

Interlocutory Orders, Etc.

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,  
AND  
WILD OATS MARKETS, INC.**

*Docket No. 9324      Order, August 8, 2008*

Order on motion to vacate the stay of administrative proceedings issued August 7, 2007, pending the outcome of proceedings in the collateral federal district court case, and resume action under Part III.

**ORDER RESCINDING STAY OF ADMINISTRATIVE PROCEEDING,  
SETTING SCHEDULING CONFERENCE, AND DESIGNATING  
PRESIDING OFFICIAL**

On June 6, 2007, the Commission filed a complaint and motions for a temporary restraining order and a preliminary injunction against Respondents in the United States District Court for the District of Columbia. On June 7, 2007, the District Court issued a Temporary Restraining Order preventing Respondent Whole Foods Market, Inc., from consummating any acquisition of any stock, assets, or other interest, directly or indirectly, in Respondent Wild Oats Markets, Inc., pending the District Court's decision on the Commission's motion for a preliminary injunction.

On June 28, 2007, the Commission issued the complaint in this administrative proceeding. The Commission retained adjudicative responsibility for the matter. *See* Commission Rule 3.42(a), 16 C.F.R. § 3.42(a). On July 17, 2007, the Respondents in this matter filed their respective Answers to the Complaint. On August 7, 2007, the Commission -- in light of the pendency of the federal court proceedings and as a matter of discretion -- issued an Order Staying Administrative Proceedings, pursuant to Commission Rule 3.51, 16 C.F.R. § 3.51.

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On August 16, 2007, the District Court denied the Commission's motion for a preliminary injunction. On July 29, 2008, the Court of Appeals for the District of Columbia Circuit issued an Opinion reversing the Opinion and Order of the District Court and remanding the case to the District Court for further proceedings consistent with the Court of Appeals Opinion. In light of the Court of Appeals Opinion and Order -- and in order to effectuate the Commission policy enunciated in Commission Rule 3.1, 16 C.F.R. § 3.1, to conduct administrative proceedings as expeditiously as possible -- the Commission has determined to rescind the stay of the administrative proceeding; to set a Scheduling Conference; and to designate Commissioner J. Thomas Rosch as the Presiding Official for the Scheduling Conference. Accordingly,

**IT IS ORDERED THAT** the stay of this administrative proceeding effected by the August 7, 2007 Order be, and it hereby is, rescinded;

**IT IS FURTHER ORDERED THAT** a Scheduling Conference, pursuant to Commission Rule 3.21(b), 16 C.F.R. § 3.21(b), shall be held on Monday, August 18, 2008, at 4:00 p.m., on the record by videoconference and/or by telephone, with a transcript to be made available to the public through the Office of the Secretary;

**IT IS FURTHER ORDERED THAT**, pursuant to Commission Rule 3.42, 16 C.F.R. § 3.42, J. Thomas Rosch, a Commissioner of the Federal Trade Commission, be, and he hereby is, designated and appointed to preside over the Scheduling Conference set for August 18, 2008; and

**IT IS FURTHER ORDERED THAT** before appearing at the Scheduling Conference, counsel for the parties shall meet and confer about the substance of the action and the most expeditious means of resolving this litigation. In addition, counsel for the

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parties are instructed to file with the Commission a joint case management statement, by Thursday, August 14, 2008, at 5:00 p.m., that includes the following information:

1. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
2. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
3. Motions: The current status of pending motions. In addition, counsel shall address any anticipated motions, including but not limited to motions respecting Respondents' defenses challenging the legal viability of the Complaint.
4. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
5. Evidence Preservation: Steps taken to preserve evidence relevant to the issues reasonably evident in this action, including interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.
6. Discovery: The scope of anticipated discovery, any proposed limitations of discovery, and a proposed discovery plan, including, without limitation, any issues relating to disclosure or discovery of electronically stored information.
7. Related Cases: Any related cases or proceedings pending before another court or administrative body.

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8. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and the hearing.
9. Hearing: The expected length and timing of the hearing.
10. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

By the Commission.

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IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,  
AND  
WILD OATS MARKETS, INC.**

*Docket No. 9324      Order, August 12, 2008*

Order granting Whole Food's motion to extend the deadline for submitting a joint case management statement and move the date of the Scheduling Conference.

**ORDER CHANGING DATE OF SCHEDULING CONFERENCE AND  
DEADLINE FOR FILING JOINT CASE MANAGEMENT STATEMENT**

On August 8, 2008, the Commission issued an Order in this matter (August 8 Order). That Order rescinded the stay of the administrative proceeding; set a Scheduling Conference; designated Commissioner J. Thomas Rosch as the Presiding Official for the Scheduling Conference; and directed the parties to file a joint case management statement by August 14, 2008. On August 11, Respondent Whole Foods Market filed a Motion to extend the deadline for submitting the joint case management statement until August 28, 2008, and to postpone the Scheduling Conference until September 2, 2008 or a later date. Complaint Counsel have advised that they do not intend to file an opposition to the Motion.

The Commission has determined to grant the Motion. Accordingly,

**IT IS ORDERED THAT** the Scheduling Conference scheduled for August 18, 2008 by the August 8 Order shall instead be held on Monday, September 8, 2008, at 10 a.m.; and