

WILD OATS MARKETS INC  
Form 10-K/A  
March 09, 2006

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 31, 2005

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

84-1100630

(State or other jurisdiction of  
Incorporation or organization)

(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:

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Title of Each Class

Common Stock, \$0.001 par value

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act:

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act:

Yes  No

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 a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12-b of the Exchange Act). Yes  No

The aggregate market value of the voting and non-voting common stock of the registrant held by non-affiliates of the registrant based on the closing price at which such stock was sold as reported by NASDAQ National Market on July 1, 2005 was approximately \$**162,254,139**. For purposes of this calculation, executive officers, directors and 5% or greater stockholders are deemed to be affiliates of the registrant.

As of February 20, 2006, the registrant had outstanding 28,443,272 shares of common stock, par value \$0.001 per share.

#### DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive Proxy Statement for the Registrant's Annual Meeting of Stockholders to be held on May 2, 2006, have been incorporated by reference into Part III of this report.

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#### EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A to our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, originally filed with the Securities and Exchange Commission on March 1, 2006, amends the cover page to include the check box relating to "whether the registrant is a shell company," and to modify the certifications set forth in Exhibit numbers 31.1 and 31.2 to conform to the form required by Item 601(b)(31)(i) of Regulation S-K. This

Amendment No. 1 does not change any information contained in other items as originally filed on March 1, 2006. This Amendment No. 1 does not reflect events that have occurred after the original filing on Form 10-K.

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PART IV.

Item 15.

EXHIBITS AND FINANCIAL STATEMENT

SCHEDULES

(a) The following are filed as a part of this Report on Form 10-K:

- (1) Reports of Independent Registered Public Accounting Firms  
Consolidated Statements of Operations  
Consolidated Statements of Comprehensive Income (Loss)  
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.
- (3) The following exhibits to this Form 10-K are filed pursuant to the requirements of Item 601 of Regulation S-K:

**Exhibit  
Number**

**Description of Document**

- 3(i).1.(a)\*\* Amended and Restated Certificate of Incorporation of the Registrant. (1)
- 3(i).1.(b)\*\* Certificate of Correction to Amended and Restated Certificate of Incorporation of the Registrant. (1)
- 3(i).1.(c)\*\* Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant. (2)
- 3(ii).1\*\* Amended and Restated By-Laws of the Registrant. (1)
- 4.1\*\* Reference is made to Exhibits 3(i) through 3(ii).1.
- 4.2\*\* Specimen stock certificate. (3)
- 4.3\*\* Rights Agreement dated May 22, 1998 between Registrant and Norwest Bank Minnesota. (10)
- 10.1\*\* Form of Indemnity Agreement between the Registrant and its directors and executive officers, with related schedule. (3)
- 10.2#\*\* 1996 Equity Incentive Plan, including forms of Options granted to employees and non-employee directors thereunder. (3)
- 10.3#\*\* Amendment to 1996 Equity Incentive Plan. (4)
- 10.4#\*\* Second Amendment to 1996 Equity Incentive Plan. (5)
- 10.5#\*\* 1996 Employee Stock Purchase Plan. (3)
- 10.6#\*\* Amendment to 1996 Employee Stock Purchase Plan. (5)
- 10.7#\*\* 1993 Stock Option Plan. (3)
- 10.8#\*\* 1991 Stock Option Plan. (3)

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- 10.9#\*\* [Employee Stock Ownership Plan. \(3\)](#)
- 10.10#\*\* [Wild Oats Markets, Inc. Deferred Compensation Plan. \(6\)](#)
- 10.11#\*\* [Employment Agreement dated March 6, 2001 between Perry D. Odak and the Registrant. \(7\)](#)
- 10.12#\*\* [Amendment to Employment Agreement dated March 6, 2001 between Perry D. Odak and the Registrant. \(5\)](#)
- 10.13#\*\* [Stock Purchase Agreement dated March 6, 2001 between Perry D. Odak and the Registrant. \(7\)](#)
- 10.14#\*\* [Stephen Kaczynski Equity Incentive Plan. \(8\)](#)
- 10.15#\*\* [Employment Agreement dated April 24, 2001 between Stephen P. Kaczynski and the Registrant. \(8\)](#)
- 10.16#\*\* [Employment Agreement dated May 21, 2001 between Bruce Bowman and the Registrant. \(8\)](#)
- 10.17#\*\* [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#\*\* [Severance Agreement dated November 7, 2002 between Bruce Bowman and the Registrant. \(11\)](#)
- 10.20#\*\* [Severance Agreement dated November 7, 2002 between Freya Brier and the Registrant. \(11\)](#)
- 10.21#\*\* [Severance Agreement dated November 7, 2002 between Stephen Kaczynski and the Registrant. \(11\)](#)
- 10.22#\*\* [Severance Agreement dated November 7, 2002 between Peter Williams and the Registrant. \(11\)](#)
- 10.23\*\* [Wild Oats Markets, Inc. 2001 Non-officer/Non-director Equity Incentive Plan. \(5\)](#)
- 10.24\*\* [Amended and Restated Stockholders Agreement between the Registrant and certain parties named therein dated August 1996. \(3\)](#)
- 10.25\*\* [Registration Rights Agreement between the Registrant and certain parties named therein dated July 12, 1996. \(3\)](#)
- 10.26#\*\* [Second Amendment to Employment Agreement between Wild Oats Markets, Inc. and Perry D. Odak, dated June 19, 2002. \(9\)](#)
- 10.27#\*\* [Third Amendment to Employment Agreement between Wild Oats Markets, Inc. and Perry D. Odak, dated August 12, 2002. \(9\)](#)
- 10.28#\*\* [Fourth Amendment to Employment Agreement, dated May 10, 2005, between Perry D. Odak and the Registrant. \(17\)](#)
- 10.29#\*\* [Employment Agreement dated April 26, 2005 between Robert B. Dimond and the Registrant. \(17\)](#)
- 10.30#\*\* [Robert B. Dimond Equity Incentive Plan. \(17\)](#)
- 10.31#\*\* [Severance Agreement dated May 9, 2005 between Robert B. Dimond and Registrant. \(17\)](#)
- 10.32\*\* [Assignment of Kaczynski Employment Agreement dated June 29, 2002, between Registrant and Sparky, Inc. \(9\)](#)
- 10.33\*\* [Loan and Security Agreement, dated March 31, 2005, by and among Wild Oats Markets, Inc., Bank of America, N.A., as agent, and the lenders identified therein. \(17\)](#)
- 10.34\*\* [Termination and Release Agreement, dated March 31, 2005, under the Second Amended and Restated Credit Agreement, dated as of February](#)

- 26, 2003, as amended by and among Wild Oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. (17)
- 10.35\*\* Waiver, dated March 28, 2005, to the Second Amended and Restated Credit Agreement, dated as of February 26, 2003, as amended by and among Wild Oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. (17)
- 10.36\*\* Waiver, dated March 31, 2005, to the Second Amended and Restated Credit Agreement, dated as of February 26, 2003, as amended by and among Wild Oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. (17)
- 10.37\*\* Second Amended and Restated Credit Agreement dated as of February 26, 2003, 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)
- 10.38\*\* Joinder Agreement dated as of December 12, 2003, among Bank of America, N.A., to the Second Amended and Restated Credit Agreement among Registrant, the lenders named therein and Wells Fargo Bank National Association, Registrant and Wells Fargo. (12)
- 10.39\*\* First Amendment to Second Amended and Restated Credit Agreement, dated as of May 21, 2004, by and among Wild oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. (13)
- 10.40\*\* Second Amendment to Second Amended and Restated Credit Agreement, dated as of August 3, 2004, by and among Wild Oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. (14)
- 10.41\*\* Third Amendment to Second Amended and Restated Credit Agreement, dated as of November 4, 2004, by and among Wild Oats Markets, Inc., the lenders identified therein and Wells Fargo Bank National Association, as administrative agent. Portions have been omitted pursuant to a request for confidential treatment. (15)
- 10.42\*\* Agreement for Distribution of Product between Wild Oats Markets, Inc. and United Natural Foods, Inc. dated January 9, 2004. Portions have been omitted pursuant to a request for confidential treatment. (12)
- 10.43\*\* Memorandum of Understanding between Tree of Life, Inc. and Wild Oats Markets, Inc. dated November 19, 2003. Portions have been omitted pursuant to a request for confidential treatment. (12)
- 10.44\*\* Amended Certificate of Designations of Series A Junior Participating Preferred Stock of Wild Oats Markets, Inc. (13)
- 10.45\*\* Indenture, dated as of June 1, 2004, between Wild Oats Markets, Inc. and U.S. Bank National Association, as Trustee, and Form of 3.25% Senior Convertible Debenture due 2034 of Wild Oats Markets, Inc. (15)
- 10.46\*\* Registration Rights Agreement, dated as of June 1, 2004, between Wild Oats Markets, Inc. and J. P. Morgan Securities Inc., as representative of the initial purchasers of the debentures. (15)
- 10.47\*\*

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|--------|---|
|        | <u>Form of Restricted Stock Unit Agreement used to evidence Restricted Stock Units granted under the Wild Oats Markets, Inc. 1996 Equity Incentive Plan. (16)</u> |
| 21.1** | <u>List of subsidiaries. (12)</u>   |
| 23.1+  | <u>Consent of Ernst &amp; Young LLP.</u>  |
| 23.2   | <u>Consent of PricewaterhouseCoopers LLP.</u>   |
| 31.1+  | <u>Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) / 15d-14(a) under the Securities Exchange Act of 1934, as amended.</u>                 |
| 31.2+  | <u>Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) / 15d-14(a) under the Securities Exchange Act of 1934, as amended.</u>                 |
| 32.1+  | <u>Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).</u>                           |
| 32.2+  | <u>Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).</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).

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- (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 10-K for the year ended December 27, 2003 (File No. 0-21577).
  - (13) Incorporated by reference from the Registrant s report dated May 25, 2004 on Form 8-K (File No. 0-21577).
  - (14) Incorporated by reference from the Registrant s Form 10-Q for the period ended June 26, 2004 (File No. 0-21577).
  - (15) Incorporated by reference from the Registrant s Registration Statement on Form S-3 filed with the Commission on August 20, 2004 (File No. 333-18406).
  - (16) Incorporated by reference from the Registrant s Form 10-Q for the period ended September 25, 2004 (File No. 0-21577).
  - (17) Incorporated by reference from the Registrant s Form 10-Q for the period ended April 2, 2005 (File No. 0-21577).
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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: March 7, 2006

By: /s/ Robert B. Dimond

Robert B. Dimond

Chief Financial Officer

(Principal Financial and Accounting Officer)



