

**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 HEALTHY INVESTMENTS, 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 Healthy Investments, LLC ("Healthy Investments").

**I. DECISION AND ORDER AND PROPOSED SALE TO HEALTHY INVESTMENTS, 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 associated 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 Associated 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 Agreement (as defined below) by which Whole Foods plans to sell certain Assets To Be Divested to Healthy Investments and explains why the Agreement satisfies the purposes of the Decision and Order.

## **II. THE TRANSACTION DOCUMENTS**

Whole Foods and Healthy Investments have executed an Agreement for the divestiture of certain Assets To Be Divested, subject to the approval of the Commission. The Agreement is embodied in the Asset Purchase Agreement (the "Agreement"). Copies of the Agreement, attachments, exhibits and schedules (the "Transaction Documents") are attached to this Petition as Confidential Appendix A.

In essence, the Agreement provides that Healthy Investments will acquire the Whole Foods Market store at 4301 Main Street in Kansas City, Missouri ("Kansas City"). Other than the contingent liability associated with the lease assignment, there will be no on-going entanglements between Whole Foods and Healthy Investments. As described below, requiring Whole Foods to divest of the Kansas City store 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**

The proposed store to be acquired will be rebannered by Healthy Investments as KC Organics and will emphasize organic produce and meat from local vendors. The store will also offer non-GMO foods, high quality supplements, gluten and wheat free foods, organic spices, purified water, organic pet foods and earth friendly body care products. The principals of Healthy Investments are Paul and David Emig.

#### **Paul Emig**

Paul Emig has been in the food business for the last seven years. He has experience working as a sales representative for U.S. Foodservice, a broadline distributor, and as a regional sales manager for Heartland Food Products. For the last three years, Emig has been employed by Nutraceutical Corporation, as a vitamin representative. In this capacity, Emig maintained contacts and relationships with health and vitamin store operators and has been able to learn about retail operations and best practices. Through his experience, Emig has also been able to form relationships with many vendors and other industry contacts. Emig built a successful franchised retail business in Kansas City that he operated for two years until its sale this past year. Through his experience in the franchise retail space, Emig gained know-how in opening and the daily operation of a small business.

#### **David Emig**

David Emig is the founder, owner and operator of the 22 year old company Emig and Associates, an architectural firm based in Emporia, Kansas. Emig has experience in business start-ups as well as deep contacts in the Kansas City area.

**B. Financial Capability**

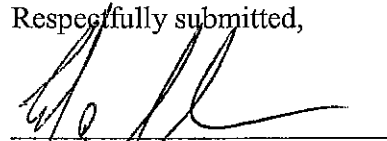
Paul and David Emig intend to invest their own funds and potentially additional monies from third-parties to consummate the transaction and maintain the store operations. Healthy Investments may also seek bank financing, although their ability to implement the business plan is not dependent on obtaining commercial financing. (Projections and a detailed business plan are attached to this Petition as Confidential Appendix B.)

**IV. CONCLUSION**

The proposed divestiture to Healthy Investments of the Kansas City store will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition. Healthy Investments has the financial capability and relevant experience to ensure that the Assets To Be Divested will be used so as to become a viable and effective competitor to Whole Foods. Accordingly, the Divestiture Trustee requests that the Commission approve the proposed divestiture and acquirer.

Dated: February 23, 2010

Respectfully submitted,



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Matthew S. Morris  
The Food Partners, LLC  
Divestiture Trustee

Appendix A  
Redacted