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CORPORATION FINANCE

October 5, 2009

Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington D.C. 20549

Re: Securities Exchange Act of 1934 - Rule 14a-8 Shareholder Proposal Submitted by the Central Laborers' Pension, Welfare & Annuity Funds

Ladies and Gentlemen:

On behalf of Whole Foods Market, Inc., a Texas corporation ("WFM" or the "Company"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are filing this letter with respect to the shareholder proposal and supporting statement (together, the "Proposal"), attached as Exhibit I hereto, that WFM has received from the Central Laborers' Pension, Welfare & Annuity Funds ("Proponent") for inclusion in the proxy materials (the "2010 Proxy Materials") that WFM intends to distribute in connection with its 2010 annual meeting of shareholders (the "2010 Annual Meeting"). The Proposal was sent to WFM under cover of a letter dated September 28, 2009, which is also attached as part of Exhibit I hereto.

Pursuant to Rule 14a-8(j), we are enclosing herewith six copies of this letter, and a copy of this letter is being sent simultaneously to Proponent as notification of WFM's intention to omit the Proposal from its 2010 Proxy Materials. WFM expects to file its definitive proxy materials with the Commission on or about January 20, 2010. Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 days before WFM files its definitive 2010 Proxy Materials.

WFM intends to omit the Proposal from the 2010 Proxy Materials pursuant to Rule 14a-8(i)(7) promulgated under the Exchange Act because the Proposal relates to WFM's ordinary business operations.

We respectfully request the concurrence of the Staff (the "Staff") of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") that it will not recommend any enforcement action if WFM omits the Proposal from the 2010 Proxy Materials.

## The Proposal

The Proposal requests that the board of directors of WFM "initiate the appropriate process to amend the Company's Corporate Governance Guidelines ("Guidelines") to adopt and disclose a written and detailed succession planning policy, including the following specific features:

- The Board of Directors will review the plan annually;
- The Board will develop criteria for the CEO position which will reflect the Company's business strategy and will use a formal assessment process to evaluate candidates;
- The Board will identify and develop internal candidates;
- The Board will begin non-emergency CEO succession planning at least 3 years before an expected transition and will maintain an emergency succession plan that is reviewed annually;
- The Board will annually produce a report on its succession plan to shareholders."

The Proposal is identical to the proposal submitted by Proponent in connection with the Company's 2009 Annual Meeting, which was the subject of a no-action letter from the Staff dated November 25, 2008.

### Rule 14a-8(i)(7) Discussion

Rule 14a-8(i)(7) provides that a company may omit a shareholder proposal from its proxy materials "if the proposal deals with a matter relating to the company's ordinary business operations." As discussed herein, we believe that the Proposal is excludable from the 2010 Proxy Materials under Rule 14a-8(i)(7) because it deals with matters relating to WFM's ordinary business operations - namely, the management of the Company's CEO succession policies and practices.

#### *Prior No-Action Letters*

Subsequent to the no-action letter from the Staff to *Whole Foods Market, Inc.* (November 25, 2008) in connection with the identical proposal last year, the Staff also issued similar no-action letters to *Black & Decker* (February 18, 2009) and *Citigroup* (February 3, 2009). As previously noted, substantially identical proposals submitted by the Proponent and its affiliates were the subject of the following no-action letters from the Staff: *Bank of America* (January 4, 2008); *Merrill Lynch* (February 12, 2008); *Verizon Communications* (February 12, 2008) and *Toll Brothers, Inc.* (January 2, 2008). Accordingly, we would note that this issue has been clearly settled by the Staff.

Even prior to these no-action letters, the Staff has historically applied the ordinary business exclusion in several no-action letters involving proposals relating to CEO employment and succession. Such letters include *Wachovia Corporation* (February 17,

2002) (stating that a stockholder proposal instructing the board of directors to seek and hire a new CEO within six months is excludible because the "termination, hiring, or promotion of employees" relates to ordinary business operations); *Willow Financial Bancorp, Inc.* (August 16, 2007) (stating that a stockholder proposal recommending the replacement of the CEO and Chief Financial Officer is excludible because the "termination, hiring, or promotion of employees" relates to ordinary business operations); and *The Boeing Company* (February 10, 2005) (stating that a stockholder proposal urging that independent directors approve, rather than merely review, the hiring of certain senior executives is excludible because the "termination, hiring, or promotion of employees" relates to ordinary business operations).

*SEC Release No. 34-40018*

The above-cited no-action letters are generally premised on the Commission's specific guidance on the policy rationale for the ordinary business exclusion in Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission observed that the general underlying policy of the ordinary business exclusion is consistent with the policy of most state corporate laws: "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."

In the 1998 Release, the Commission stated that one of the two central considerations underlying the ordinary business exclusion is that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." Examples cited by the Commission included the "management of the workforce, such as the hiring, promotion, and termination of employees..."

The second consideration underlying the policy of the ordinary business exception is the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." The Commission noted that this consideration may come into play in a number of circumstances, such as where the proposal "seeks to impose specific time-frames or methods for implementing complex policies."

*Application of Ordinary Business Exclusion*

The Proposal clearly falls within the ordinary business exclusion based upon the application of the foregoing policies. CEO succession planning inherently involves the management of WFM's workforce and decisions regarding the hiring, promotion and termination decisions, which are decisions reserved to WFM's board of directors under Texas corporate laws. Further, by specifying detailed features of the proposed succession policy (including its timetable and disclosure), the Proposal seeks to micro-manage

WFM's management of the workforce and operations of the board of directors, which are complex matters that shareholders cannot effectively supervise.

The designation of a potential successor or group of successor candidates to the CEO contemplates both (i) potentially increased responsibilities of certain existing executives and (ii) the exclusion of other executives. Such designations, if publicly disclosed, would likely result in competitive harm to WFM. Competitors of WFM might attempt to recruit executives away from WFM based on such public disclosures. Executives not designated as potential successors might choose to voluntarily leave the employ of WFM. Recruitment of executives might also be impaired. Any of these possibilities would actually subvert, rather than improve, WFM's succession planning process.

The Proposal expressly requests that WFM address its "business strategy" in its public disclosure of CEO succession criteria. This factor would potentially injure WFM by requiring disclosure of certain long-term strategic objectives and plans that are not otherwise disclosable to the public, and which could then be used by current and future competitors. We would also note that the Company's public disclosure policy generally is a fact-intensive process that is an ongoing function of the board of directors, working together with its officers and its legal and accounting advisors. Having shareholders mandate the timing and substance of these disclosures provides a level of micro-management that is inconsistent with the responsibility and authority of the board of directors.

The Proposal further requires that the succession policy "identify and develop internal candidates." Although WFM has had a strong history of developing internal candidates for all of its executive officer positions, its board of directors has a fiduciary duty to shareholders that cannot be micro-managed or constrained by shareholders in this manner. It is certainly conceivable that an outstanding external candidate might be presented on short notice to the board of directors and that the board would choose to consider such an approach.

While not essential to the analysis under Rule 14a-8(i)(7), it is important to mention that succession planning, including CEO succession, is an identified function in the WFM board of directors' mission statement and role definition, all as set forth in the Corporate Governance Principles (March 2009 version) that are publicly available on WFM's corporate website. Accordingly, we are not dealing with an area in which the Proponent is attempting to fill an existing void in corporate governance and business operations. On the contrary, the Proponent would be actively interfering with ordinary business operations of the Company's board of directors.

In prior letters to the Staff, Proponent has argued to the Staff that the identification of succession planning as a board of directors' function is an admission that such function is not fundamental to management's ability to run a corporation on a day to day basis. The Proponent further asserts that a function must be within the "exclusive

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purview” of its executive officers in order to constitute a “management function.” This assertion wrongly equates a corporation’s “management” with its executive officers and misses the essential involvement of the board of directors in the management of a corporation’s affairs. The Texas Business Corporation Act (applicable to the Company until December 31, 2009) provides in Article 2.31 that the business and affairs of a Texas corporation are managed under the direction of the board. The Texas Business Organizations Code (applicable to the Company on and after January 1, 2010) provides in Section 21.401 that the board is responsible to direct the management and affairs of a Texas corporation.

### **Conclusion**

Based on the foregoing, WFM intends to omit the Proposal from the 2010 Proxy Materials for the 2010 Annual Meeting. We respectfully request that the Staff confirm that the Proposal may be omitted from such proxy materials.

Should you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact the undersigned at (214) 922-4120. Please file-stamp the enclosed copy of this letter and return it to me in the enclosed self-addressed, postage-paid envelope.

Very truly yours,



Bruce H. Hallett

October 5, 2009

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cc: Mr. Dan Koeppel (regular mail)  
Executive Director  
Central Laborers' Pension, Welfare & Annuity Funds  
PO Box 1267  
Jacksonville, Illinois 62651

Ms. Jennifer O'Dell (FedEx)  
Laborers Int'l. Union of North America  
905 16<sup>th</sup> Street, NW  
Washington, DC 20006

Mr. Albert Percival (by email; .pdf)  
National Transactions Counsel  
Whole Foods Market, Inc.

296595.3



## CENTRAL LABORERS' PENSION, WELFARE & ANNUITY FUNDS

P.O. BOX 1267 • JACKSONVILLE, IL 62651 • (217) 243-8521 • FAX (217) 245-1293

Sent Via Fax (512) 482-7000

September 28, 2009

Ms. Roberta Lang  
General Counsel  
Whole Foods Market, Inc.  
550 Bowie Street  
Austin, TX 78703

Dear Ms. Lang,

On behalf of the Central Laborers' Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Whole Foods Market, Inc. ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 2,543 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term. Maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Ms. Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell in care of the Laborers' International Union of North America Corporate Governance Project, 905 16<sup>th</sup> Street, NW, Washington, DC 20006.

Sincerely,

  
Dan Koepfel  
Executive Director

c: Jennifer O'Dell  
Enclosure

PENSION &  
ANNUITY FUNDS  
BOARD OF TRUSTEES

JOHN F. PENN  
*Chairman*

JAMES P. BRUNER  
*Secretary*

CHARLES ADAMS  
JOHN E. GOFTZ  
MARK HANNON  
FRANK HOVAR  
KEN KILIAN  
JOE LAMB  
STEVE MORTHOLE  
GLYN RAMAGE  
ALLAN REYHAN, JR.  
BRAD SCHAIVE  
RICK SCHEWE  
JOHN E. TAYLOR  
JOHN R. TAYLOR

WELFARE FUND  
BOARD OF TRUSTEES

MARTIN EASTERLING  
*Chairman*

SCOTT LARKIN  
*Secretary*

KENTON DAY  
EDWARD DOYLE  
TIM GARVEY  
MARK HANNON  
BOB McDONALD  
GREGORY T. NEFF  
JOHN M. PRISKER  
BRAD SCHAIVE  
PATRICK SHEPPARD  
STEVE TROKEY

DAN KOEPPEL  
*Executive Director*

**Pride  
of the  
Industry**

www.central-laborers.com

**Resolved:** That the shareholders of Whole Foods Market, Inc. ("Company") hereby request that the Board of Directors initiate the appropriate process to amend the Company's Corporate Governance Guidelines ("Guidelines") to adopt and disclose a written and detailed succession planning policy, including the following specific features:

- The Board of Directors will review the plan annually;
- The Board will develop criteria for the CEO position which will reflect the Company's business strategy and will use a formal assessment process to evaluate candidates;
- The Board will identify and develop internal candidates;
- The Board will begin non-emergency CEO succession planning at least 3 years before an expected transition and will maintain an emergency succession plan that is reviewed annually;
- The Board will annually produce a report on its succession plan to shareholders.

**Supporting Statement:**

CEO succession is one of the primary responsibilities of the board of directors. A recent study published by the NACD quoted a director of a large technology firm: "A board's biggest responsibility is succession planning. It's the one area where the board is completely accountable, and the choice has significant consequences, good and bad, for the corporation's future." (*The Role of the Board in CEO Succession: A Best Practices Study, 2006*). The study also cited research by Challenger, Gray & Christmas that "CEO departures doubled in 2005, with 1228 departures recorded from the beginning of 2005 through November, up 102 percent from the same period in 2004."

In its 2007 study *What Makes the Most Admired Companies Great: Board Governance and Effective Human Capital Management*, Hay Group found that 85% of the Most Admired Company boards have a well defined CEO succession plan to prepare for replacement of the CEO on a long-term basis and that 91% have a well defined plan to cover the emergency loss of the CEO that is discussed at least annually by the board.

The NACD report identified several best practices and innovations in CEO succession planning. The report found that boards of companies with successful CEO transitions are more likely to have well-developed succession plans that are put in place well before a transition, are focused on developing internal candidates and include clear candidate criteria and a formal assessment process. Our proposal is intended to have the board adopt a written policy containing several specific best practices in order to ensure a smooth transition in the event of the CEO's departure. We urge shareholders to vote **FOR** our proposal.