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GRISTEDES FOODS INC

Form 10-K/A

April 07, 2003

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K/A  
AMENDMENT NO. 1

(X) ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

For fiscal year ended December 1, 2002

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For the transition period from\_\_\_\_\_ to\_\_\_\_\_

Commission File No. 1-7013

GRISTEDE'S FOODS, INC.  
(Exact name of registrant as specified in its charter)

DELAWARE  
(State or Other Jurisdiction of  
incorporation or organization)

13-1829183  
(I.R.S. Employer  
Identification No.)

823 ELEVENTH AVENUE, NEW YORK, NY  
(Address of Principal Executive Offices)

10019-3535  
(Zip Code)

(212) 956-5803  
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12 (b) of the Act:

Title of each class	Name of each exchange on which registered
COMMON STOCK, \$0.02 PAR VALUE	AMERICAN STOCK EXCHANGE

Securities registered pursuant to Section 12(g) of the Act:

NONE

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13, or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes      X      No  
            -

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

As of February 25, 2003, 19,636,574 shares of the registrant's common stock, \$0.02 par value, were outstanding.

The aggregate market value of the common stock held by nonaffiliates of the

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registrant (i.e., excluding shares held by executive officers, directors, and control persons as defined in Rule 405) on May 31, 2002 (the last business day of the second fiscal quarter) was \$1,678,553 computed at the closing price on that date.

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### EXPLANATORY NOTE

This amendment of the Annual Report on Form 10-K/A is being filed for the sole purpose of (a) filing Exhibit 10.13 and (b) to designate the Certification pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as Exhibit 99.1. Such Certification was filed with the Annual Report on Form 10-K filed on March 5, 2003.

#### PART IV

#### ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) Exhibits:

Number	Description
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3.1	Amended and Restated Certificate of Incorporation of the Registrant. Incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended February 28, 1990 (the "1990 10-K").
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3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant. Incorporated by reference to Exhibit 3.2 to the Registrant's Annual Report on Form 10-KSB for the fiscal year ended February 27, 1994 (the "1994 10-KSB").
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3.3	Certificate of Amendment of Certificate of Incorporation of the Company, dated November 4, 1997. Incorporated by reference to Exhibit 3.4 to the Registrant's Annual Report on Form 10-K for the transition period ended November 30, 1997 (the "Transition Period 10-K").
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3.4	Certificate of Amendment of Certificate of Incorporation of the
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Company, dated August 13, 1999. Incorporated by reference to Exhibit 3.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 3, 2000 (the "2000 10-K").

- 3.5 Certificate of Amendment of Certificate of Incorporation of the Company dated November 10, 2000. Incorporated by reference to Exhibit 3.5 to the 2000 10-K.
- 3.6 Amended and Restated Bylaws of the Registrant. Incorporated by reference to Exhibit 3.2 to the 1990 10-K.
- 10.1 Form of Indemnification Agreement dated as of January 1, 1994 between the Registrant and each director of the Registrant. Incorporated by reference to Exhibit 10.11 to the 1994 10-KSB.
- 10.2 Form of Indemnification Agreement dated as of January 1, 1994 between the Registrant and each officer of the Registrant. Incorporated by reference to Exhibit 10.12 to the 1994 10-KSB.
- 10.3 1994 Stock Option Plan. Incorporated by reference to Exhibit 10.12 of the Company's Annual Report on Form 10-KSB for the fiscal year ended February 26, 1995 ("1995 10-KSB").
- 10.4 Director Stock Option Plan. Incorporated by reference to Exhibit 10.13 of the Company's 1995 10-KSB.
- 10.5 Merger Agreement. Incorporated by reference to Exhibit A to the Company's definitive Proxy Statement for the Special and Annual Meeting of Stockholders of the Company held on October 31, 1997.
- 10.6 Management Agreement dated November 10, 1997 between Namdor Inc., G Remainder Corp. and S Remainder Corp. Incorporated by reference to Exhibit 10.7 to the Transition Period 10-K.
- 10.7 Agreement dated as of March 1, 2000 between G Remainder Corp. and Gristede's Operating Corp. Incorporated by reference to Exhibit 10.8 to the Company's annual report in Form 10-K for the fiscal year ended November 28, 1999 (the "1999 10-K").
- 10.8 1998 Stock Option Plan. Incorporated by reference to Exhibit 10.10 to the Transition Period 10-K.
- 10.9 Agreement dated March 1, 2000 between John Catsimatidis and the Company. Incorporated by reference to Exhibit 10.11 to the 1999 10-K.
- 10.10 Agreement dated May 10, 2000 between S Remainder Corp and Namdor Inc. Incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K for the fiscal year ended December 3, 2000.
- 10.11 Agreement dated December 3, 2000 between John Catsimatidis and the Company. Incorporated by reference to Exhibit 10.18 to the Company's Annual Report on Form 10-K for the fiscal year ended December 3, 2000.
- 10.12 Amended and Restated Loan Agreement (the "Loan Agreement") dated as of October 31, 2001 among the Company, Citibank, Israel Discount Bank of New York, and Bank Leumi USA. Incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the fiscal year ended December 2, 2001.
- \*10.13 First Amendment to Loan Agreement dated as of November 30, 2002 among

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the Company, Citibank, N.A., Israel Discount Bank of New York and Bank Leumi USA.

11. Statement re: computation of per share income (loss). Not required.

21. Listing of the Company's subsidiaries all of which are wholly owned by the Company.

Subsidiaries	State of Incorporation
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Namdor Inc.	New York
City Produce Operating Corp.	New York
Gristede's Foods NY Inc.	New York
Gristede's Delivery Service, Inc.	New York

\*99.1 Certification pursuant to 18 U.S.C. Section 1350, as adapted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Filed herewith.

(b) The Company did not file any Current Reports on Form 8-K during the last quarter of the period covered by this report.

### SIGNATURES

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Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

GRISTEDE'S FOODS, INC.

By: /s/ John A. Catsimatidis

-----  
John A. Catsimatidis  
Chairman of the Board

SIGNATURE	TITLE	DATE
/s/ John A. Catsimatidis ----- JOHN A. CATSIMATIDIS	Chairman of Board, President and Chief Executive Officer (Chief Executive Officer and Chief Operating Officer)	April 7, 2003
/s/ Martin R. Bring ----- MARTIN R. BRING	Director	April 7, 2003
FREDERICK SELBY	Director	
/s/ Kishore Lall ----- KISHORE LALL	Director	April 7, 2003

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/s/ Gary Pokrassa ----- GARY POKRASSA	Chief Financial Officer (Chief Financial Officer and Chief Accounting Officer	April 7, 2003
/s/ Martin Steinberg ----- MARTIN STEINBERG	Director	April 7, 2003
/s/ Edward P. Salzano ----- EDWARD P. SALZANO	Director	April 7, 2003
/s/ Andrew J. Maloney ----- ANDREW J. MALONEY	Director	April 7, 2003

ANNUAL AND QUARTERLY CERTIFICATIONS  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John A. Catsimatidis, certify that:

1. I have reviewed this annual report on Form 10-K/A of Gristede's Foods, Inc.
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - (a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - (c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to

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record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ John A. Catsimatidis

Date: April 7, 2003

Title: Chief Executive Officer

### ANNUAL AND QUARTERLY CERTIFICATIONS

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gary Pokrassa, certify that:

1. I have reviewed this annual report on Form 10-K/A of Gristede's Foods, Inc.
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - (a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  - (c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

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- (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ Gary Pokrassa

Date: April 7, 2003

Title: Chief Financial Officer