the divestiture of the Assets To Be Divested is to ensure the viable and competitive operation of the Assets To Be Divested in the same business and in the same manner in which the Assets To Be Divested were engaged at the time of the announcement of the proposed acquisition of Wild Oats by Whole Foods and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) Days thereafter until Respondent has fully complied with Paragraphs II.A., through II.H, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed and to the Divestiture Trustee. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of this Order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondent.

V.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

**APPENDIX A
OPERATING LOCATIONS**

Wild Oats Market
2584 Baseline Rd.
Boulder, CO 80305

Alfalfa's
1651 Broadway St.
Boulder, CO 80302

Whole Foods Market
3180 New Center Point
Colorado Springs, CO 80922

Wild Oats Market
4301 Main St.
Kansas City, MO 64111

Whole Foods Market
7250 W. Lake Mead Blvd.
Las Vegas, NV 89128

Wild Oats Market
5910 S. University Blvd.
Littleton, CO 80121

Whole Foods Market
6930 S. Highland Dr.
Cotton Wood Heights, UT 84121

Wild Oats Market
1090 St. Francis Dr.
Santa Fe, NM 87505

Whole Foods Market
8688 East Raintree Drive
Scottsdale, AZ 85260

Whole Foods Market
19440 NW Cornell Rd.
Hillsboro, OR 97124

Whole Foods Market
7133 N. Oracle Rd.
Tucson, AZ 85704

Whole Foods Market
340 N. Main St.
West Hartford, CT 06117

Whole Foods Market
9229 N. Sheridan Blvd.
Westminster, CO 80031

**APPENDIX B
CLOSED LOCATIONS**

200 W. Foothills Pkwy.
Fort Collins, CO 80525

13823 N. Tatum Blvd.
Phoenix, AZ 85032

1422 N. Cooper Road
Gilbert, AZ 85233

87 Marginal Way
Portland, ME 04101

874 E. Warner Road
Gilbert, AZ 85296

2077 NE Burnside St.
Gresham, OR 97030

5350 W. Bell Road
Glendale, AZ 85308

5695 S. Virginia Street
Reno, NV 89502

517 N. Stephanie St.
Henderson, NV 89014

4979 S. Virginia Street
Reno, NV 89502

17711 Jean Way
Lake Oswego, OR 97035

4600 Shelbyville Road
St. Matthews, KY 40207

8194 S. Kipling Parkway
Littleton, CO 80127

15569 W. Bell Road
Surprise, AZ 85374

6424 Naples Blvd.
Naples, FL 34109

3736 W. Center Park Drive
West Jordan, UT 84084

7831 Dodge St.
Omaha, NE 68114

8819-8833 Ladue Rd.
St. Louis, MO 63124

9028 W. Union Hills
Peoria, AZ 85382

APPENDIX C

INFORMATION TO BE PROVIDED TO THE DIVESTITURE TRUSTEE

For each store listed in Appendix A and Appendix B:

Store number, banner, name, address, city, state, zip code and county

Total square footage and selling space square footage

Date store opened and closed (if applicable)

Indication whether store is freestanding or in a shopping center

Indication whether store has equipment (yes or no answer within ten (10) days of approval of trustee agreement, full list of fixtures and equipment to be provided later upon the request of the Divestiture Trustee

Total gross sales for the (1) 2008 fiscal year, (2) first quarter 2009 fiscal year, and (3) first quarter 2008 fiscal year

Occupancy expenses (segmented by minimum annual rent, percentage rent, common area maintenance expenses, insurance, taxes and utilities) during the last full fiscal year

Lease and lease abstract indicating lease commencement date, base lease expiration, remaining renewal options, minimum annual rent, percentage rent and threshold, rent adjustments, recapture rights/operating covenants, and use restrictions

Any required contractual obligations to be assumed related to occupancy

Fixture (basic floor plan layout) and site plans (e.g., ingress and egress into shopping center, etc.) to the extent they exist

Aerial, exterior and interior photographs to the extent they exist

Maps of the customer draw area and customer spotting surveys and supporting data, to the extent they exist, to be provided on the Closing Date for the particular store

For the Wild Oats Associated Intellectual Property:

A detailed list of all assets that constitute the Wild Oats Associated Intellectual Property

All registrations for all trademarks, trade dress, service marks and trade names

CONFIDENTIAL APPENDIX D

[Redacted From the Public Record Version, But Incorporated By Reference]