

WILD OATS MARKETS INC
Form 10-K/A
April 30, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

ANNUAL REPORT PURSUANT TO SECTION 13 OR SECTION 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 28, 2002

OR

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

Commission file number 0-21577

WILD OATS MARKETS, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of
Incorporation or
organization)

84-1100630

(I.R.S. Employer Identification
Number)

3375 Mitchell Lane
Boulder, Colorado 80301
(Address of principal executive offices, including zip code)

(303) 440-5220

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: None

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

Title of Each Class

Common Stock, \$.001 par value

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 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 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:

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2):

Yes No

As of June 28, 2002, the aggregate market value of the voting common stock held by non-affiliates (as defined by the regulations of the Securities and Exchange Commission) of the Registrant was \$16.10, based upon the closing sale price of such stock on such date as reported on the NASDAQ National Market.

As of March 3, 2003, the total number of shares outstanding of the Registrant's common stock, \$.001 par value, was 29,705,475 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the Registrant's Annual Meeting of Stockholders to be held on May 5, 2003, have been incorporated by reference into Part III of this report.

EXPLANATORY NOTE

The purpose of this amendment is to amend and restate Part IV, Item 15 solely to add exhibits, which were excluded from the Registrant's Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 28, 2003. Other than such addition of exhibits, no other changes are made by this amendment and all other information included in the initial filing is unchanged.

PART IV.

Item 15.

EXHIBITS, FINANCIAL STATEMENTS, FINANCIAL STATEMENT
SCHEDULES AND REPORTS ON FORM 8-K

- (a) **Financial Statements and Financial Statement Schedule.**
The following are filed as a part of this Report on Form 10-K:

- (1) Report of Management
Report of Independent Accountants
Consolidated Statements of Operations
Consolidated Balance Sheets
Consolidated Statements of Changes in Stockholders' Equity
Consolidated Statements of Cash Flows
Notes to Consolidated Financial Statements
- (2) Financial Statement Schedules No schedules are required.

- (b) **Reports on Form 8-K.**
The Company filed the following reports on Form 8-K during fiscal 2001:

- (1) Report dated January 31, 2002, on Form 8-K, reported under Item 5, Other Events, regarding the filing of a lawsuit by certain parties.
- (2) Report dated June 14, 2002, on Form 8-K, reported under Item 5, Other Events, regarding the execution of an Agreement for Distribution of Products with Tree of Life, Inc.
- (3) Report dated September 4, 2002, on Form 8-K, reported under Item 5, Other Events, regarding completion of an equity offering of \$4.45 million shares of the Registrant's common stock.

- (c) **Exhibits.** The following exhibits to this Form 10-K are filed pursuant to the requirements of Item 601 of Regulation S-K:

- 3(i).1.(a)** Amended and Restated Certificate of Incorporation of the Registrant.
(1)

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3(i).1.(b)**	<u>Certificate of Correction to Amended and Restated Certificate of Incorporation of the Registrant.</u> (1)
3(i).1.(c)**	<u>Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant.</u> (2)
3(ii).1**	<u>Amended and Restated By-Laws of the Registrant.</u> (1)
4.1**	Reference is made to Exhibits 3(i). through 3(ii).1.
4.2**	<u>Specimen stock certificate.</u> (3)
4.3**	<u>Rights Agreement dated May 22, 1998 between Registrant and Norwest Bank Minnesota.</u> (10)
4.4**	<u>Amendment No. 1 to Rights Agreement dated February 26, 2002 between Registrant and Wells Fargo Bank, N.A.</u> (5)
10.1**	<u>Form of Indemnity Agreement between the Registrant and its directors and executive officers, with related schedule.</u> (3)
10.2#**	<u>1996 Equity Incentive Plan, including forms of Options granted to employees and non-employee directors thereunder.</u> (3)
10.3#**	<u>Amendment to 1996 Equity Incentive Plan.</u> (4)
10.4#**	<u>Second Amendment to 1996 Equity Incentive Plan.</u> (5)
10.5#**	<u>1996 Employee Stock Purchase Plan.</u> (3)
10.6#**	<u>Amendment to 1996 Employee Stock Purchase Plan.</u> (5)
10.7#**	<u>1993 Stock Option Plan.</u> (3)
10.8#**	<u>1991 Stock Option Plan.</u> (3)
10.9#**	<u>Employee Stock Ownership Plan.</u> (3)
10.10#**	<u>Wild Oats Markets, Inc. Deferred Compensation Plan.</u> (6)
10.11#**	<u>Employment Agreement dated March 6, 2001 between Perry D. Odak and the Registrant.</u> (7)
10.12#**	<u>Amendment to Employment Agreement dated March 6, 2001 between Perry D. Odak and the Registrant.</u> (5)
10.13#**	<u>Stock Purchase Agreement dated March 6, 2001 between Perry D. Odak and the Registrant.</u> (7)
10.14#**	<u>Stephen Kaczynski Equity Incentive Plan.</u> (8)
10.15#**	<u>Employment Agreement dated April 24, 2001 between Stephen A. Kaczynski and the Registrant.</u> (8)
10.16#**	<u>Employment Agreement dated May 21, 2001 between Bruce Bowman and the Registrant.</u> (8)
10.17#**	

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- Amendment to Employment Agreement dated May 21, 2001 between Bruce Bowman and the Registrant. (5)
- 10.18#** Bruce Bowman Equity Incentive Plan. (8)
- 10.19#** Terry Maloy Equity Incentive Plan. (5)
- 10.20#** Edward F. Dunlap Equity Incentive Plan. (5)
- 10.21#** Employment Agreement dated December 17, 2001 between Edward F. Dunlap and the Registrant. (5)
- 10.22#** Severance Agreement dated November 7, 2002 between Bruce Bowman and the Registrant.(11)
- 10.23#** Severance Agreement dated November 7, 2002 between Freya Brier and the Registrant.(11)
- 10.24#** Severance Agreement dated November 7, 2002 between Edward Dunlap and the Registrant.(11)
- 10.25#** Severance Agreement dated November 7, 2002 between Stephen Kaczynski and the Registrant.(11)
- 10.26#** Severance Agreement dated November 7, 2002 between Terry Maloy and the Registrant.(11)
- 10.27#** Severance Agreement dated November 7, 2002 between Peter Williams and the Registrant.(11)
- 10.28** Wild Oats Markets, Inc. 2001 Nonofficer/Nondirector Equity Incentive Plan. (5)
- 10.29** Amended and Restated Stockholders Agreement among the Registrant and certain parties named therein dated August 1996. (3)
- 10.30** Registration Rights Agreement between the Registrant and certain parties named therein dated July 12, 1996. (3)
- 10.31#** Second Amendment to Employment Agreement between Wild Oats Markets, Inc. and Perry D. Odak, dated June 19, 2002. (9)
- 10.32#** Third Amendment to Employment Agreement between Wild Oats Markets, Inc. and Perry D. Odak, dated August 7, 2002. (9)
- 10.33** Assignment of Kaczynski Employment Agreement, dated June 29, 2002, between Registrant and Sparky, Inc. (9)
- 10.34** Assignment of Dunlap Employment Agreement, dated June 29, 2002, between Registrant and Wild Oats Financial, Inc. (9)
- 10.35** Second Amended and Restated Credit Agreement dated as of February 26, 2002, among Registrant, the lenders named therein and Wells Fargo Bank National Association, as Administrative Agent. Portions have been omitted pursuant to a request for confidential treatment.(11)
- 10.36** Tree of Life Agreement, dated June 14, 2002. Portions have been omitted pursuant to a request for confidential treatment.(12)

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21.1**	<u>List of subsidiaries.</u> (11)
23**	<u>Consent of PricewaterhouseCoopers LLP, independent accountants.</u> (11)
99.1+	<u>CEO Certification</u>
99.2+	<u>CFO Certification</u>

Management Compensation Plan.

** Previously filed.

+ Included herewith.

- (1) Incorporated by reference from the Registrant s Form 10-K for the year ended December 28, 1996 (File No. 0-21577).
- (2) Incorporated by reference from the Registrant s Amendment No. 2 to the Registration Statement on Form S-3 filed with the Commission on November 10, 1999 (File No. 333-88011).
- (3) Incorporated by reference from the Registrant s Registration Statement on Form S-1 (File No. 333-11261) filed on August 30, 1996.
- (4) Incorporated by reference from the Registrant s Registration Statement on Form S-8 (File No. 333-66347) filed on October 30, 1998.
- (5) Incorporated by reference from the Registrant s Form 10-K for the year ended December 29, 2001 (File No. 0-21577), filed on March 27, 2002.
- (6) Incorporated by reference from the Registrant s Form 10-K for the year ended January 1, 2000 (File No. 0-21577).
- (7) Incorporated by reference from the Registrant s Form 10-Q for the period ended March 31, 2001 (File No. 0-21577).
- (8) Incorporated by reference from the Registrant s Form 10-Q for the period ended June 30, 2001 (File No. 0-21577).
- (9) Incorporated by reference from the Registrant s Form 10-Q for the period ended June 29, 2002 (File No. 0-21577).
- (10) Incorporated by reference from the Registrant s Form 8-K filed on May 5, 1998 (File No. 0-21577).
- (11) Incorporated by reference from the Registrant s Form 10-K for the year ended December 28, 2002 (File No. 0-21577).
- (12) Incorporated by reference from the Registrant s Form 8-K filed on July 1, 2002 (File No. 0-21577).

SIGNATURES

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

Wild Oats Markets, Inc.
(Registrant)

Date: April 28, 2003

By: /s/ Edward F. Dunlap
Edward F. Dunlap
Executive Officer and Chief Financial Officer
(Principal Financial and Accounting Officer)

Certification of CEO Pursuant to

18 U.S.C. Section 1350,

As Adopted Pursuant to

Section 302 of the Sarbanes-Oxley Act of 2002

I, Perry D. Odak, Chief Executive Officer of Wild Oats Markets, Inc., certify that:

1. I have reviewed this annual report on Form 10-K/A of Wild Oats Markets, Inc. (the "Registrant");
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 functions):
- 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;
6. The Registrant's other certifying officers and I have indicated in this annual report whether 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.

Date: April 28, 2003

/s/ Perry D. Odak

Perry D. Odak, Chief Executive Officer

Certification of CFO Pursuant to

18 U.S.C. Section 1350,

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As Adopted Pursuant to

Section 302 of the Sarbanes-Oxley Act of 2002

I, Edward Dunlap, Chief Financial Officer of Wild Oats Markets, Inc., certify that:

1. I have reviewed this annual report on Form 10-K/A of Wild Oats Markets, Inc. (the "Registrant");
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 functions):
- 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;
6. The Registrant's other certifying officers and I have indicated in this annual report whether 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.

Date: April 28, 2003

/s/ Edward F. Dunlap

Edward F. Dunlap, Chief Financial Officer