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			
)	Docket No. 9324
WHOLE FOODS MARI	KET, INC.,)	
a corporation.)	
)	

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. Kovac