

WILD OATS MARKETS INC
Form S-8
June 24, 2004

As filed with the Securities and Exchange Commission on June 24, 2004 Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Wild Oats Markets, Inc.

(Exact name of registrant as specified in its charter)

Delaware

84-1100630

(State of Incorporation)

(I.R.S. Employer Identification No.)

3375 Mitchell Lane

Boulder, Colorado 80301-2244

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(Address of principal executive offices)

Gary Rawlings Equity Incentive Plan

and

David B. Clark Equity Incentive Plan

-

(Full titles of the plans)

Freya R. Brier

Vice President of Legal, General Counsel

Wild Oats Markets, Inc.

3375 Mitchell Lane

Boulder, Colorado 80301-2244

(303) 440-5220

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Francis R. Wheeler, Esq.

Cooley Godward LLP

380 Interlocken Crescent

Suite 900

Broomfield, Colorado 80021-8023

(720) 566-4231

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, par value \$.001 per share	140,000 shares	\$11.06	\$1,548,400	\$196.18

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h)(1) under the Securities Act of 1933, as amended (the "Securities Act"). The price per share and aggregate offering price are based upon the weighted average exercise price of options outstanding. The following chart illustrates our calculation of the registration fee:

2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
		Code	V Amount (D) Price			

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number. SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)
		Code	V (A) (D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares	
01/11/2011		A	10,824	(1)	01/11/2021		10,824	\$ 0

Consent of Cooley Godward LLP (included in Exhibit 5.1)

24.1

Power of Attorney

- (1) Incorporated by reference to Wild Oats Annual Report on Form 10-K for the year ended December 28, 1996 (File No. 0-21577).
- (2) Incorporated by reference to Wild Oats 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 to Wild Oats Form 8-K filed with the Commission on May 21, 1998 (File No. 0-21577).
- (4) Incorporated by reference to Wild Oats Form 8-K filed with the Commission on May 25, 2004 (File No. 0-21577).
- (5) Incorporated by reference to Wild Oats Annual Report on Form 10-K for the fiscal year ended December 29, 2001 (File No. 0-21577).
- (6) Incorporated by reference to Wild Oats Registration Statement on Form S-1 filed on August 30, 1996 (File No. 333-11261).

Item 9. Undertakings

1. The undersigned registrant hereby undertakes:

- (a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, State of Colorado on June 24, 2004.

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Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<hr style="width: 25%; margin: 0 auto;"/> <p style="text-align: center;">*</p> <p style="text-align: center;">Perry D. Odak</p>	<p>Chief Executive Officer, President and Director (Principal Executive Officer)</p>	<p>June 24, 2004</p>
<p><u>/s/ Edward F. Dunlap</u></p> <hr style="width: 25%; margin: 0 auto;"/> <p style="text-align: center;">Edward F. Dunlap</p>	<p>Chief Financial Officer (Principal Financial Officer)</p>	<p>June 24, 2004</p>
<hr style="width: 25%; margin: 0 auto;"/> <p style="text-align: center;">*</p> <p style="text-align: center;">Dawn Vanhaverbeke</p>	<p>Controller (Principal Accounting Officer)</p>	<p>June 24, 2004</p>
<hr style="width: 25%; margin: 0 auto;"/> <p style="text-align: center;">*</p> <p style="text-align: center;">Stacey Bell</p>	<p>Director</p>	<p>June 24, 2004</p>

<hr/> <p style="text-align: center;">*</p> <hr/> <p style="text-align: center;">David M. Chamberlain</p>	Director	June 24, 2004
<hr/> <p style="text-align: center;">*</p> <hr/> <p style="text-align: center;">Brian K. Devine</p>	Director	June 24, 2004
<hr/> <p style="text-align: right;">*</p> <hr/> <p style="text-align: center;">David Gallitano</p>	Director	June 24, 2004
<hr/> <p style="text-align: right;">*</p> <hr/> <p style="text-align: center;">Mark A. Retzloff</p>	Director	June 24, 2004
<hr/> <p style="text-align: center;">*</p> <hr/> <p style="text-align: center;">John A. Shields</p>	Director	June 24, 2004
<hr/> <p style="text-align: center;">*</p> <hr/> <p style="text-align: center;">Ann Marie Austin-Stephens</p>	Director	June 24, 2004

*By: /s/ Freya R. Brier

Attorney in
Fact

June 24, 2004

Freya R. Brier, as Attorney in Fact

EXHIBIT INDEX

Exhibit Number	Description
4.1	Amended and Restated Certificate of Incorporation of Wild Oats (1)
4.2	Certificate of Correction to Amended and Restated Certificate of Incorporation of Wild Oats (1)
4.3	Certificate of Amendment to Amended and Restated Certificate of Incorporation of Wild Oats (2)
4.4	Certificate of Designations of Series A Junior Participating Preferred Stock of Wild Oats (3)
4.5	Amended Certificate of Designations of Series A Junior Participating Preferred Stock of Wild Oats (4)
4.4	Amended and Restated By-Laws of Wild Oats (1)
4.5	Rights Agreement dated May 22, 1998 between Wild Oats and Norwest Bank Minnesota (3)
4.6	Amendment No. 1 to Rights Agreement dated February 26, 2002 between Wild Oats and Wells Fargo Bank, N.A.(5)
4.7	Specimen stock certificate (6)
5.1	Opinion of Cooley Godward llp
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Cooley Godward llp (included in Exhibit 5.1)
24.1	Power of Attorney

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