

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 TOPCO ASSOCIATES 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 Topco Associates LLC ("Topco").

I. DECISION AND ORDER AND PROPOSED SALE TO TOPCO ASSOCIATES 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 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 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 Topco and explains why the Agreements satisfy the purposes of the Decision and Order.

II. THE TRANSACTION DOCUMENTS

Whole Foods and Topco 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 Agreements (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 Topco will acquire the Wild Oats and Alfalfa's intellectual property. There will be no on-going entanglements between Topco and Whole Foods. As described below, requiring Whole Foods to divest of the Wild Oats and Alfalfa's intellectual property 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

Based in Skokie, Illinois, Topco is a \$10.8 billion, privately held cooperative that provides multifaceted solutions for its food industry member-owners and customers. Topco provides procurement, quality assurance, packaging and other services exclusively for its member-owners, which include supermarket retailers, wholesalers and foodservice companies. The company serves as a vehicle for its members to aggregate their purchasing volume to drive down product costs and to obtain economies of scale. In this manner, Topco's member-owners are able to more effectively compete against national companies. Member-owners purchase a variety of products and services through the cooperative including corporate and national brands, perishables, equipment, supplies and business services. Together, member-owners represent more than \$120 billion in consumer sales and have thousands of stores across the country. Topco products appear in approximately 8,400 stores. Topco distributes all of its earnings back to its member-owners based on each member's level of participation.

The company began in 1944 as a small cooperative that was formed to supply its members with dairy products and paper goods. Called Food Cooperatives, Inc., the products procured by this organization were sold under the Food Club and Elna labels. Some of the members of Food Cooperatives were also members of another cooperative called Top Frost Foods. The two companies merged in 1950 forming Topco, as it is known today.

Topco currently offers cost savings through collective procurement in the areas of center store (grocery, frozen, dairy, bakery, GM/HBC and pharmacy), perishables (branded and fresh meat, produce and floral), corporate brands and world brands. Topco's corporate brand programs offer extensive corporate brand product mix in both Topco and member-owned brands in premium, first quality and value quality levels. Topco brands include Food Club, Top Crest, Top Care, Paws Premium, Paws Professional, World Classics Trading Company, Dining In, Full Circle, ValuTime, Clear Value and the X-Brands.

Select member-owners and associate member-owners include Affiliated Foods Midwest, Alex Lee, Associated Grocers (Baton Rouge), Associated Grocers of Florida, Associated Grocers of the South, Bashas', BI-LO, Big Y, Brookshire Grocery, C&S Wholesale, Centro Cuesta Nacional, Certco, Coborn's, Duckwall-ALCO, Fred W. Albrecht Grocery, G&C Food Distributors, Giant Eagle, Golub/Price Chopper, Haggen, Harris Teeter, Hy-Vee, Imperial Distributors, J.H. Harvey, King Kullen, K-VA-T, Larroc, Laurel Grocery, Lund Food, Marsh, Meijer, Mitchell Grocery, Oppenheimer Company, Piggly Wiggly Carolina, Piggly Wiggly Midwest, Pueblo, Quick Chek, Raley's, Roche Bros., Roundy's, Save Mart Supermarkets, Schnucks, Scolari's, Spartan Stores, Stater Bros., Tops, UniPro Foodservice, United Supermarkets, W. Lee Flowers, Wegman's, Weis and Winn-Dixie.

Through Topco's member-owners the Wild Oats and Alfalfa's intellectual property can be used by members to increase their competition in the premium, natural and organic space by sourcing Wild Oats and Alfalfa's product to Topco's retailers and wholesalers, creating competing, national brands. The company is interested in the intellectual property to further penetrate the natural and organic market. Topco is considering (i) allowing its members-owners to brand the natural and organic sections of their stores with the Wild Oats and Alfalfa's intellectual property (ii) allowing its member-owners to create Wild Oats and Alfalfa's cafes in their stores and (iii) creating a group of products branded using the Wild Oats and Alfalfa's intellectual property. Each of these opportunities, in addition to others that are being explored by Topco, could create meaningful competition to Whole Foods in the natural and organic market.

B. Financial Capability

Topco has approximately \$11 billion in sales and has adequate liquidity to consummate the proposed acquisition and maintain the assets. The company plans to pay cash for the Wild Oats and Alfalfa's intellectual property. (Additional information pertaining to Topco is attached to this Petition as Confidential Appendix B.)

IV. CONCLUSION

The proposed divestiture to Topco of the Wild Oats and Alfalfa's intellectual property will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition. Topco has the financial capability and relevant experience to facilitate its members' use of the Assets To Be Divested to increase their competition with Whole Foods. Accordingly, the Divestiture Trustee requests that the Commission approve the proposed divestiture and acquirer.

Dated: March 8, 2010

Respectfully submitted,


Matthew S. Morris
The Food Partners, LLC
Divestiture Trustee

**Appendix A
Redacted**

**Appendix B
Redacted**