

WILD OATS MARKETS INC

Form PREM14A

June 15, 2007

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
(RULE 14a-101)  
SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**Wild Oats Markets, Inc.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

Wild Oats Markets, Inc. common stock, par value \$.001 per share

(2) Aggregate number of securities to which transaction applies: 31,334,034

The aggregate of 31,334,034 shares of common stock, par value \$0.001 per share, of Wild Oats Markets, Inc. outstanding consists of: (a) 29,900,167 shares of common stock issued and outstanding, (b) 1,274,380 shares of common stock issuable pursuant to existing stock options with an exercise price below \$18.50 per share, and (c) 159,487 shares of restricted common stock and restricted common stock units

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

**Calculated solely for the purpose of determining the filing fee.** The value of the transaction is determined based upon the product of (1) the aggregate of 31,334,034 shares of common stock, par value \$0.001 per share, of Wild Oats Markets, Inc. outstanding consisting of: (a) 29,900,167 shares of common stock issued and outstanding, (b) 1,274,380 shares of common stock issuable pursuant to existing stock options with an exercise price below \$18.50 per share, and (c) 159,487 shares of restricted common stock and restricted common stock units, and (2) the \$18.50 per share merger consideration. The filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, is calculated by multiplying the value of the transaction by 0.0000307.

(4) Proposed maximum aggregate value of transaction:

\$579,679,629

(5) Total fee paid:

\$17,796.17

- o Fee paid previously with preliminary materials.
  - o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
- (1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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**The information in this document is not complete and can be changed.  
PRELIMINARY DRAFT, DATED JUNE 15, 2007**

Dear Stockholder:

You are cordially invited to attend a special meeting of stockholders of Wild Oats Markets, Inc. (the Company) to be held on \_\_\_\_\_, 2007 at :00 MDT at \_\_\_\_\_, Boulder, Colorado.

At the special meeting, you will be asked to approve and adopt an agreement and plan of merger that the Company entered into on February 21, 2007, providing for the merger of an affiliate of Whole Foods Market, Inc. ( WFMI ) with and into the Company with the Company surviving as a wholly-owned subsidiary of WFMI. WFMI is one of the leading retailers of natural and organic foods. WFMI operates 195 stores in the United States, Canada and United Kingdom.

If the merger is consummated, the Company's stockholders will be entitled to receive \$18.50 in cash for each share of Company common stock they own. The \$18.50 per share being paid pursuant to the merger represents a 17% premium over the closing price of the Company's common stock on February 20, 2007, the last trading day before the merger was announced, and a 23% premium over the average closing price of the Company's common stock for the one month prior to announcement.

On February 20, 2007, our board of directors, after carefully considered a number of factors which are described in the accompanying proxy, unanimously determined that the merger agreement and the merger are fair to and in the best interests of the Company and its stockholders, and unanimously approved the form, terms and provisions of the merger agreement. **The Company's board of directors unanimously recommends that the Company's stockholders vote FOR the proposal to approve and adopt the merger agreement.**

The Company cannot consummate the merger unless the Company's stockholders approve and adopt the merger agreement. Such approval and adoption requires the affirmative vote of the holders of at least a majority of the shares of Company common stock outstanding on the record date.

The attached notice of special meeting and proxy statement explain the proposed merger and provide specific information concerning the special meeting. Please read these materials (including the annexes) carefully.

**Your vote is important. Whether or not you plan to attend the special meeting, you should read the proxy statement and follow the instructions on your proxy card to submit a proxy by mail, telephone or Internet to ensure that your shares will be represented at the special meeting.** If you decide to attend the special meeting and vote in person, your vote at the special meeting will revoke any previously submitted proxy.

Sincerely,

Greg Mays  
Chairman and CEO

**This transaction has not been approved or disapproved by the Securities and Exchange Commission, nor has the Securities and Exchange Commission passed upon the fairness or merits of this transaction or the accuracy or adequacy of the information contained in this proxy statement. Any representation to the contrary is unlawful.**

This proxy statement is dated \_\_\_\_\_, 2007, and is first being mailed to stockholders of the Company on or about \_\_\_\_\_, 2007.

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**The information in this document is not complete and can be changed.  
PRELIMINARY DRAFT, DATED JUNE 15, 2007**

*1821 30th Street  
Boulder, CO 80301  
303-440-5220*

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD ON \_\_\_\_\_, 2007**

TO OUR STOCKHOLDERS:

**Notice Is Hereby Given** that a special meeting of Stockholders of Wild Oats Markets, Inc. (the Company) will be held on \_\_\_\_\_, 2007 at \_\_\_\_\_:00 MDT at \_\_\_\_\_, Boulder, Colorado. All holders of record of shares of Company common stock at the close of business on \_\_\_\_\_, 2007 are entitled to vote at this special meeting and at any adjournment or postponement thereof. At the special meeting, the Company's stockholders will be asked to:

1. consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger, dated as of February 21, 2007 (the Merger Agreement), by and among the Company, Whole Foods Market, Inc. (WFMI) and WFMI Merger Co., a wholly-owned subsidiary of WFMI (Merger Sub), pursuant to which, upon the merger becoming effective, each outstanding share of the Company's common stock, par value \$.001 (together with associated preferred stock purchase rights, the Shares) will be converted into the right to receive \$18.50 per share in cash, without interest;
2. approve any motion to adjourn the special meeting to a later date, if necessary or appropriate, and to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the foregoing proposal; and
3. transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this notice.

All holders of record of Shares at the close of business on \_\_\_\_\_, 2007 are entitled to vote at this special meeting and at any adjournment or postponement thereof. **The Company's board of directors has determined that the Merger Agreement and the Merger are fair to and in the best interests of the Company and its stockholders, and has unanimously approved the Merger Agreement and related transactions. The Company's board of directors unanimously recommends that the Company's stockholders vote FOR the proposal to approve and adopt the Merger Agreement.**

When you consider the recommendation of our board of directors to approve the Merger Agreement, you should be aware that some of our directors and executive officers have interests in the Merger that may be different from, or in addition to, the interests of our stockholders generally.

Company stockholders who do not vote in favor of approval and adoption of the Merger Agreement will have the right to seek appraisal of the fair value of their shares if the Merger is consummated, but only if they perfect their appraisal rights by complying with all of the required procedures under Delaware law. See Special Factors Appraisal

Rights beginning on page 22 of the accompanying proxy statement and Annex F to the proxy statement.

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You are cordially invited to attend the special meeting in person. **Whether or not you expect to attend the special meeting, please vote by phone, Internet or complete, date, sign and return the enclosed proxy as promptly as possible in order to ensure your representation at the special meeting.** The approval and adoption of the merger agreement require the affirmative vote of a majority of the outstanding shares of common stock entitled to vote thereon. It is important that your shares are represented at this special meeting. A return envelope (which is postage prepaid if mailed in the United States) is enclosed for that purpose. You may also vote by phone or Internet, following the instructions on your ballot. Even if you have given your proxy, you may still vote in person if you attend the special meeting

By Order of the Board of Directors

Freya R. Brier  
Senior Vice President and Corporate Secretary

Boulder, Colorado  
, 2007

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**SUMMARY TERM SHEET OF MERGER TERMS AND CONDITIONS**

*This summary term sheet highlights material information contained in this proxy statement, but does not contain all of the information in this proxy statement that is important to your voting decision. To understand the Merger Agreement fully and for a more complete description of the terms of the Merger, you should carefully read this entire proxy statement, including the attached annexes. In addition, the Company encourages you to read the Merger Agreement and the information incorporated by reference into this proxy statement, which includes important business and financial information about the Company that has been filed with the Securities and Exchange Commission. See*

*Where Can You Find More Information. Page references below relate to a more complete description of terms and conditions in this proxy statement.*

**Important Defined Terms**

<b>Company:</b>	Wild Oats Markets, Inc., a Delaware corporation
<b>Company Board</b>	Board of Directors of Wild Oats Markets, Inc.
<b>DGCL:</b>	Delaware General Corporations Law
<b>Effective Time:</b>	The time of the filing of the Certificate of Merger with the Secretary of State of the State of Delaware effecting the Merger
<b>FTC:</b>	The Federal Trade Commission
<b>HSR Act:</b>	Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended
<b>Merger:</b>	The merger of Merger Sub with and into the Company, with the Company as the survivor
<b>Merger Agreement:</b>	Agreement and Plan of Merger, dated as of February 21, 2007, by and among WFMI, Merger Sub and the Company, a copy of which is attached as Annex A to this proxy statement
<b>Merger Sub:</b>	WFMI Merger Co., a wholly owned subsidiary of Whole Foods Market, Inc.
<b>Per Share Merger Consideration:</b>	\$18.50 per Share in cash, without interest
<b>SEC:</b>	Securities and Exchange Commission
<b>Shares:</b>	Wild Oats Markets, Inc. common stock, \$.001 par value, including associated preferred stock purchase rights
<b>WFMI:</b>	Whole Foods Market, Inc., a Texas corporation

**The Parties (page 10)**

The Company is a nationwide chain of natural and organic foods markets currently operating 110 natural food stores in 24 U.S. states and British Columbia, Canada under the Wild Oats Marketplace, Henry's Farmers Market, Sun Harvest and Capers Community Markets banners. The Company's corporate headquarters are located at 1821 30th Street, Boulder, Colorado, 80301, and its principal phone number is 303-440-5220.

WFMI is one of the leading retailers of natural and organic foods currently operating 195 stores in the United States, Canada and the United Kingdom. WFMI's principal offices are located at 550 Bowie Street, Austin, Texas 78703, and its phone number is (512) 477-4455.

Merger Sub is a Delaware corporation and, to date, has engaged in no activities other than those incident to its formation and to the tender offer and the Merger. Merger Sub's principal executive offices are located at 550 Bowie Street, Austin, Texas 78703, and Merger Sub's telephone number at such principal executive offices is (512) 477-4455.

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**Recommendation of the Company's Board of Directors (page 14)**

The Company Board has determined that the Merger Agreement and the Merger are fair to and in the best interests of the Company and its stockholders, and has unanimously approved the Merger Agreement and related transactions.

**The Company Board unanimously recommends that the Company's stockholders vote FOR the proposal to approve and adopt the Merger Agreement.**

**Principal Reasons for the Merger (page 14)**

The principal reasons for the Merger include, among others, the risks and uncertainties of executing the Company's business and financial plans as a stand-alone company and the opportunity for the Company's stockholders to receive a cash payment for their Shares at a significant premium to historical trading prices. See Special Factors Recommendation of the Company's Board of Directors and Its Reasons for the Merger.

**What You Will Receive in the Merger (page 30)**

If the Merger is consummated, each outstanding Share (other than Shares held in the treasury of the Company, owned by Merger Sub, WFMI or any wholly-owned subsidiary of WFMI or the Company, or held by stockholders who properly demand and perfect appraisal rights under Delaware law) will be converted into the right to receive the Per Share Merger Consideration (i.e., \$18.50 in cash). You will receive the Per Share Merger Consideration in respect of your Shares after you remit your stock certificate(s) evidencing your Shares or exchange your book-entry Shares in accordance with the instructions contained in a letter of transmittal to be sent to you as soon as reasonably practicable after consummation of the Merger, together with a properly completed and signed letter of transmittal and any other documentation required to be completed pursuant to the written instructions. If your Shares are held in street name by your bank, broker or other nominee, you will receive instructions from your bank, broker or nominee as to how to surrender your street name Shares and receive cash for those Shares.

**Treatment of Company Stock Options, ESPP and RSUs (page 30)**

The Merger Agreement provides that, no later than the Effective Time, each outstanding and unexercised option to acquire Shares granted under any of the Company's equity incentive plans, whether vested or unvested, will automatically be terminated and will thereafter solely represent the right to receive, in exchange, an amount in cash equal to the product of the number of Shares subject to such option and the excess, if any, of the Per Share Merger Consideration over the exercise price per Share subject to such option. Options having an exercise price per Share equal to or greater than the Per Share Merger Consideration will, at the Effective Time, be cancelled without payment of any consideration. The Company Board has taken actions under the Company's Employee Stock Purchase Plan such that no further offering periods for the purchase of Shares thereunder would commence following the expiration of the offering period that ended December 31, 2006. Immediately prior to the Effective Time, all granted but unvested restricted stock units, or RSUs, will become fully vested. Each Share of restricted stock and each Share represented by an RSU will, at the Effective Time, be cancelled and converted into the right to receive the Per Share Merger Consideration.

**Opinion of Financial Advisor (page 18)**

Citigroup Global Markets Inc. delivered its written opinion to the Company Board that, as of February 20, 2007, and based upon and subject to the factors and assumptions set forth in its written opinion, the \$18.50 per share in cash to be received by the holders of Company Shares pursuant to the Merger Agreement was fair from a financial point of view to such holders. The full text of Citigroup's written opinion is attached to this proxy statement as Annex C.

**Appraisal Rights (page 22)**

Holders of Shares who do not vote in favor of approval and adoption of the Merger Agreement will have the right to seek appraisal of the fair value of their Shares as determined by the Delaware Court of Chancery if the Merger is consummated, but only if they submit a written demand for appraisal to the Company before the vote is taken on the Merger Agreement and they comply with all requirements of Delaware law, which are summarized in

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this proxy statement. This appraisal amount could be more than, the same as or less than the amount a stockholder would be entitled to receive under the terms of the Merger Agreement. Any holder of Shares intending to exercise his appraisal rights, among other things, must submit a written demand for an appraisal to the Company prior to the vote on the approval and adoption of the Merger Agreement and must not vote or otherwise submit a proxy in favor of approval and adoption of the Merger Agreement.

### **Material United States Federal Income Tax Consequences (Page 24).**

The receipt of cash in exchange for Shares pursuant to the Merger will be a taxable sale transaction for United States federal income tax purposes. In general, you will recognize gain or loss in the Merger in an amount equal to the difference, if any, between the cash you receive and your tax basis in Shares surrendered. Payment of the cash consideration with respect to the disposition of Shares pursuant to the Merger may be subject to information reporting and United States federal backup withholding tax at the applicable rate (currently 28%), unless a holder of Shares properly certifies its taxpayer identification number or otherwise establishes an exemption from backup withholding and complies with all other applicable requirements of the backup withholding rules. **Tax matters are very complicated. The tax consequences of the Merger to you will depend upon your particular circumstances. You should consult your tax advisor for a full understanding of the U.S. federal, state, local, non-U.S. and other tax consequences of the Merger to you.**

### **Regulatory Approvals (Page 25)**

The Merger is subject to U.S. antitrust laws. WFMI and the Company separately filed the required notifications under the HSR Act with both the Antitrust Division of the Department of Justice and the FTC. On March 13, 2007, the FTC issues a request for additional documentary material and information, which is commonly referred to as a second request. On June 7, 2007, the FTC filed suit in federal district court challenging the Merger on antitrust grounds and seeking a temporary restraining order and preliminary injunction to block the Merger pending a trial on the merits. WFMI and the Company consented to a temporary restraining order pending the hearing of the preliminary injunction, which has been scheduled for July 31 and August 1, 2007. While WFMI and the Company are optimistic that the FTC's case is without legal or factual merit and have agreed to cooperate to vigorously challenge the FTC in court, there can be no assurance that the parties will be successful in this matter or that the matter will be resolved prior to the Outside Date (defined below under "Termination of the Merger Agreement").

The Merger Agreement provides that, in the event that any administrative or judicial action or proceeding is instituted by a government entity or private party challenging the Merger or any transaction contemplated by the Merger Agreement, each of WFMI, Merger Sub and the Company shall cooperate in all respects with each other and use its respective reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction, or other order whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts the consummation of the transactions contemplated by the Merger Agreement, and each have further agreed to take all reasonable actions that are necessary, proper or advisable to avoid any obstacle that may be asserted by any governmental authority under applicable antitrust laws to enable the Merger to be completed as soon as possible, and to cause the termination of the applicable HSR waiting periods.

### **Source of Funds (page 26)**

The Merger is not subject to a financing contingency. WFMI intends to fund the Merger with cash on hand and borrowing capacity under its credit facilities.

### **Merger Agreement (page 29)**



A copy of the Merger Agreement is attached to this proxy statement as Annex A and a summary of the Merger Agreement is provided beginning on page A-1 of this proxy statement. You are encouraged to carefully read the Merger Agreement as it is the legal document that contains the terms and conditions of the Merger.

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**The Tender Offer (page 28)**

Pursuant to the Merger Agreement, Merger Sub made a cash tender offer disclosed in a Tender Offer Statement on Schedule TO dated February 27, 2007 filed with the SEC to purchase all outstanding Shares at a price of \$18.50 per share, net to the seller in cash, without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase and related Letter of Transmittal, copies of which are filed as Annexes D and E hereto and are incorporated herein by reference. The current expiration date of the tender offer is June 20, 2007, which may be extended from time to time by WFMI but not beyond the Outside Date without the Company's consent.

**Holders that have tendered their Shares in the tender offer are counted for the purpose of determining whether a quorum exists and are eligible to vote their Shares at the special meeting. We urge you to vote your Shares FOR the proposal to approve and adopt the Merger Agreement.**

**The Merger (page 29)**

Promptly following either (i) the Merger having been approved by stockholders of record owning a majority of our Shares (whether or not the tender offer closes), or (ii) at least 90% of the Shares being tendered to and purchased by Merger Sub in the tender offer, allowing Merger Sub to merge with the Company under Delaware's short form merger statute, Merger Sub will (subject to satisfaction of the other conditions set forth in the Merger Agreement) merge with and into the Company, with the Company surviving the Merger as a wholly-owned subsidiary of WFMI.

**No-Solicitation (page 33)**

The Merger Agreement contains restrictions on the Company's ability to solicit or engage in discussions or negotiations with a third party regarding a competing proposal as described in Merger Agreement No Solicitation of Alternative Acquisition Proposals. Notwithstanding these restrictions, under certain limited circumstances, the Company may furnish non-public information to a third party making a competing proposal (after entering into a confidentiality agreement with such third party) and engage in discussions or negotiations with a third party with respect to a superior proposal, in each case after furnishing prior written notice of such proposal to WFMI and satisfying the other conditions described in the Merger Agreement.

**Conditions to the Merger (page 36)**

The obligations of each party to consummate the Merger are subject to the satisfaction or waiver, where permissible, at or prior to the Effective Time, of the following conditions:

unless the Merger is consummated as a short-form merger under Delaware Law, the Merger Agreement shall have been approved and adopted by the requisite vote of holders of the outstanding Shares of the Company;

the applicable waiting period under the HSR Act shall have expired or been terminated; and

no statute, rule, regulation, judgment, writ, decree, order or injunction or similar action shall have been promulgated, issued or taken by any governmental entity of competent jurisdiction that makes illegal or prohibits consummation of the Merger.

The obligations of the Company to consummate the Merger are subject to the satisfaction or waiver, at or prior to the Effective Time, of the following conditions:

WFMI and Merger Sub having complied in all material respects with their respective agreements contained in the Merger Agreement; and

all material representation and warranties of WFMI and Merger Sub contained in the Merger Agreement being true and correct, except for certain breaches of representations and warranties that do not have a material adverse effect on WFMI's and Merger Sub's ability to consummate the Merger.

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Unless Merger Sub has purchased Shares in the tender offer, the obligations of WFMI and Merger Sub to consummate the Merger are subject to the satisfaction or waiver, at or prior to the Effective Time, of the following conditions:

the Company having complied in all material respects with its agreements contained in the Merger Agreement;

all material representations and warranties of the Company contained in the Merger Agreement being true and correct, except for certain breaches of representations and warranties that are not reasonably expected to have a Material Adverse Effect, which is defined below under Merger Agreement Representations and Warranties;

no change, event or circumstance shall have occurred since the date of the Merger Agreement that has a Material Adverse Effect; and

the parties having received certain third party consents, except where the failure to obtain any such consent is not reasonably expected to have a Material Adverse Effect.

**Termination of the Merger Agreement (page 36)**

The Merger Agreement may be terminated at any time prior to the consummation of the Merger by mutual written consent of the Company Board and the board of directors of WFMI.

The Merger Agreement may be terminated by either party if:

The Merger is not consummated by the Outside Date (defined below) and a breach by the party seeking to terminate the Merger Agreement is not the principal cause of the Merger not being consummated by such date;

A governmental entity takes final action permanently prohibiting the Merger and the party seeking to terminate the Merger Agreement used its reasonable best efforts to avoid such action from occurring;

Stockholder approval of the Merger Agreement, if necessary, is not obtained; or

The non-terminating party has materially breached its representations, warranties, covenants or other agreements set forth in the Merger Agreement.

As used in this proxy statement, Outside Date refers to June 30, 2007, the latest date the Merger can be consummated, unless, as of June 30, 2007, either

all of the conditions to the consummation of the Merger are satisfied, other than (A) the Merger being approved by the Company's stockholders; or (B) the applicable HSR Act waiting periods being expired or terminated; or

any court of competent jurisdiction or other governmental entity has issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the tender offer or the Merger (as applicable) and such order, decree, ruling or other action has not become final and nonappealable,

in which case, the latest date the Merger can be consummated is August 31, 2007.

Subject to certain conditions, including payment of the Termination Fee described below under Termination Fee Payable by the Company and WFMI, the Merger Agreement may be terminated by the Company if, at any time prior to the earlier of (i) the purchase of Shares by Merger Sub in the tender offer and (ii) a meeting of the Company's

stockholders to vote on the Merger, the Company Board determines in good faith after consultation with its legal and financial advisors that

the terms of an alternative acquisition proposal are superior from a financial point of view to the terms of the tender offer and Merger, and

it is necessary to withdraw or modify its recommendation in respect of the tender offer and Merger to comply with its fiduciary duties to stockholders under applicable law.

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**Termination Fee Payable by the Company and WFMI (page 37)**

The Merger Agreement provides that the Company will be obligated to pay WFMI a fee of \$15.2 million, which we refer to in this proxy statement as the Termination Fee, if:

The Company terminates the Merger Agreement under the circumstance described above in the last paragraph under Termination of the Merger Agreement; or

Both of the following occur:

either party properly terminates the Merger Agreement as a result of the Merger not being consummated by the Outside Date or failure of the stockholders to approve the Merger by such date; and

within twelve months after the date of such termination, the Company consummates a transaction with a third party for the acquisition of the Company.

In addition, either party will be obligated to pay the other a \$4.0 million termination fee if the Merger fails to close for certain breaches by the paying party of its representations, warranties, covenants or obligations.

**Tender and Support Agreement with Yucaipa Stockholders (page 38)**

Yucaipa, which holds approximately 18% of the Company's outstanding Shares, has agreed pursuant to a Tender and Support Agreement with the Company, WFMI and Merger Sub to vote its Shares in favor of the Merger at any meeting of stockholders in which the Merger is considered, and at every adjournment or postponement of such meeting.

**Interests of the Company's Directors and Executive Officers in the Merger (page 19)**

When considering the recommendation by the Company Board, you should be aware that a number of the Company's directors and executive officers may have interests in the Merger that are different from, or in addition to, the interests of the Company's other stockholders. The Company Board was aware of these interests and considered them, among other matters, in unanimously approving the Merger Agreement and the related transactions. Each of these additional interests is described in this proxy statement, to the extent material, and, except as described in this proxy statement, such persons have, to the knowledge of the Company, no material interest in the Merger apart from those of the Company's common stockholders generally. See Special Factors Interests of Certain Persons in Matters to be Acted Upon.

**Price Range of Common Stock and Dividend Information (page 39)**

The Shares are listed on Nasdaq and trade under the symbol OATS. The Company does not currently pay dividends on the Shares. See Other Important Information Regarding the Company-Price Range of Common Stock and Dividend Information.

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**QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE SPECIAL MEETING**

*The following are some questions that you may have regarding the proposed Merger and the other matters being considered at the special meeting and brief answers to those questions. The Company urges you to carefully read the remainder of this proxy statement because the information in this section does not provide all the information that might be important to you with respect to the proposed Merger. Additional important information is also contained in the annexes to, and the documents incorporated by reference in, this proxy statement.*

**WHAT AM I BEING ASKED TO VOTE ON?**

The Company is asking for your vote to approve and adopt the Merger Agreement, which will result in Merger Sub being merged with and into the Company with the Company surviving the Merger and continuing its existence as a wholly-owned subsidiary of WFMI.

**WHY AM I RECEIVING THESE MATERIALS?**

In order to consummate the Merger, the Company's stockholders must approve and adopt the Merger Agreement. Under the General Corporation Law of the State of Delaware, or DGCL, in order for the Merger Agreement to be approved and adopted, a majority of the outstanding Shares must be voted in favor of approval and adoption of the Merger Agreement at a meeting of the Company's stockholders. A quorum is necessary to hold the special meeting. A quorum exists if at least a majority of the votes entitled to be cast at the special meeting are present in person or by proxy.

This proxy statement contains important information about the proposed Merger, the Merger Agreement and the special meeting, which you should read carefully. The enclosed voting materials allow you to vote your Shares without attending the special meeting.

For a more complete description of the special meeting, see The Special Meeting of Stockholders.

**Your vote is very important. You are encouraged to vote as soon as possible.**

**IF I TENDER MY SHARES AM I STILL PERMITTED TO VOTE AT THE MEETING?**

**Yes. Holders that have tendered their Shares in the tender offer are counted for the purpose of determining whether a quorum exists and are eligible to vote their Shares at the special meeting. We urge you to vote your Shares FOR the proposal to approve and adopt the Merger Agreement.**

**WHAT WILL I RECEIVE IF THE MERGER IS APPROVED AND CONSUMMATED?**

If the Merger is consummated, at the Effective Time, the Company's stockholders will be entitled to receive \$18.50 per share in cash, without interest, for each Share they own. For example, if you own 100 Shares upon completion of the Merger you will receive \$1,850 in cash.

For a more complete description of what the Company's stockholders will be entitled to receive pursuant to the Merger, see Merger Agreement Merger Consideration.

**WHAT WILL HAPPEN IN THE PROPOSED MERGER TO OPTIONS TO PURCHASE SHARES?**

The Merger Agreement provides that, no later than the Effective Time of the Merger, each outstanding and unexercised option to acquire Shares granted under any of the Company's equity incentive plans, whether vested or unvested, will automatically be terminated in exchange for an amount in cash equal to the product of the number of Shares subject to such option and the excess, if any, of the Per Share Merger Consideration (i.e., \$18.50 in cash) over the exercise price per Share subject to such option. Options having an exercise price per Share equal to or greater than the Per Share Merger Consideration will be cancelled without payment of any consideration.



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**WILL THE MERGER BE TAXABLE TO ME?**

Yes. The exchange of Shares for cash pursuant to the Merger will be a taxable transaction for U.S. federal income tax purposes, and may be a taxable transaction under state and local tax law as well. A U.S. Holder that receives cash for Shares pursuant to the Merger will recognize capital gain or loss equal to the difference between the amount of cash received and the holder's adjusted tax basis in the Shares. Such gain or loss will be long-term if the U.S. Holder's holding period for the Shares is more than one year at the time of sale.

Because individual circumstances may differ, you should consult your own tax advisor to determine the particular tax effects to you of the consummation of the Merger. See Special Factors United States Federal Income Tax Considerations.

**AFTER THE MERGER IS CONSUMMATED, HOW WILL I RECEIVE THE CASH FOR MY SHARES?**

After the Merger is consummated, you will receive written instructions from the exchange agent to be appointed by WFMI on how to exchange your Company common stock certificates or book-entry Shares for the Per Share Merger Consideration. You will receive cash for your Shares from the exchange agent after you comply with these instructions.

If your Shares are held in street name by your bank, broker or other nominee, you will receive instructions from your bank, broker or nominee as to how to surrender your street name Shares and receive cash for those shares.

**SHOULD I SEND IN MY COMPANY STOCK CERTIFICATES NOW?**

No. After the Merger is consummated, you will receive written instructions from the exchange agent on how to exchange your Company common stock certificates for the Per Share Merger Consideration. **Please do not send in your Company common stock certificates with your proxy card.**

**WHAT CONDITIONS ARE REQUIRED TO BE FULFILLED TO CONSUMMATE THE MERGER?**

The Company, WFMI and Merger Sub are not required to consummate the Merger unless specified conditions are satisfied or waived. These conditions include, among others, approval and adoption of the Merger Agreement by the Company's stockholders and the expiration or early termination of the waiting period required under the HSR Act. On June 7, 2007, the FTC filed suit in federal district court challenging the Merger on antitrust grounds and seeking a temporary restraining order and preliminary injunction to block the Merger pending a trial on the merits. WFMI and the Company consented to a temporary restraining order pending the hearing of the preliminary injunction, which has been scheduled for July 31 and August 1, 2007. While WFMI and the Company are optimistic that the FTC's case is without legal or factual merit and have agreed to cooperate to vigorously challenge the FTC in court, there can be no assurance that the parties will be successful in this matter or that the matter will be resolved prior to the Outside Date.

**IS THE MERGER SUBJECT TO WFMI OBTAINING NEW FINANCING?**

No. WFMI intends to finance the Merger using cash on hand and borrowing capacity under its existing credit facilities.

**WHAT VOTE IS REQUIRED TO APPROVE THE MERGER?**

Under the DGCL, in order for the Merger Agreement to be approved and adopted, a majority of the outstanding Shares must be voted in favor of approval and adoption of the Merger Agreement at a meeting of the Company's

stockholders, provided that a quorum is present. Our transfer agent, Wells Fargo Bank, N.A., will act as inspector of election at the special meeting, determining whether or not quorum is present, and separately counting affirmative and negative votes, abstentions and broker non-votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether a matter has been approved. Abstentions are not counted as votes cast where approval of a matter is by plurality of votes cast. Where approval of a matter requires the affirmative vote

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of a majority of the total votes cast on a proposal, abstentions count toward the tabulation of votes cast on the proposal and will have the same effect as negative votes.

**HOW MANY VOTES DOES THE COMPANY ALREADY KNOW WILL BE VOTED IN FAVOR OF THE MERGER PROPOSAL?**

Pursuant to a Tender and Support Agreement, Yucaipa has agreed to vote its Shares in favor of the Merger, which represent approximately 18% of our outstanding Shares.

**WHEN DO YOU EXPECT THE MERGER TO BE COMPLETED?**

The Company, WFMI and Merger Sub are working to complete the Merger as quickly as possible. However, they cannot predict the exact timing of the consummation of the Merger because it is subject to several conditions, including successful resolution of the action brought by the FTC challenging the Merger. See Special Factors Regulatory Approvals.

**WHAT IF I OBJECT TO THE MERGER?**

Under Delaware law, you have the right to seek appraisal of the fair value of your Shares as may be determined by the Delaware Court of Chancery if the Merger is consummated. However, you must follow the procedures under Delaware law explained in this proxy statement in order to do so. In order to preserve your appraisal rights, Delaware law requires, among other things, that you do not vote in favor of the approval and adoption of the Merger Agreement at the special meeting.

**WHEN AND WHERE WILL THE SPECIAL MEETING BE HELD?**

The special meeting will be held on \_\_\_\_\_, 2007 at :00 MDT at \_\_\_\_\_, Boulder, Colorado.

**HOW DOES THE BOARD OF DIRECTORS OF THE COMPANY RECOMMEND THAT I VOTE ON THE MERGER?**

The Company Board recommends that a