

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *NHB Holdings, Inc., and Proficio Mortgage Ventures, LLC*, both of Jacksonville, Florida, to engage *de novo* in a joint venture with SilverLeaf Mortgage, LLC, Salt Lake City, Utah, in conducting mortgage banking activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9-5454 Filed 3-12-09; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Pennsylvania Commerce Bancorp, Inc.*, Harrisburg, Pennsylvania, to merge with Republic First Bancorp, Inc., and thereby indirectly acquire Republic First Bank, both of Philadelphia, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Scott Morgan Bancorp, Inc.*, Bluffs, Illinois, to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bluffs, Bluffs, Illinois.

Board of Governors of the Federal Reserve System, March 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9-5455 Filed 3-12-09; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

[Docket No. 9324]

Whole Foods Market, Inc.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 6, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Whole Foods Market, Docket No. 9324” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-WholeFoodsMarket/>) (and following the instructions on the web-based form). To ensure that the Commission considers

¹ FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

an electronic comment, you must file it on the web-based form at the weblink:(<https://secure.commentworks.com/ftc-WholeFoodsMarket>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the "Whole Foods Market, Inc., Docket No. 9324" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

FOR FURTHER INFORMATION CONTACT: Albert Y. Kim, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2952.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2009), on the World Wide Web, at (<http://www.ftc.gov/os/2009/03/index.htm>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Whole Foods Market, Inc. ("Whole Foods"). The purpose of the proposed Consent Agreement is to remedy the competitive harm resulting from Whole Foods' acquisition of Wild Oats Markets, Inc. ("Wild Oats"), completed on or about August 28, 2007. Under the terms of the proposed Consent Agreement, Whole Foods is required to maintain and subsequently divest a significant portion of the Wild Oats assets at issue in this matter.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and the comments received, and decide whether it should withdraw the Consent Agreement or make it final.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement; it is not intended to constitute an official interpretation of the Consent Agreement or modify its terms in any way.

II. BACKGROUND

On February 21, 2007, Whole Foods and Wild Oats publicly announced that they had executed a merger agreement pursuant to which Whole Foods would acquire Wild Oats in a transaction

valued at about \$700 million. At the time of the merger announcement, Whole Foods (headquartered in Austin, Texas) and Wild Oats (headquartered in Boulder, Colorado) were the only national operators of premium natural and organic supermarkets ("PNOS") in the United States. Whole Foods operated 194 stores in more than 37 states and the District of Columbia as well as the United Kingdom, and Wild Oats maintained 74 PNOS stores in 24 states.²

Wild Oats and Whole Foods offered a unique selection of natural and organic products, amenities, and high levels of customer service that differentiated them from conventional supermarkets, mass merchants, and other categories of food retailers. The combination of Whole Foods and Wild Oats would provide Whole Foods with market power post-acquisition in the PNOS market, leading to significant anticompetitive effects. Staff's investigation confirmed that repositioning by existing competitors or new entry would be inadequate to deter or counteract this harm to competition.

Having reason to believe the proposed transaction would result in competitive harm, the Commission authorized staff to seek a temporary restraining order ("TRO") and preliminary injunctive relief in federal district court and to commence an administrative trial under Part 3 of the Commission's Rules of Practice. Both the district court and administrative complaints alleged that the combined company would increase prices, and decrease the quality and number of offered services, if the merger were permitted to close.

III. LITIGATION HISTORY

On June 6, 2007, the Commission filed an action in the U.S. District Court for the District of Columbia to seek a TRO and a preliminary injunction against the acquisition. The court granted the TRO on June 7, 2007. On June 28, 2007, the Commission issued an administrative complaint pursuant to Part 3 of its Rules. Given the proceedings in the collateral federal district court case, the Commission, as a matter of discretion, stayed the Part 3 action in an order issued on August 7, 2007.

After a two-day hearing on July 31 and August 1, 2007, the district court denied the Commission's motion for a preliminary injunction on August 16, 2007. On August 17, 2007, the

² Wild Oats also operated stores under the Henry's Farmers Market banner (in Southern California), the Sun Harvest banner (in Texas), and the Capers Community Market banner (in British Columbia, Canada).

Commission filed with the U.S. Court of Appeals for the D.C. Circuit a notice of appeal and an emergency motion for an injunction pending appeal. Although the D.C. Circuit initially denied the Commission's emergency motion for an injunction pending appeal, on July 29, 2008, the court of appeals reversed the district court's opinion and found that the Commission had demonstrated the requisite likelihood of success in the preliminary injunction proceeding, and remanded the matter to the district court to address the equities and, if necessary, fashion appropriate relief.³

Approximately one week later, on August 8, 2008, the Commission lifted the stay of the Part 3 proceedings, and the Commission issued an amended administrative complaint on September 8, 2008. The amended complaint alleged anticompetitive effects in 22 overlap markets (in which Whole Foods and Wild Oats competed head-to-head) and seven potential competition markets (in which Whole Foods had planned to enter but for the merger).

On January 8, 2009, the district court issued a written order and opinion holding that the issue of likelihood of success had been fully resolved in the Commission's favor by the court of appeals, and confirming that all that remained was to weigh the equities and impose relief, if necessary.

On January 26, 2009, Whole Foods filed a motion to withdraw the matter from administrative litigation, together with a settlement agreement. The Commission granted Whole Foods' motion on January 29, 2009, and temporarily withdrew the matter from administrative adjudication. The withdrawal was subsequently extended until March 6, 2009, as Whole Foods and Commission staff negotiated a remedy in settlement of the ongoing litigation.

IV. POST-ACQUISITION INTEGRATION

The acquired Wild Oats assets included stores operating under the Wild Oats banner as well as a number of leases for Wild Oats stores that were closed prior to the acquisition.⁴ After

³ Following Whole Foods' August 26, 2008 petition for rehearing *en banc* in the court of appeals, the D.C. Circuit denied the petition and reissued the court's judgment on November 21, 2008. The two judges of the panel majority reissued opinions that reiterated their respective rationales for concluding that the Commission had carried its burden of showing a likelihood of success on the merits and that the district court should conduct an equities analysis to determine whether an injunction should issue.

⁴ Immediately following the closing, on September, 30, 2007, Whole Foods sold the Henry's and Sun Harvest stores that Wild Oats had been

the district court's August 16, 2007 decision denying the Commission's request for a preliminary injunction, Whole Foods consummated its acquisition of Wild Oats and began integrating certain of the acquired Wild Oats assets, rebranding Wild Oats stores, closing other Wild Oats locations, and terminating certain leases.

In the 18 months since the close of the transaction, Whole Foods has closed a number of Wild Oats stores. Whole Foods has maintained leases and physical assets relating to some, but not all, of the closed Wild Oats locations. Within the 29 geographic markets alleged in the complaint, Whole Foods is currently operating 31 former Wild Oats stores and is maintaining control of 19 formerly operating Wild Oats stores.

V. THE PROPOSED CONSENT AGREEMENT

In order to remedy, to a significant degree, the anticompetitive effects of the transaction, the Commission has entered into the attached Consent Agreement with Whole Foods, which requires the divestiture of 32 stores, along with associated Wild Oats intellectual property and related assets, leases, properties, and government permits.⁵ The Order to Maintain Assets will require Whole Foods to maintain the operating status of the open stores, and maintain all leases (open and dark stores) until divestiture is complete. *See* Appendix A.

The inclusion of the Wild Oats intellectual property is an important component of the package. The intellectual property includes the use, without restriction, of the Wild Oats name. Even months after the acquisition, the Wild Oats brand name retains significant brand equity that has been developed over the past 20 years.

As shown in Appendices A & B of the Decision and Order, Whole Foods is required to divest a significant portion of the acquired and currently operating stores, and all of the formerly operating stores for which leases still exist. These planned divestitures will offer relief in 17 of the 29 geographic markets alleged in the amended administrative complaint, eliminating Whole Foods' monopoly position in these markets, and permitting consumers to once again enjoy the benefits of competition between PNOS operators. These stores also could provide a springboard from

operating to Smart & Final Inc., a Los Angeles-based food retailer.

⁵ Of the 32 stores, 13 are live stores and 19 are "dark" stores. Dark stores are former Wild Oats stores that are not presently operating, but are under the control of Whole Foods.

which the acquirer(s) can expand into additional geographic markets.

The proposed order provides that the responsibility for the marketing and sale of the assets to be divested will immediately be put in the hands of the divestiture trustee.⁶ The trustee will have six months within which to divest the stores and related assets to a buyer or buyers approved by the Commission. If the trustee has received good faith offers from potential acquirers for certain stores within the initial six-month divestiture period, the Commission may extend the divestiture period for those stores for up to an additional six months. The requirement that any potential acquirer be approved by the Commission is designed to ensure that the potential acquirer(s) intends to put the divested assets, including the stores and the Wild Oats brand, to use in the relevant product market in competition with Whole Foods.

VI. OTHER PROVISIONS OF THE CONSENT AGREEMENT

The Consent Agreement contains several additional provisions designed to ensure that competition is, in fact, replicated in the targeted geographic markets. As referenced above, the Consent Agreement requires appointment of a divestiture trustee to oversee the process for divesting the Wild Oats assets. The Food Partners ("TFP") has been appointed to fill this role. TFP is one of the leading investment banking firms in the food retailing industry, with particular expertise in mergers, acquisition, and divestiture services. TFP has advised on a number of supermarket sales and acquisitions, including divesting packages of geographically dispersed national chain supermarkets. For these reasons, TFP is well-suited to serve as divestiture trustee in this matter.

The Consent Agreement also includes an Order to Maintain Assets ("OMA"), which requires Whole Foods to continue to operate the Wild Oats stores until a buyer is identified and approved by the Commission and final closing of the purchase occurs. Because of concerns about possible deterioration of the stores during the divestiture period, the OMA further provides for the appointment of an interim monitor to ensure that Whole Foods maintains the viability, marketability, and competitiveness of the assets and does

⁶ Pursuant to the proposed Consent Agreement, although the divestiture of the stores may be made to one or more Commission-approved buyers, the Wild Oats-associated intellectual property may be divested to only a single buyer.

not terminate the operation of any store included in the divestiture package.

VII. POST-CONSUMMATION RELIEF

The absence of pre-consummation relief from the district court, and Whole Foods' subsequent integration activities, have made it more difficult for the Commission to obtain complete relief in this matter. However, the proposed Consent Agreement will provide substantial relief to consumers in 17 geographic markets across the United States. Moreover, acceptance of the proposed Consent Agreement will bring immediate, certain relief and avoid the expense and uncertainty inherent in continued litigation. Reestablishing a PNOS competitor in these markets under the Wild Oats banner will reintroduce direct price, quality, and service competition in these areas, restoring to a substantial degree the competition that was eliminated by the acquisition, providing important benefits to consumers, and perhaps creating a springboard for broader competition nationwide.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9-5519 Filed 3-12-09; 8:45 am]

[BILLING CODE 6750-01-S]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-08-0740]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Medical Monitoring Project (MMP) (OMB No. 0920-0740, exp. June 2010.)—Revision—National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Some MMP interview questions were revised to make them easier for patients to understand and respond appropriately. Medical record abstraction sections were removed, and a provider survey has been added. Revisions to previously approved instruments have been included. The purpose of MMP is to supplement the HIV/AIDS surveillance programs in 26 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS.

MMP collects data on behaviors and clinical outcomes from a probability sample of HIV-infected adults receiving care in the U.S. Collection of data from interviews with HIV-infected patients provides information on patient demographics, and the current levels of behaviors that may facilitate HIV transmission: Sexual and drug use behaviors; patients' access to, use of and

barriers to HIV-related secondary prevention services; utilization of HIV-related medical services; and adherence to drug regimens. Collection of data from patient medical records provide information on: Demographics and insurance status; the prevalence and incidence of AIDS-defining opportunistic illnesses and co-morbidities related to HIV disease; the receipt of prophylactic and antiretroviral medications; and whether patients are receiving screening and treatment according to Public Health Service guidelines. The provider survey will collect data from a nationally representative sample of HIV care providers selected to participate in MMP. The provider survey will collect information on: Health care providers' professional training history, ongoing sources of training and continuing education about HIV care and treatment, perceptions of patients' barriers to care and reasons for declining HIV care, awareness of HIV related resources, and approach to antiretroviral therapy management and HIV risk reduction counseling. No other Federal agency collects national population-based behavioral and clinical information from HIV-infected adults in care or HIV care providers.

The data will have significant implications for policy, program development, and resource allocation at the state/local and national levels. Users of MMP data include, but are not limited to, Federal agencies, State and local health departments, clinicians, researchers, and HIV prevention and care planning groups.

There are no costs to the respondents other than their time.

The total estimated annualized burden hours are 9,603.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Patients	Standard Interview	7,988	1	45/60
Patients	Short Interview	332	1	20/60
Facility office staff	Medical Record Abstraction	7,488	1	3/60
Facility office staff	None (providing estimated patient loads)	936	1	2
Facility office staff	None providing patient lists)	1,030	1	30/60
Facility office staff	None approaching patients for enrollment) ...	3,120	1	5/60
Physicians, nurse practitioners, physician's assistants.	Provider Survey	1,440	1	20/60