What Happened?

Whole Foods, FTC settle on Wild Oats merger

** Settlement includes sale of 13 functioning stores*

** Whole Foods shares up 2.55 percent (Adds comment from Moody's, analysts; updates shares)*

By Diane Bartz

WASHINGTON, March 6 (Reuters) - Premium organic grocer Whole Foods Market Inc WFMI.O has settled an antitrust battle with U.S. regulators by agreeing to sell the Wild Oats brand, 13 functioning stores, and the leases and assets for 19 closed stores.

The 13 functioning stores to be sold include 12 former Wild Oats stores and one Whole Foods store. Among the 19 closed stores, all of them Wild Oats outlets, some were shuttered before the merger was concluded and some after, Whole Foods said. [nN06393725]

The premium grocer must also sell the Wild Oats brand, according to the settlement.

Whole Foods shares see-sawed following news of the settlement, but closed up 30 cents at $12.08 on Friday on Nasdaq.

The U.S. Federal Trade Commission challenged Whole Foods' 2007 purchase of smaller rival Wild Oats, saying it was concerned about loss of competition in 29 markets.

"We're getting relief in 17 (markets). It substantially restores the competition that was lost," said David Wales, director of the FTC's Bureau of Competition.

John Mackey, chairman and and co-founder of Whole Foods, called the deal "mutually satisfactory."

"We believe it was in the best interests of all our stakeholders to resolve this matter," he said.

Pali Research analyst Robert Summers said the 13 stores being sold "seem to be huge underperformers."

"When you look at them having to close these stores, they're like, 'OK twist my arm,'" he said. "Given the range of potential outcomes, this is definitely a win."

Whole Foods would retain the properties if no buyer emerges after 12 months, said Matt Reilly, the FTC's assistant director in the Bureau of Competition.

But Reilly said the agency had been in touch with companies that could be appropriate purchasers for the former premium grocery stores. "We expect a significant portion to be sold," he added.

'IN THIS DOWNTURN'

Luke Froeb, who teaches at the Vanderbilt Owen Graduate School of Management, seemed skeptical that it would be easy to find appropriate purchasers for the stores.

"It's high-end retailers that have gotten killed in this downturn," he said, calling the FTC's decision to revive the Wild Oats brand "unprecedented."

Whole Foods expects a noncash charge of $19 million or less for the sale of the 13 stores in operation.

The deal settles legal battles between the FTC and Whole Foods, both within the agency's administrative process and in the courts.

Whole Foods had argued in one case that the agency, one of two that enforce antitrust law, had publicly prejudged the merger and it was unfair that the FTC and Justice Department had different procedures for assessing whether mergers are legal.

The FTC previously said that up to 50 stores could be sold, including Wild Oats and legacy Whole Foods stores, as well as their distribution channels, as a remedy to the antitrust issues.

The settlement is subject to a 30-day comment period ending April 6, after which the FTC will issue a final ruling.

"The cloud surrounding the FTC challenge of Whole Foods' acquisition of Wild Oats has finally been lifted, which should be a modest positive for the stock in the near term," William Blair & Co analyst Mark Miller said in a note.

William Blair has a "market perform" rating on Whole Foods shares.

Moody's Investors Service said the settlement would not affect its rating of "Ba3 with a negative rating outlook." (Additional reporting by Michele Gershberg in New York and Lisa Baertlein in Los Angeles; editing by John Wallace, Andre Grenon, Richard Chang)