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Whole Foods and JANA Partners

Scott Ostfeld, partner of JANA Partners (JANA) and co-portfolio manager of their activist focused fund (JANA Strategic Investments), was reflecting on the hedge fund's investment in grocery chain Whole Foods Market, Inc. (Whole Foods). It was June 16, 2017 and Whole Foods had just announced that the struggling grocer was being acquired by online retailer Amazon. JANA had started its activism at Whole Foods a few months earlier after a year of due diligence led by Kevin Galligan, a managing director of JANA Partners, and several false starts to accumulate a meaningful stake in the company at their entry price target. JANA's announcement of its activist intent coincided with the first day of Whole Foods co-founder and CEO John Mackey's book tour for his recent book on "The Whole Foods Diet."[1] The timing engendered no good will on Mackey's part who thought it was intentional.[2]

Whole Foods was struggling in the face of increased natural and organic offerings from traditional supermarkets and high costs that dissuaded many shoppers after a decade of rapid growth in which the chain became synonymous with the natural and organic food movement.[3] The company was slow to respond to changing customer needs, and its stock had fallen over 50% since its peak, and had experienced declining same store sales in 2016, its first since the 2008 recession.[4] Mackey and his management team were working to stop the sales slide and improve Whole Foods operations and pricing, but investors had grown impatient with the company's slow response.[5]

JANA thought there were major strategic and governance challenges at the company that could only be fixed by wholesale change and partnered with experienced industry executives, who had been part of JANA's diligence efforts, for potential nomination to the board.[6] Whole Foods tried to settle by offering board seats to two of JANA's industry partners along with appointing a high-profile slew of experienced directors the company had identified on their own.[7] But when JANA refused, the company responded by unilaterally refreshing its board, and released new, ambitious financial targets.[8] However, these moves were not enough to satisfy JANA,[9] and Whole Foods eventually announced that it would be acquired by Amazon for $13.7 billion, a premium of 27% over the then trading price of $33 per share.[10]

Professor Suraj Srinivasan and Research Associate Quinn Pitcher prepared this case. This case was developed from published sources. Funding for the development of this case was provided by Harvard Business School and not by the company. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

Whole Foods Market

History

Whole Foods was an Austin, Texas-based chain of organic and natural foods supermarket. The company was founded as SaferWay in Austin in 1978 by then 25-year old John Mackey and his then-girlfriend, Renee Lawson. Mackey and Lawson became caught up in the nascent movement towards healthier eating and natural foods, and the original SaferWay was an extreme example of that, and did not carry meat, sugar, or alcohol. Mackey, now working on his own, eventually compromised on the model of the original store, partnering with two local supermarket owners to open the first Whole Foods Market in 1980. The 10,500-square-foot store was more than twice as large as competing natural food stores at that time, and did carry meat, alcohol, and sugar, although it didn't allow preservatives or artificial coloring or flavoring.[11]

Within six months, the first Whole Foods store was doing more business than any other natural foods supermarket in America. Expansion was slow, with Whole Foods expanding outside of Texas for the first time in 1988. The company listed on the stock market in 1992, when it had 10 stores in operation. Whole Foods began to differentiate itself in the late nineties, as Walmart's price cutting led to aggressive "race to the bottom" pricing at supermarkets and Whole Foods realized it could corner a larger part of the middle-class-and-up market. As Mackey put it, "We transitioned over to a middle-class customer that we never thought we were going to get." [12]

Whole Foods maintained its commitment to organic foods, with a list of over 120 ingredients and products that were banned from its store, like bleached flour. Organic and natural foods remained at the core of Whole Foods' identity, but it branched into gourmet prepared foods and other items that would not traditionally be considered healthy, like in-store hamburger bars. The company tried to make its supermarkets destinations, with craft beer bars and fresh food markets to attract customers looking for quick, organic meals, but also cemented the company's quirky, hip attitude. Prepared foods and bakery items made up 19% of sales in 2016, far higher than other traditional supermarkets.[13] The company went so far as to introduce a vegetable "butcher" at a new Brooklyn supermarket in 2017.[14]

The company was also known for treating it employees well and the freedom it allowed its regional managers: Whole Foods offered stock options and health-care benefits to all employees down through its hourly, in-store workers. Whole Foods had 12 regions, with each region having a large degree of autonomy over the products in its stores, a strategy that would allow stores to source the best local and regional products.[15]

In late 2013, Whole Foods' stock price peaked at $65, having doubled revenue and tripled profits over the past seven years, reaching $12.9 billion in sales as same store sales growth averaged nearly 8% after the 2008 recession. Whole Foods also enjoyed healthier margins than most other supermarkets, with a 35.8% gross margin, whereas most other supermarkets managed gross margins in the low- to mid-twenties. The company grew to around 470 stores, primarily in the U.S. but also in Canada and the U.K., and Mackey, who shared the CEO title with long-time executive Walter Robb, outlined plans for that number to triple by 2021.[16] Fortune magazine declared that Whole Foods had taken over America in 2014, as analysts expected that the supermarket chain would capture an increasing share of the healthy, organic, and natural products market, which stood at $150 billion in 2014 and was projected to grow about 50% over the five years.[17]

The company was defined by Mackey, a dedicated vegan who had even cut oils out of his diet, who eschewed many of the traditional notions of what a public company CEO was. Mackey lowered his salary to $1 in 2006 and forfeited his stock options, so that he owned less than 1% of Whole Foods stock. Mackey saw Whole Foods as much more than a supermarket chain, with an all-encompassing view of the company as a solution for worsening public health, opening up two Whole Foods health clinics, one in Austin and another in Los Angeles.[18] He'd also dedicated significant time to outside pursuits, like co-authoring a 2013 book called "Conscious Capitalism: Liberating the Heroic Spirit of Business." The idea was a guiding light for Mackey, who outlined what the phrase meant in a Harvard Business Review article:

> "Conscious Capitalism" is a way of thinking about capitalism and business that better reflects where we are in the human journey, the state of our world today, and the innate potential of business to make a positive impact on the world. Conscious businesses are galvanized by higher purposes that serve, align and integrate the interests of all their major stakeholders… They endeavor to create financial, intellectual, social, cultural, emotional, spiritual, physical and ecological wealth for all their stakeholders.[19]

Mackey was an outspoken leader, sometimes to the detriment of his company's public relations and often raised eyebrows in the business community. In a New Yorker profile, he commented on Whole Foods' growth and his background: "We've been making it up as we've gone along. I never took any business classes or worked for other companies."[20] But Mackey was well-respected within Whole Foods for his uncompromising vision, with some employees calling him a "visionary."[21]

Recent Struggles

Whole Foods' early 2014 zenith did not last long. Traditional supermarkets and other competitors began increasing their variety of natural and organic foods at lower prices than Whole Foods, which cut into the chain's sales. In the year up through May 2015, Whole Foods' sales were up 2.8%, compared with historical growth of 7-8%.[22] "Everybody is jumping kind of on the natural- and organic-food bandwagon," said Mackey, adding, "and that's really, frankly due to our success."[23] The supermarket had long been the only place where customers could find a large range of organic food, but this was no longer the case. As one supermarket analyst put it, "I think the chain really had blinders on and thought they were so far ahead of everyone else that they didn't have to pay attention to competitors. The reality is, I can go to Kroger and buy the same or similar goods at a lower price—it's that simple."[24]

Whole Foods had long been jokingly referred to as "Whole Paycheck" due to its high prices, but this was the first time that it appeared its pricing seemed to be hurting sales. In May 2015, to combat falling sales and increased competition, Mackey announced a new chain of lower-cost stores under the name "365"—borrowing the name of Whole Foods' private label brand—set to open in 2016.[25] In September 2015, the company also announced that it would cut 1,500 jobs, about 1.6% of its workforce.[26]

The "365" concept was part of nine broad initiatives that Whole Foods introduced in November 2015 to stem its slowing sales and maintain profitability. Specifically, Whole Foods said it would: reduce operating expenses by $300 million; "Innovate faster" by focusing on private brands and its prepared foods; "Improve value perception" through price reductions and promotions; "enhance external marketing;" "invest in digital strategies" by partnering with grocery delivery service Instarcart; "invest in technology" to improve customer experience and improve its operational efficiency; launch its "365" stores; slow its store growth in an effort to prevent cannibalization; and, lastly, "affirm our culture."[27]

2016 found Whole Foods continuing to introduce measures to control costs and bolster its flagging sales. In February 2016, the company announced the elimination of the 12 regional units, stating that purchasing for several categories of goods, including packaged goods and nonperishable items, would occur at the national level in an effort to contain costs. The company would also introduce software to automate staff scheduling and replenishing store shelves.[28]

The new measures did little to stop Whole Foods' slide. In November 2016, the company announced that co-CEO Robb would be leaving the company with Mackey assuming the full leadership role, and longtime CFO Glenda Manbeck would also leave the company.[29] In 2016, for only the second time in its history, Whole Foods had seen its same store sales for a full year, and the company had endured sales declines for six consecutive quarters (see **Exhibit 1** for Whole Foods' same store sales growth over time).[30] Meanwhile, Kroger, whose stock was outperforming Whole Foods', had surpassed Whole Foods in annual sales of natural and organic products (see **Exhibit 2** for a stock price comparison between Kroger and Whole Foods).[31] Whole Foods stock was hovering around $30, having lost half its value from its 2013 peak.[32]

Mackey had a singular vision of a Whole Foods that was more than a supermarket chain, but some of the decisions made in pursuit of that vision had arguably distracted Whole Foods, and allowed companies like Kroger to catch up to, and then surpass, the supermarket chain in what it was meant to do best: provide quality natural and organic products. On the other hand, Whole Foods' entire appeal had grown through that vision and its quirky, attention-getting moves and in-store experience that was a driver of customer loyalty.

Investors were frustrated with Whole Foods' performance and its apparent inability respond to its competitors. Between January 2012 and January 2017, the short interest in the company stock more than doubled from around 5% to around 12%.[33] The short interest reflected the stock's weak performance—in a peer group of other 12 other retailers, its five-year stock return was ranked 11—and severe erosion of its valuation multiple (see **Exhibits 3 and 4** for a stock price comparison for Whole Foods and other retailers and food companies and Whole Foods' valuation multiple).[34]

Analysts were skeptical of Whole Foods' plans to turn their business around, and were continually disappointed by the company's inability to stem the same store sales decreases. An analyst at Credit Suisse saw a move to close nine stores as a positive sign that management was focused on improving profitability rather than growth, but thought that a company decision to refocus on its core customers—affectionately referred to as "Whole Foodies"—as inefficient given the continued efforts of traditional supermarket chains to offer competing products.[35] An analyst at JP Morgan thought that much of Whole Foods' potential rebound would come from improvements in how it controlled prices: "Over the past couple of years, at different times, we have seen Whole Foods focus on price cuts in produce, promotions in perishables, and promotions in packaged food. But per the company, the traffic response to these efforts has been somewhat uneven. Management is beginning to develop customer analytics to begin offering more targeted promotions on items that have higher elasticity."[36]

Although displeased with recent performance, most analysts were willing to take a "wait and see" approach with Mackey and Whole Foods' management when it came to cost-cutting and improving sales. There were also rumblings that Whole Foods might get acquired as its stock price fell. In October 2016, several reports claimed that Kroger was considering acquiring Whole Foods as the supermarket had been on a recent acquisitions tear.[37] Online retailer Amazon was a popular pick for a potential buyer, as the company was making inroads into groceries, while some observers speculated that a private equity buyer might make the most sense for Whole Foods.[38]

Whole Foods' large institutional investors like Neuberger Berman did not have the patience to let acquisition rumors play out or Mackey turn the company around on his own. Neuberger Berman was tired of seeing its $200 million investment in Whole Foods wallow, and began reaching out to activist hedge funds in the hope that one would push for accelerated change at the supermarket chain. Among those Neuberger Berman reached out to was JANA Partners.[39]

Governance Concerns

Among the causes of concern at Whole Foods was the company's governance (see **Exhibit 5** for Whole Foods' board of directors). Leading proxy advisor Institutional Shareholder Services (ISS) gave the company its worst possible rating for board structure.[40] The average tenure of Whole Foods' directors was over 13 years,[41] well above the S&P 500 average of about 8 years.[42] Board member, William Tindell III, the ex-CEO of The Container Store, was Mackey's college roommate.[43] As proxy adviser Glass Lewis put it, they had concerns over the level of "coziness" on Whole Foods' board, recommending against a severance package for Walter Robb.[44]

There were also continuing concerns about Mackey and whether he would be a dedicated leader for the company. After all, the CEO had in 2016 said, "I stopped taking compensation from the company nine years ago, so if I want to take a trip, I don't feel guilty."[45] Faced with waning sales, Mackey was nonchalant: "We're going back to being a little bit more niche than we were. We are not going to be the supermarket that everybody's going to want to shop at."[46] Despite the posturing, it did seem that Mackey was at least somewhat aware of the stakes, as Whole Foods announced in February 2017 that it was focusing on lowering prices and dropped its 1,200 store ambitions. The company also introduced initiatives like coupons and loyalty programs to increase traffic and appeal to bargain-hunters.[47]

JANA Partners

JANA was founded in 2001 by Barry Rosenstein in the wake of the Enron corporate scandal. Rosenstein got his taste for activism in the 1980's after working with Asher Edelman, a major figure of the decade's hostile raider and leveraged buyout (LBO) craze. Rosenstein eventually set out on his own, founding JANA with $35 million. JANA's investment model included passive and activist investing as well as identifying "event-driven" opportunities to generate returns. The hedge fund had been extremely successful, generating impressive annualized returns, and in 2015 sold a 20% stake to a unit of Neuberger Berman at an estimated valuation of $2 billion.[48] JANA had typically kept its activism limited to mid-cap companies and had significant experience with consumer and retail companies, pushing for successful buyouts at companies like PetSmart, ConAgra, and Safeway, but in recent years had started targeting larger companies, such as Qualcomm and Walgreens.[49]

Ostfeld joined JANA in 2006 after working at GSC Partners in its distressed debt private equity group. Ostfeld started his career with Credit Suisse working in investment banking, and had a JD from Columbia Law School and MBA from Columbia Business School.[50]

Deciding to Invest in Whole Foods

After studying Whole Foods for over a year, JANA had to consider a number of questions before investing. Whole Foods was a somewhat controversial company with a mercurial CEO and an idiosyncratic brand and appeal. Would JANA be able to advocate for the kind of measures needed to improve Whole Foods' performance without sparking a scorched earth backlash from Mackey?

Was it going to be possible to fix the company with the full glare of public market investors? JANA had success with buyouts with supermarket chain Safeway and pet supplies chain PetSmart, each acquired by a private equity firm in LBOs costing around $9 billion. However, these companies were smaller than Whole Foods. Whole Foods would cost significantly more than that, making a private equity purchase less likely. Whole Foods could still be a likely acquisition target by a large enough competitor, but the most likely possibility was that JANA would need to rely on fixing the company in public markets. Whether there was investor support for radical changes was crucial? Whole Foods' top five investors, in order of stake, were Vanguard, JANA (including options), BlackRock, State Street Global Advisers, and Sands Capital Management.[51] Would JANA be able to drum up the investor support to push for significant board change if it turned out that it couldn't work with the existing board and management team?

JANA Engages Whole Foods

On April 10, 2017, JANA and four industry executives disclosed a ~$750 million investment in Whole Foods, representing approximately 8.8% of the company. JANA had taken the unusual step of filing its 13D form in partnership with the candidates it could nominate for the board, who had each purchased their own independent stakes in Whole Foods. Noted New York Times food writer and columnist Mark Bittman (labeled a "Whole Foodie Hero" by Mackey in his recent book) and Diane Dietz, the CEO of Rodan + Fields and the former Chief Merchandising Officer of Safeway, would serve as consultants for JANA in its activist campaign.[52]

The three industry executives JANA had nomination agreements with at the time of their filing were: Glenn Murphy, a former CEO of Gap Inc. and Shoppers Drug Mart, a former senior executive of supermarket chain Loblaws, and co-chairman of lululemon athletica; Thomas Dickson, the former chairman and CEO of Harris Teeter supermarkets which had been acquired by Kroger; and Meredith Adler, a longtime number one ranked sell-side analyst covering food and drug retail. Murphy and Dietz put forward significant amounts of their own money to become Whole Foods shareholders: Murphy bought $44 million worth of stock and Dietz spent $3.1 million. Adler and Dickson also spent north of $100,000 to acquire stock. These partners were central to JANA's strategy: the hedge fund needed a credible slate of potential directors who had the experience and track-record to help turnaround Whole Foods that the supermarket would have a difficult time rejecting on their individual merits separate from JANA's involvement.[53]

In the 13D, JANA claimed that Whole Foods' shares were undervalued and outlined several broad topics it was looking to discuss with Mackey and Whole Foods' board:

- "addressing the Issuer's chronic underperformance for shareholders;"
- "changing the Issuer's board and senior management composition and addressing governance;"
- "optimizing the Issuer's real estate and capital allocation strategies, including discussing the Issuer's "365" small store format and opportunities to improve returns on invested capital;"
- "pursuing opportunities to improve performance by advancing its brand development and by addressing core operating deficiencies in areas including customer loyalty and analytics, category management and analytics, technology and digital capabilities, procurement and buying practices, pricing strategies and value proposition communication, and online offerings;"
- "improving in-store execution, including labor scheduling and management, management of inventory and shrink levels, stocking practices, product layout, in-store signage, private label program strategy and management, and assessing broader cost structure and operating opportunities;"

- "evaluating opportunities to re-engineer the Issuer's suboptimal and cost- disadvantaged grocery procurement and distribution strategy, such as by internalizing distribution or pursuing other hybrid strategies, in order to diversify away from its existing primary wholesale distribution partner, while in the interim implementing better management and increased auditing of this relationship to reduce costs, improve execution, and limit such distribution partner's influence;" and
- "initiating a review of strategic alternatives particularly in light of the Issuer's apparent unwillingness to engage in discussions with third parties regarding such alternatives."[54]

Investment Community Response

JANA's activism quickly won plaudits from some analysts as the stock price jumped 10% on the announcement of their investment. An analyst at Credit Suisse was optimistic, declaring, "Activist investor Jana Partners today announced an 8.8% stake in WFM, and appears to be pushing for an accelerated turnaround effort while exploring a sale of the company. The news represents the catalyst the stock has lacked and highlights the opportunity in this once-thriving company."[55] The analyst believed that there was potential for JANA to help turnaround Whole Foods, noting that the company's issues stretch far beyond pricing to include the fact that the company is "not a well-run, modern day retailer at the moment," and that, barring fixing the company, a sale to a competitor like Kroger was a distinct, value-creating opportunity.[56]

Analysts at JP Morgan were more cautious. They believed that there was limited price upside for Whole Foods, which was already trading at 9 times EV/EBITDA, far higher than either Kroger or Walmart. Moreover, they were unclear on whether JANA, by mentioning the "365" stores, was advocating shifting the strategy for the chain to lower-cost models, improving profitability, or completely jettisoning the idea altogether. There were doubts that JANA could help Whole Foods further cut prices and improve efficiency and whether they would lead to the improvements in sales: "[Whole Foods] cannot simply slash its prices and hope to make up the margin losses in volume; however, perhaps improved analytics can help identify items that will drive the greatest elasticity with customers." Finally, their thoughts on Whole Foods' acquisition potential were negative: "We struggle to see anyone buying WFM, which has been comping negatively for a while now, for a significant premium right now over today's stock price."[57]

The 13D, with its extensive listing of JANA's concerns, was a departure for the hedge fund, which preferred to conduct its overtures to companies in private. Analysts at JP Morgan speculated on the impact of doing so:

> In our opinion, that JANA felt the need to a) accumulate so many shares, b) work publicly to effect change (rather than behind the scenes, as it has in some recent maneuvers), and c) make no effort to conceal its interest in replacing some senior leaders within the company, seems to suggest that its presence and efforts will not wholly be welcomed at company headquarters in Austin, TX.[58]

JANA stopped short of any other public announcements criticizing the companies, leaving the 13D to speak for itself.

Whole Foods Tries to Head Off JANA

Perhaps sensing that there was growing support for JANA's position, Whole Foods began efforts to stave off a protracted activist campaign and potential proxy fight. In meetings with JANA, the company attempted to reach a settlement and it updated its shareholders on that progress at its May 10 earnings call. During the call, Whole Foods' announced that Gabrielle Sulzberger, a private equity investor who had been on the board for 14 years, would become its new board chairwoman. Sulzberger detailed the attempt to settle with JANA:

> We identified two of JANA's nominees that we were prepared to add to the board in return for a customary standstill or cooperation agreement to enable the board to focus on the important tasks at hand. JANA indicated that they were pleasantly surprised by the changes, but they currently didn't want to tie their hands with an agreement. Both sides suggested that we would continue the dialogue.[59]

The agreement would have also included an 18-month standstill agreement, and Whole Foods would also replace four of its current board members with new ones in addition to the two seats for JANA.[60] While far from granting JANA's objective, adding two members would have offered a platform from which to advocate for shareholder-friendly actions on a twelve-person board. Four new directors, while not necessarily a given, offered the potential JANA appointees a chance to exert influence if they could be convinced to side with them on key issues. Would the two seats have been enough for JANA to accomplish its goals and save the trouble of a longer fight?

Whole Foods remained on the offensive during its May 10 earnings call. The company announced a new CFO and five new directors, in addition to new strategic measures. Keith Manbeck, Whole Foods' new CFO, was former Senior Vice President of Finance, Strategy, and Business Transformation at Kohl's Corporation, and the five new directors were: Ken Hicks, former chairman, CEO, and president of Foot Locker; Joe Mansueto, founder and executive chairman of Morningstar; Sharon McCollam, former CFO of Best Buy and Williams-Sonoma; Scott Powers, former president and CEO of State Street Global Advisors; and Ron Shaich, co-founder, chairman, and CEO of Panera Bread (see **Exhibit 6** for a listing of JANA's nominees and Whole Foods' new board members). The five would replace Tindell (Mackey's college roommate), Dr. John B. Elstrott, Morris Siegel, Jonathan D. Sokoloff, and Dr. Ralph Z. Sorenson.[61]

Mackey announced a series of long-term targets for Whole Foods. The company would achieve $300 million in cost savings by 2020, with $100 million coming in the next year. Whole Foods would also increase its dividend 29%, and announced a new $1.25 billion share repurchase plan. On top of this, Mackey announced that Whole Foods would reach $18 billion in sales in 2020, with an EBITDA margin of 9.5%, which would mean an approximately 30% increase in EBITDA, and cash flow of $1.2 billion. The new targets felt ambitious by the standards of Whole Foods' recent performance, but Whole Foods in 2013 projected a $1 billion increase in EBITDA by 2018, while the new target implied only a $100 million increase.[62]

Analysts were largely pleased by the moves. Both Hicks and McCollam had experience turning around struggling retailers by reducing prices and improving supply chains. Some analysts were disappointed by the lack of food retail experience among the new directors but were encouraged by the "new sense of urgency." [63,64]

The timing of the turnaround announcement, CFO change and board refresh raised eyebrows. The concurrent announcement of the new board members and the new performance targets gave the impression that the new directors and new CFO had not been involved in approving the plan and the turnaround experience of the new directors had been wasted. This was especially concerning given Whole Food's failure to achieve prior turnaround targets. The addition of Shaich and Powers was also interesting in the context of JANA's activism: both had weathered activist campaigns just recently. Shaich was publicly critical of activism,[65] and Powers had refused a Trian Partners campaign to spinoff State Street's money management group, State Street Global Advisers.[66]

Fighting for Whole Foods

JANA responded to the company's May 10 changes by adding a fourth nominee to the board, former Chief Sustainability Officer of Kellogg Dr. Celeste Clark, on May 30, 2017.[67] Meanwhile, Mackey struck a defiant public attitude, referring to the activists as "greedy bastards" and decried JANA's motives, claiming they "don't care about stakeholders or long-term value."[68] Mackey still had a long-term vision for the supermarket, and was afraid that JANA was coming in to destroy that long-term vision. He said, "These people, they just want to sell Whole Foods and make hundreds of millions of dollars, and they have to know that I'm going to resist that. That's my baby. I'm going to protect my kid, and they've got to knock Daddy out if they want to take it over."[69] Mackey railed against the idea of selling the company given Whole Foods' long record of growth:

> Whole Foods has created amazing value for our shareholders. We've increased value thirty times over since we went public. We have the highest sales per square foot in the food-retailing business. By every objective measurement, we're still best in class in the entire food-retailing industry. Our business model's not broken. We're still extremely healthy. We had eight percent growth in same-store sales for thirty-five years. The last year and a half got negative same-store sales, and our stock has fallen fifty percent. So, obviously, the company needs to be sold! Obviously, the management can't create any value![70]

It all came back to Mackey's idea of "conscious capitalism" and what he called "a morality play between conscious capitalism and greedy, short-term financial capitalism," which he saw JANA as representing.[71] Mackey called Whole Foods "a mission driven company," and talked about what he saw as the reaction to that idea:

> It's hard for many people to understand that Whole Foods wasn't created to make money per se. It wasn't created as an MBA project to meet some unmet market need… We're not like every other corporation. Whole Foods Market doesn't primarily care about money. It primarily cares about fulfilling its purpose.[72]

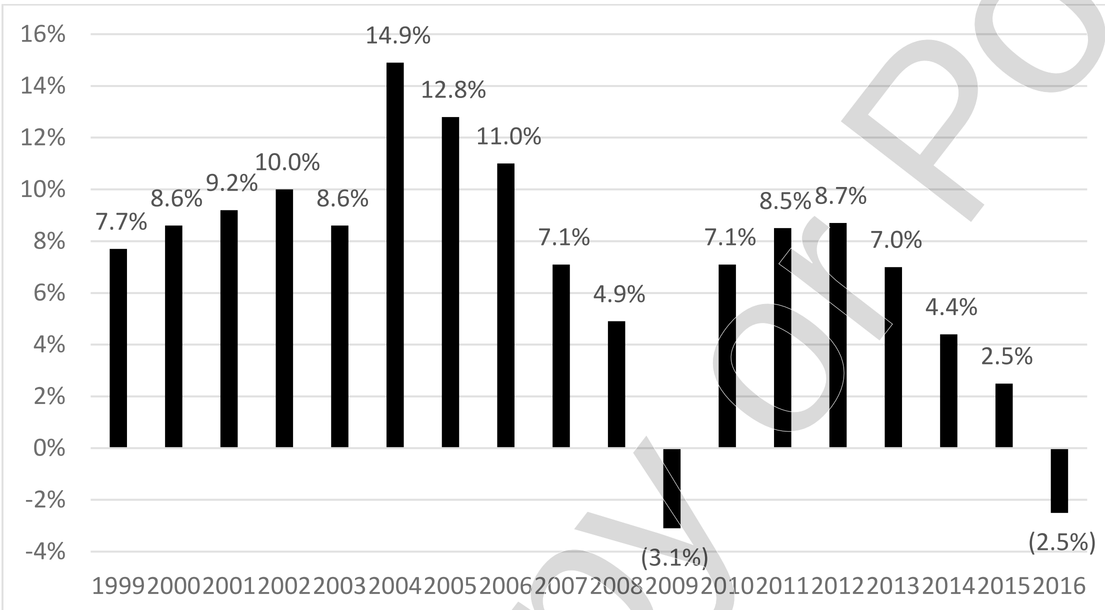
Mackey felt that part of the issue was that Whole Foods was a public company. It was difficult to maintain a mission-driven company in public markets, with the attendant greater earnings pressure and disclosures. Mackey often complained that competitors like Trader Joe's could operate under the radar, but one supermarket industry analyst said that Mackey simply didn't have the constitution to run a public company: "I'm not sure John's personality is suited for that Wall Street mentality, that constant pressure on earnings or store openings or what to do. That's different from being steeped in good health for America."[73]

Amazon Acquisition

On June 16, 2017, Amazon announced that it was acquiring Whole Foods for $13.7 billion, approximately $42 per share, or 27% over the stock's previous closing price. Mackey would retain his position as CEO as part of the deal. The announcement quieted questions of whether Whole Foods would be sold, and to whom. The deal was apparently catalyzed by JANA's involvement: Amazon had considered acquiring Whole Foods in the fall of 2016, deciding against it, but reconsidered doing with the presence of the activist. Market reaction to the deal was overwhelmingly positive: Whole Foods stock rocketed to within a cent of the acquisition price, and Amazon's stock also increased, adding more value to the company's market capitalization than it had paid to acquire Whole Foods for.[74]

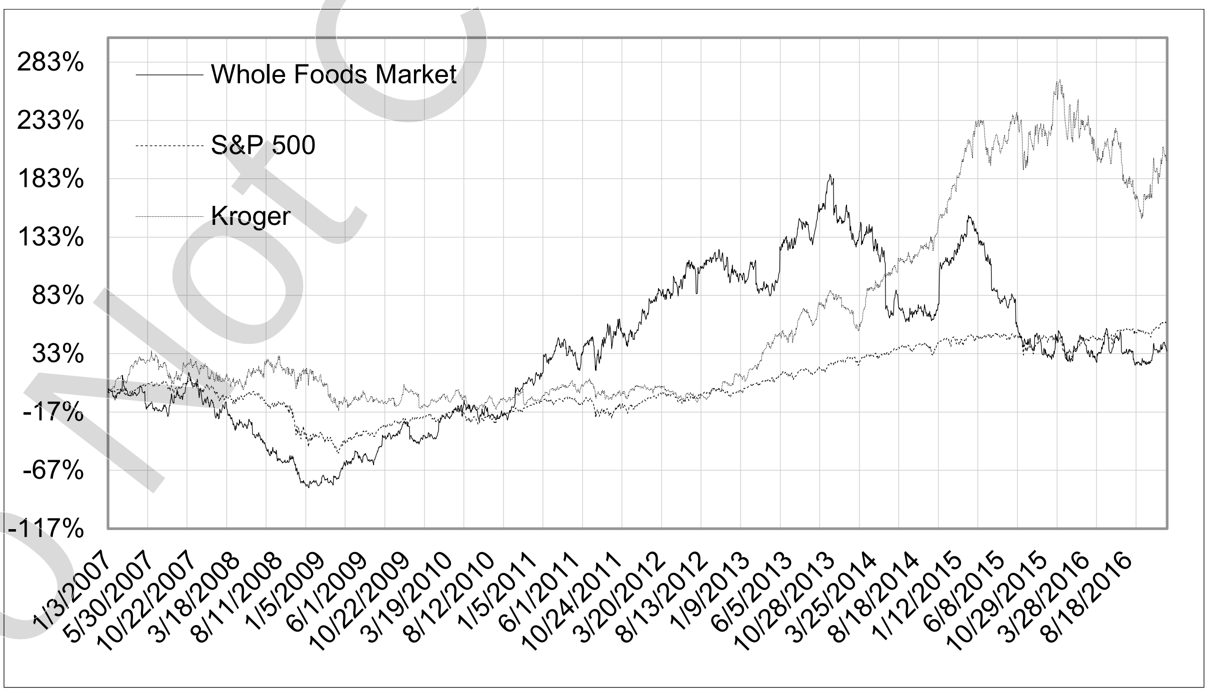
With the Amazon acquisition, JANA had succeeded in pushing for a sale at the company, despite all of Mackey's posturing that he wouldn't sell the company. The risks that the activist fund had taken in deciding to invest and its engagement strategy had paid off, as Amazon swooped in before what was likely to be an incredibly contentious and close proxy fight. Ostfeld thought about the past few fast paced months what lessons this engagement had for JANA's future activist investments.

Exhibit 1 Whole Foods Same Store Sales Annual Growth, 1999-2016



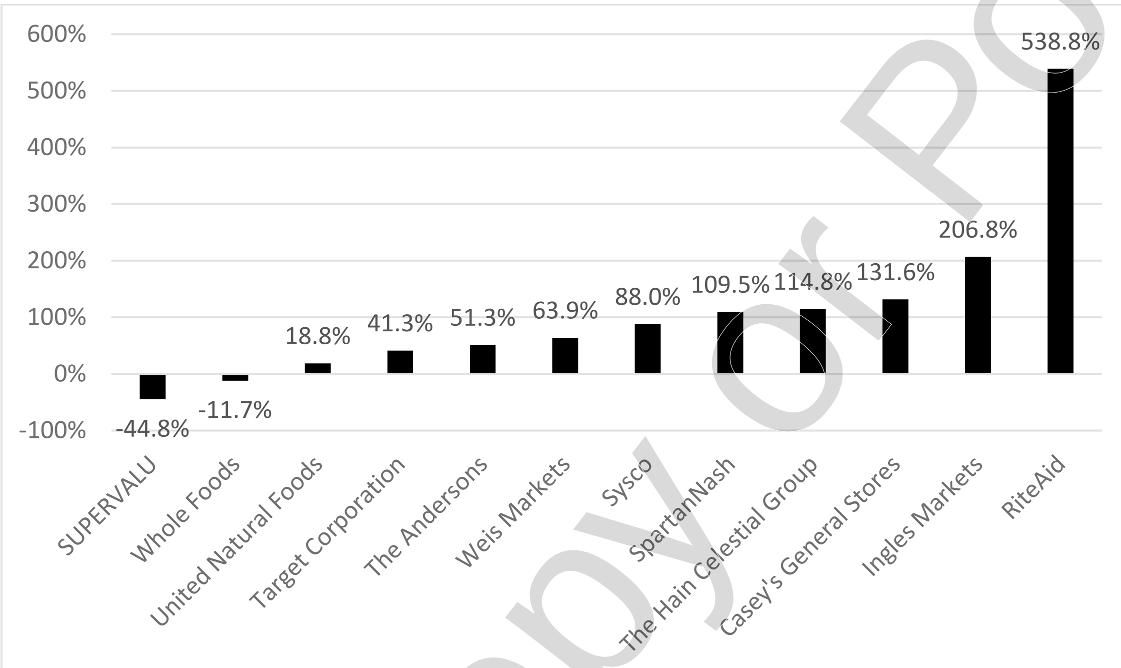
Source: Standard & Poor's Capital IQ.

Exhibit 2 Whole Foods Market and Kroger Stock Performance, 2007-2016



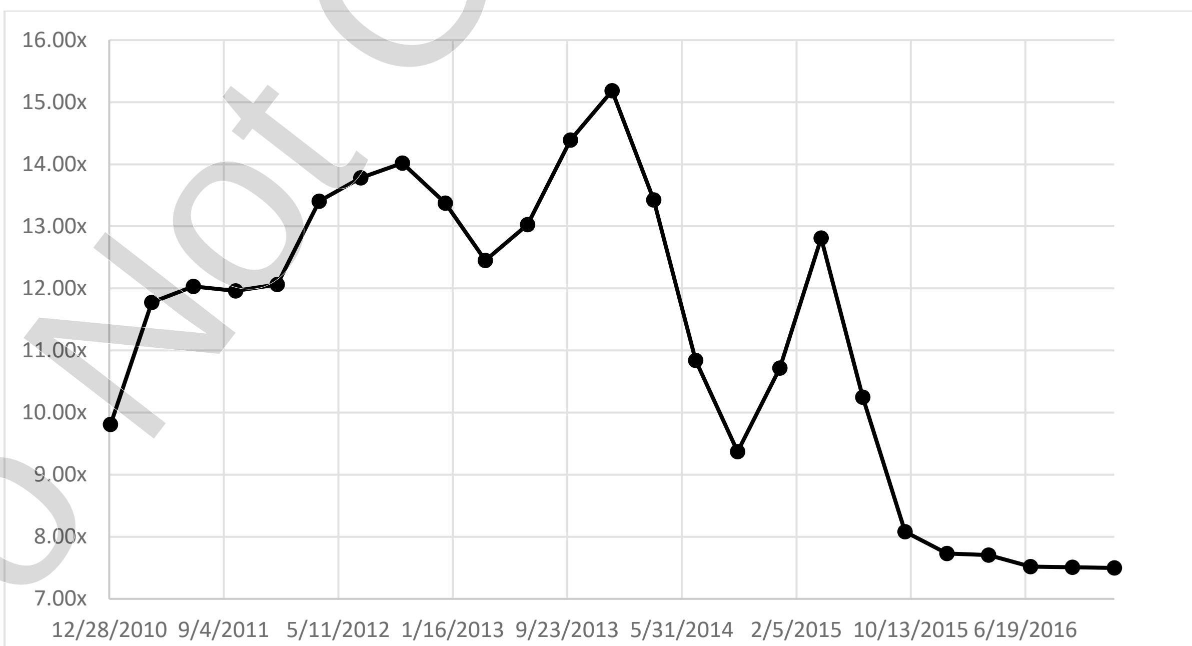
Source: Standard & Poor's Capital IQ.

Exhibit 3 Whole Foods and Comparable Firms Stock Price Return, 2012-2016



Source: Standard & Poor's Capital IQ.

Exhibit 4 Whole Foods Market TEV/LTM EBITDA Ratio, 2011-2017



Source: Standard & Poor's Capital IQ.

Exhibit 5 Whole Foods Board of Directors, Start of 2017

Name	Director Since	Background
Dr. John Elstrott, Chairman	1995	Emeritus Professor of Entrepreneurship and the founding director of the Levy-Rosenblum Institute for Entrepreneurship at Tulane University's Freeman School of Business. Former director, Stewart Enterprise.
Mary Ellen Coe	2016	Vice President of Sales and Product Operations at Google.
Shahid Hassan	2005	General Partner at Greenmont Capital. Formerly the co-founder, president, and CEO of Alfafa's Market and president of Wild Oats Marketplace, as well as the founder of U.K. organic food retailer Fresh & Wild.
Stephanie Kugelman	2008	Principal of strategy and brand consultancy A.S.O.; vice chairwoman of Solera Capital; and director, HSNi. Former vice chairwoman and Chief Strategy Officer, Young & Rubicam Brands.
John Mackey	1978	Co-founder and CEO of Whole Foods.
Walter Robb	2010	Former co-CEO of Whole Foods, current senior adviser and director at The Container Store. Robb started his career with Whole Foods in 1991 and previously held the roles of co-president and co-COO.
Jonathan Seiffer	2008	Senior Partner, Leonard Green & Partners.
Morris Seigel	2003	Co-founder, Celestial Seasonings and former director, Spicy Pickle Franchising.
Jonathan Sokoloff	2008	Managing Partner, Leonard Green & Partners and director, The Container Store, Shake Shack Inc. and Signet Jewelers Limited.
Dr. Ralph Sorenson	1994	Managing General Partner at venture capital firm Sorenson Limited Partnership. Former President Emeritus, Babson College; Professor Emeritus and former Dean of the University of Colorado Business School; professor, Harvard Business School; and CEO and chairman, Barry Wright Corporation.
Gabrielle Sulzberger	2003	Principal, Rustic Canyon/Fontis Partners and director, Teva Pharmaceuticals and Brixmor Property Group. Former CFO, Villanueva Companies.
William Tindell III	2008	Co-founder and former CEO and chairman, The Container Store.

Source: Company filings.

Note: Gabrielle Sulzberger became chairwoman as a result of the May 2017 board changes. William Tindell III, Dr. John B. Elstrott, Morris Siegel, Jonathan D. Sokoloff, and Dr. Ralph Z. Sorenson left the board as a result of the same board changes.

Exhibit 6 Whole Foods' Newly Appointed Directors and JANA's Potential Nominees

Whole Foods' New Directors		JANA's Potential Nominees	
Name	**Background**	**Name**	**Background**
Ken Hicks	Former chairman, president, and CEO of Foot Locker.	Glenn Murphy	Former CEO, Gap Inc.; and former CEO, Shoppers Drug Mart, former Loblaws executive, co-chairman of lululemon athletica
Joe Mansueto	Founder and executive chairman, Morningstar.	Meredith Adler	Former equity analyst at Barclays, Credit Suisse, and other investment banks with 30 years of consumer experience. Director at Performance Food Group.
Sharon McCollam	Former CFO, Best Buy and Williams-Sonoma.	Tad Dickson	Former CEO of Harris Teeter Supermarkets. Former director, The Pantry, Inc. Director at Conagra Brands, Inc.
Scott Powers	Former president and CEO, State Street Global Advisors.	Dr. Celeste Clark	Senior Vice President of Global Public Policy and External Relations and Chief Sustainability Officer of Kellogg Company, where she had served in various other executive positions since first joining in 1977.
Ron Shaich,	Co-founder, chairman, and CEO of Panera Bread. Former founder of Au Bon Pain.		

Source: Compiled by casewriter from: Schedule 13D Form. JANA Partners, April 10, 2017; Q2 Whole Foods Market Inc. Earnings Call – Final. May 10, 2017; and "Jana Partners adds fifth nominee to its slate for Whole Foods' board." Reuters, May 30, 2017.

Note: Dr. Celeste Clark was added on May 30, 2017.

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