

WILD OATS MARKETS INC

Form S-8

April 20, 2006

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As filed with the Securities and Exchange Commission on April 20, 2006

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
(State of Incorporation)

84-1100630
(I.R.S. Employer Identification No.)

**3375 Mitchell Lane
Boulder, Colorado 80301-2244**

(Address of principal executive offices)

**Robert B. Dimond Equity Incentive Plan
and
Samuel M. Martin III Equity Incentive Plan**

(Full titles of the plans)

**Freya R. Brier
Senior Vice President
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

Proposed

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (1)	Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, par value \$.001 per share	200,000 shares	\$ 11.095	\$ 2,219,000	\$ 237.43

(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:

Type of Shares	Number of Shares	Offering Price Per Share	Aggregate Offering Price
Shares issuable pursuant to options outstanding under the Robert B. Dimond Equity Incentive Plan	100,000	\$ 10.00	\$ 1,000,000
Shares issuable pursuant to options outstanding under the Samuel M. Martin III Equity Incentive Plan	100,000	\$ 12.19	\$ 1,219,000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

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Consent of Ernst & Young LLP

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INTRODUCTION

This Registration Statement on Form S-8 is filed by Wild Oats Markets, Inc., a Delaware corporation, (Wild Oats) and relates to 100,000 shares of the Company s Common Stock issuable pursuant to the Company s Robert B. Dimond Equity Incentive Plan and 100,000 shares of the Company s Common Stock issuable pursuant to the Company s Samuel M. Martin III Equity Incentive Plan.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents filed with the Commission are incorporated by reference into this Registration Statement:

- (a) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2005;
- (b) Our amendments on Form 10-K/A to our Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed on March 8, 2006.
- (c) Our Quarterly Report on Form 10-Q for the quarter ended April 2, 2005, July 2, 2005 and October 1, 2005;
- (d) The description of our Common Stock contained in our registration statement on Form 8-A filed on October 17, 1996;
- (e) The description of rights to purchase our Series A Junior Participating Preferred Stock contained in our registration statement on Form 8-A dated May 21, 1998; and
- (f) All reports and other documents filed by Wild Oats with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Registration Statement.

Any statement contained in a document incorporated, or deemed to be incorporated, by reference herein or contained in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

Not Applicable.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

Under Section 145 of the Delaware General Corporation Law, Wild Oats has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act. The Company s Amended and Restated Bylaws, as amended also provide that the Company will indemnify its directors and officers and may indemnify its employees and other agents to the fullest extent permitted by Delaware law, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The Company s Amended and Restated Certificate of Incorporation, as amended, provides for the elimination of liability for monetary damages for breach of the directors fiduciary duty of care to the Company and its stockholders. These provisions do not eliminate the directors duty of care and, in appropriate circumstances, equitable remedies such as injunctive or other forms of nonmonetary relief will remain available under Delaware law. In addition, each director will

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continue to be subject to liability for breach of the director's duty of loyalty to the Company, for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for any transaction from which the director derived an improper personal benefit, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provisions do not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

The Company has entered into agreements with its directors and certain executive officers that require the Company to indemnify such persons against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer of the Company, provided that such person's conduct was not knowingly fraudulent or deliberately dishonest and did not constitute willful misconduct. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

The above discussion of the Company's Amended and Restated Certificate of Incorporation, as amended, Amended and Restated Bylaws, as amended, and the Delaware General Corporation Law is only a summary and is qualified in its entirety by the full text of each of the foregoing.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

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)
4.6	Amended and Restated By-Laws of Wild Oats (1)
4.7	First Amendment to Amended and Restated Bylaws of Wild Oats, adopted March 24, 2006 (5)
4.8	Rights Agreement dated May 22, 1998 between Wild Oats and Norwest Bank Minnesota (3)
4.9	Amendment No. 1 to Rights Agreement dated February 26, 2002 between Wild Oats and Wells Fargo Bank, N.A (6)
4.10	Amendment No. 2 to Rights Agreement, dated March 24, 2006 between Wild Oats and Wells Fargo Bank, N.A., as successor in interest to Norwest Bank Minneapolis, N.A. (5)
4.11	Specimen stock certificate (7)
5.1	Opinion of Cooley Godward LLP
23.1	Consent of Ernst & Young LLP

23.2 Consent of PricewaterhouseCoopers LLP

23.3 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 Form 8-K filed with the Commission on March 27, 2006. (File No. 0-21577).

(6) Incorporated by reference to Wild Oats Annual Report on Form 10-K for the fiscal year ended December 29, 2001 (File No. 0-21577).

(7) Incorporated by reference to Wild Oats Registration Statement on Form S-1 filed on August 30, 1996 (File No. 333-11261).

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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.

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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 April 20, 2006.

Wild Oats Markets, Inc.

By: /s/ Robert B. Dimond
 Robert B. Dimond, Chief Financial
 Officer
 (Principal Financial and Accounting
 Officer)

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
/s/ Perry D. Odak	Chief Executive Officer and Director (<i>Principal Executive Officer</i>)	April 20, 2006
Perry D. Odak		
/s/ Robert B. Dimond	Senior Vice President and Chief Financial Officer (<i>Principal Financial and Accounting Officer</i>)	April 20, 2006
Robert B. Dimond		
*	Chairman of the Board	April 20, 2006
Robert G. Miller	Director	
Stacey Bell		
*	Director	April 20, 2006
David M. Chamberlain		
*	Director	April 20, 2006
Brian K. Devine		
*	Director	April 20, 2006
David Gallitano		
*	Director	April 20, 2006
Mark A. Retzloff		
*	Director	April 20, 2006
John A. Shields		

*By: /s/Freya R. Brier Attorney in Fact April 20, 2006

Freya R. Brier, as Attorney
in Fact

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