



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

June 18, 2010

Matthew S. Morris  
The Food Partners  
5335 Wisconsin Avenue, N.W.  
Suite 410  
Washington, DC 20015

Re: Whole Foods Market, Inc.  
Docket No. 9324

Dear Mr. Morris:

This is in response to the Petition for Approval of Proposed Divestiture to A-M Holdings, LLC which you filed on February 23, 2010 ("A-M Petition"), the Petition for Approval of Proposed Divestiture to Healthy Investments, LLC which you filed on February 23, 2010 ("Healthy Investments Petition"), the Petition for Approval of Proposed Divestiture to Trader Joe's East, Inc. which you filed on March 4, 2010 ("Trader Joe's Petition"), the Petition for Approval of Proposed Divestiture to Luberski, Inc. which you filed on March 8, 2010 ("Luberski Petition"), and the Petition for Approval of Proposed Divestiture to Topco Associates LLC which you filed on March 8, 2010 ("Topco Petition") pursuant to the Order in Docket N. 9324 ("Order"). Each of the Petitions was subject to a thirty day public comment period. Public comments were filed with regard to the Trader Joe's Petition and the A-M Petition.

The Commission has determined to approve the A-M Petition, the Healthy Investments Petition, the Trader Joe's Petition, and the Luberski Petition, and to deny the Topco Petition.

A-M Holdings, LLC ("A-M") and Healthy Investments, LLC ("Healthy Investments") each intend to acquire a currently operating store from Whole Foods and operate a premium natural and organic supermarket at the location. They each have demonstrated the financial resources needed to acquire and operate the store in a viable manner. Divestiture to A-M and Healthy Investments is consistent with the purposes of the Order.

Trader Joe's East, Inc. ("Trader Joe's") intends to acquire a closed store location from Whole Foods. Whole Foods closed this location prior to the entry of the Order and has not operated a premium natural and organic supermarket at the location since the Order was entered. Under the Order, if the Commission does not approve the Trader Joe's Petition, no divestiture of this location will occur. Although Trader Joe's does not compete directly with Whole Foods in the premium natural and organic supermarket market, it does provide some level of competition to Whole Foods. Because the store location is currently closed, and is thus not competing in the market, the Commission has determined that approving the Trader Joe's Petition would better serve the purposes of the Order than having the location remain closed.

The A-M Petition and the Topco Petition each involve, in part, the acquisition of the rights to the “Alfalfa’s” name and associated intellectual property. A-M also proposes to acquire the store at 1651 Broadway in Boulder, Colorado. That store currently operates under the “Alfalfa’s” name. A-M proposes to continue to operate the store under the “Alfalfa’s” name by acquiring the rights to the name as well as the store location. Topco Associates LLC (“Topco”) does not propose to acquire any store locations in addition to the intellectual property it proposes to acquire. Topco proposes to use the “Alfalfa’s” intellectual property to allow its member-owners to brand the natural and organic sections of their stores with the intellectual property, allowing its member-owners to create Alfalfa’s cafes in their stores, and creating a group of products branded using the Alfalfa’s intellectual property. Topco Petition at 3. Paragraph II.I. of the Order states “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.” The Complaint alleged that the acquisition lessened competition in the operation of premium natural and organic supermarkets. The Commission has determined that the A-M Petition better satisfies the purposes of the divestiture than does the Topco Petition with regard to the “Alfalfa’s” intellectual property. A-M intends to use the “Alfalfa’s” intellectual property in the operation of a premium natural and organic supermarket. It will also use the intellectual property in the same manner as it was used at the time of the announcement of the proposed acquisition. Topco does not intend to use the “Alfalfa’s” intellectual property in the operation of premium natural and organic supermarkets. It also does not intend to use the intellectual property in the same manner as it was used at the time of the announcement of the proposed acquisition. Accordingly, the Topco Petition does not satisfy the purposes of the divestiture of the “Alfalfa’s” intellectual property. Therefore, the Commission has determined to approve the A-M Petition and to deny the Topco Petition as to the “Alfalfa’s” intellectual property.

The Luberski Petition and the Topco Petition each involve, in part, the acquisition of the “Wild Oats” name and associated intellectual property. Luberski, Inc. (“Luberski”) intends to develop and supply a Wild Oats labeled brand of natural and organic packaged food products. Luberski Petition at 2. Luberski also intends to use the Wild Oats intellectual property to open Wild Oats stores by licensing the name to developers. Letter from Charles F. Rule, Esq., to Kenneth A. Libby, Esq., April 19, 2010, at 4. Topco proposes to use the Wild Oats intellectual property to allow its member-owners to brand the natural and organic sections of their stores with the intellectual property, allowing its member-owners to create Wild Oats’s cafes in their stores, and creating a group of products branded using the Wild Oats intellectual property. Topco Petition at 3. At the time of the announcement of the proposed acquisition, the “Wild Oats” intellectual property was used on products sold to third party retailers and as the name of stores. It was not used as the name of the natural and organic sections of other stores or as the name of cafes in other stores. Topco also has not shown how its proposed use of the “Wild Oats” intellectual property will remedy the lessening of competition alleged in the Commission’s complaint. The Commission has determined that Luberski’s proposed use of the “Wild Oats” intellectual property better satisfies the purposes of the divestiture than does Topco’s proposed use of the “Wild Oats” intellectual property. Therefore, the Commission has determined to

approve the Luberski Petition and to deny the Topco Petition as to the “Wild Oats” intellectual property.

In granting its approval, the Commission relied on the information you submitted and the information submitted by the proposed acquirers and assumed it to be accurate and complete.

By direction of the Commission, Commissioner Ramirez and Commissioner Brill not participating.

Richard C. Donohue  
Acting Secretary

cc: James A. Fishkin  
Dechert LLP  
1775 I Street, N.W.  
Washington, DC 20006