

Interlocutory Orders, Etc.

IN THE MATTER OF

**WHOLE FOODS MARKET, INC.,
AND
WILD OATS MARKETS, INC.***Docket No. 9324 Order, December 15, 2008*

Order taking Whole Foods Market's motion to stay the proceeding under advisement.

ORDER

On December 3, 2008, Respondent filed a Motion To Stay the Proceeding, To Amend the Scheduling Order, and to Certify the Questions to the Commission for Determination in this matter ("Motion"). On December 8, 2008, Complaint Counsel filed an Opposition to that Motion. On December 11, 2008, the Administrative Law Judge issued an Order certifying Respondent's Motion to the Commission without a recommendation. The Commission has taken the Motion, the Opposition, and the Order under advisement; no further briefing is needed; and the Commission will shortly issue an appropriate Order.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

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

Docket No. 9324 Order, December 19, 2008

Order granting Whole Foods Market's motion in part and denying in part.

**ORDER AMENDING SCHEDULING ORDER AND DENYING
RESPONDENT'S MOTION TO STAY PROCEEDING**

Respondent Whole Foods Market, Inc. has filed a Motion to stay this administrative proceeding until the conclusion of the federal district court remand proceeding, and to amend the September 10, 2008 Scheduling Order to postpone the commencement of the administrative hearing until no earlier than September 14, 2009. The Commission has determined to deny Respondent's Motion, but to amend the Scheduling Order in certain respects.

The Scheduling Order currently provides that the administrative trial will begin on February 16, 2009. Respondent argues that (1) a stay is warranted because the remand proceeding "will result in findings of fact regarding the actual effects of the Whole Foods Market/Wild Oats merger and other important issues that necessarily will affect the conduct of the administrative proceedings" (Motion at 1); and (2) without a seven-month extension, it "will be unable to complete adequate third party discovery in advance of expert reports and the administrative hearing." *Id.* at 5. Although we find that Whole Foods has failed to adequately justify staying these proceedings or delaying trial for seven months, we nevertheless will delay the trial until April 6, 2009.