UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	William E. Kovacic, Chairman Pamela Jones Harbour Jon Leibowitz J. Thomas Rosch	
In the Matter of		
WHOLE FOODS MARI a corporation.	KET, INC.,) Docket No. 9324)

ORDER DESIGNATING ADMINISTRATIVE LAW JUDGE

The Federal Trade Commission ("FTC") issued an administrative complaint on June 27, 2007, alleging that Whole Foods Market, Inc.'s agreement to acquire Wild Oats Markets, Inc. violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act. The Commission retained jurisdiction over the matter pursuant to its authority under the Administrative Procedure Act (APA)¹ and the Commission Rules of Practice.² On August 7, 2007 the Commission issued an Order staying the administrative proceeding pending the proceedings in the collateral federal district court case. On August 8, 2008, the Commission issued an Order rescinding the stay of the administrative proceeding, setting a Scheduling Conference, and designating Commissioner J. Thomas Rosch as the Presiding Official for the Scheduling Conference. On September 8, 2008, the Commission issued an Order Amending Complaint and an Amended Complaint. Commissioner

Section 556(b)(2) of the APA permits the Commission to determine whether the Commission itself, one or more Commissioners, or an administrative law judge appointed under 5 U.S.C. § 3105 of the APA will "preside at the taking of evidence" in adjudications conducted under Section 554 of the APA -- such as this adjudicative proceeding -- and to carry out all the functions permitted by Section 556(c) of the APA and Part 3 of the Commission Rules of Practice. *See* 5 U.S.C. § 556.

Part 3 of the Commission Rules of Practice governs the procedures used in Commission adjudicative proceedings. *See* 16 C.F.R. § 3.1 *et seq.* (2008). Commission Rule 3.42 gives the Commission full discretion to determine whether it should preside over a particular adjudicative proceeding itself; designate one or more Members of the Commission to preside over the proceeding; or refer the proceeding to an administrative law judge. *See* 16 C.F.R. § 3.42.

Rosch held the Scheduling Conference on that same day, and on September 10, 2008, the Commission issued a Scheduling Order imposing a fair and timely schedule in this matter. That Order provides, *inter alia*, that the administrative hearing shall begin on February 16, 2009.

The Commission has now determined to designate Acting Chief Administrative Law Judge D. Michael Chappell as the Administrative Law Judge in this matter. Chairman William E. Kovacic and Commissioners Pamela Jones Harbour, Jon Leibowitz, and J. Thomas Rosch are committed, subject to the bounds of reasonableness and fairness, to a just and expeditious resolution of any potential appeal from an Initial Decision filed by the Administrative Law Judge in this matter that may be taken to the full Commission. If such an appeal is filed, the Commissioners commit to make every effort to issue a Commission Opinion and Final Order within approximately 45 days after oral argument.

Accordingly,

IT IS ORDERED THAT Acting Chief Administrative Law Judge D. Michael Chappell be, and he hereby is, designated and appointed to serve as the Administrative Law Judge presiding over the adjudicative proceeding in this matter; and

IT IS FURTHER ORDERED THAT the Commission hereby transfers adjudicative responsibility for this matter to Judge Chappell, in his capacity as Administrative Law Judge presiding over the adjudicative proceeding in this matter.

By the Commission.

Donald S. Clark Secretary

ISSUED: October 20, 2008