

UNITED NATURAL FOODS INC  
Form S-8  
October 22, 2018

As filed with the Securities and Exchange Commission on October 22, 2018

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

**UNDER**  
**THE SECURITIES ACT OF 1933**

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**United Natural Foods, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**05-0376157**  
(IRS Employer  
Identification No.)

**313 Iron Horse Way**

**Providence, Rhode Island 02908**

(Address of Principal Executive Offices)

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**UNITED NATURAL FOODS, INC. SECOND AMENDED AND RESTATED 2012 EQUITY INCENTIVE PLAN**

(Full title of the plan)

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**Jill E. Sutton**

**Senior Vice President, General Counsel and Chief Compliance Legal Officer**

**United Natural Foods, Inc.**

**313 Iron Horse Way**

**Providence, Rhode Island 02908**

**(401) 528-8634**

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

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Indicate by a check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Exchange Act (Check one):

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

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**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be	Proposed Maximum	Proposed Maximum	Amount of Registration Fee

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	Registered	Offering Price per Share	Aggregate Offering Price
Common Stock, par value \$0.01 per share	5,000,000 <sup>(1)</sup>	\$26.13 <sup>(2)</sup>	\$130,650,000 <sup>(2)</sup>

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act ), this Registration Statement also covers such indeterminable number of additional shares of common stock of the Registrant as may become issuable to prevent dilution in the event of stock splits, stock dividends or similar transactions pursuant to the terms of the United Natural Foods, Inc. Second Amended and Restated 2012 Equity Incentive Plan.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the average high and low prices of the Common Stock, as reported on the NASDAQ Global Select Market on October 16, 2018.

**EXPLANATORY NOTE**

This Registration Statement on Form S-8 (this Registration Statement ) is filed by United Natural Foods, Inc. (the Registrant or the Company ) relating to 5,000,000 shares of its common stock, par value \$0.01 per share (the Common Stock ), issuable pursuant to awards originally granted under SUPERVALU INC. 2012 Stock Plan (as amended July 20, 2016) which awards were assumed by the Registrant under and pursuant to Section 4.3 of United Natural Foods, Inc. Second Amended and Restated 2012 Equity Incentive Plan (the Plan ). These 5,000,000 shares are in addition to the 5,050,000 shares of Common Stock previously registered, in the aggregate, on the Registrant's Form S-8 filed with the Securities and Exchange Commission (the Commission ) on December 22, 2017 (Commission File No. 333-222257), December 22, 2015 (Commission File No. 333-208695) and December 21, 2012 (Commission File No. 333-185637).

**PART I. INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**ITEM 1. PLAN INFORMATION**

The documents containing the information specified in Part I will be delivered in accordance with Form S-8 and Rule 428(b) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the Commission), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION**

The written statement required by Item 2 of Part I is included in documents delivered to participants in the plan covered by this Registration Statement pursuant to Rule 428(b) of the Securities Act.

**PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE**

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

(1) The Registrant's annual report on Form 10-K for the fiscal year ended July 28, 2018, filed with the Commission on September 24, 2018, which includes audited financial statements for the Registrant for the fiscal year ended July 28, 2018;

(2) The Registrant's current reports on Form 8-K filed with the Commission on September 28, 2018, October 10, 2018, October 18, 2018 and October 22, 2018; and

(3) The description of the Registrant's Common Stock, contained in the Registrant's registration statement on Form 8-A filed with the Commission under Section 12(b) of the Securities Exchange Act of 1934 on October 11, 1996 and any amendment or report subsequently filed for the purpose of updating such description.

All other documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which

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deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents.

Notwithstanding the foregoing provisions of this Item 3, no document, or portion of or exhibit to a document, that is furnished to (rather than filed with) the Commission shall be incorporated or deemed to be incorporated by reference in 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**

Section 145 of the Delaware General Corporation Law (the DGCL ) permits a corporation to indemnify any person who is or has been a director, officer, employee or agent of the corporation or who is or has been serving as director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise at the request of the corporation, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement actually and reasonably incurred in connection with any civil, criminal, administrative or investigative action, suit or proceeding (other than an action by or in the right of the corporation) in which such person is involved by reason of the fact that he or she served or is

serving in these capacities, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation and, with respect to any criminal action or proceeding, had no cause to believe his or her conduct was unlawful. In the case of an action or suit made or brought by or in the right of the corporation to procure a judgment in its favor, the corporation shall not indemnify such person in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the corporation, except for such expenses as the court may allow. To the extent that such person has been successful on the merits or otherwise in defending any such action, suit or proceeding referred to above or any claim, issue or matter therein, he or she is entitled to indemnification for expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 102(b)(7) of the DGCL provides that a corporation may eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

#### ***Amended and Restated Certificate of Incorporation***

Article Ninth of the Company's Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), provides that, subject to the Company's determination of a director's or officer's entitlement to indemnification, the Company must indemnify any director or officer of the Company who is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (each, a "Proceeding"), by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Company, or is or was serving, or has agreed to serve, at the request of the Company, as a director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf in connection with such Proceeding and any appeal therefrom, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. However, the Company is not required to indemnify any director or officer with respect to any Proceeding by or in the right of the Company as to which such director or officer shall have been adjudged to be liable to the Company, unless the Court of Chancery of Delaware determines that, despite such adjudication but in view of all the circumstances of the case, such person is entitled to indemnity for such expenses. Notwithstanding the foregoing, to the extent that a director or officer has been successful, on the merits or otherwise, in the defense of any Proceeding, or in the defense of any claim, issue or matter therein, the Company is required to indemnify such person against all expenses (including attorneys' fees) actually and reasonably incurred by or on his or her behalf in connection therewith.

The Company is not required to make the above-described indemnification payments if the Company determines (in the manner provided in the Certificate of Incorporation) that the applicable standard of conduct required for indemnification has not been met. In the event of such a determination by the Company, or if the Company fails to make an indemnification payment within 60 days after such payment is claimed by a director or officer, such person is permitted to petition a court to make an independent determination as to whether such person is entitled to indemnification. As a condition precedent to the right of indemnification, the director or officer must give the Company notice of the Proceeding for which indemnity is sought and the Company has the right to participate in such Proceeding or assume the defense thereof.

Article Ninth of the Certificate of Incorporation further provides that the indemnification provided therein is not exclusive, and that, in the event that the DGCL is amended to expand the indemnification permitted to directors or officers, the Company must indemnify those persons to the fullest extent permitted by such law as so amended.

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The Company is required to advance to a director or officer, at his or her request, expenses incurred in defending a Proceeding upon receipt of an undertaking by the director or officer to repay such amount if it is ultimately determined that he or she is not entitled to indemnification.

The Company has entered into indemnification agreements with its directors and executive officers that provide such persons indemnification and expense reimbursement rights on the same terms as the provisions of the Certificate of Incorporation described above. The indemnification agreements also set forth the procedures that will apply in the event a director or officer makes a claim against the Company for indemnification, and further provide that the Company has the burden of proving that a director or officer is not entitled to indemnification with respect to any Proceeding. The Company's obligations under each of these agreements survives and continues after the termination of the director or officer's service.

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The Company has purchased a general liability insurance policy which covers certain liabilities of its directors and officers arising out of claims based on acts or omissions in their capacity as directors or officers.

Article Eighth of the Certificate of Incorporation provides that, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, none of its directors will be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duty as a director.

The above discussion of the Certificate of Incorporation, Section 145 of the DGCL and the Company's indemnification agreements is not intended to be exhaustive and is qualified in its entirety by the actual provisions of the Certificate of Incorporation, that statute and the indemnification agreements.

### **ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not applicable.

### **ITEM 8. EXHIBITS**

The Exhibits accompanying this Registration Statement are listed on the accompanying Exhibit Index.

### **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) 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; and

(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;

*provided, however,* that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference herein.

(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 therein, 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 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.

**Exhibit Index**

<b>Exhibit Number</b>	<b>Description</b>
4.1	<u>Certificate of Incorporation of the Registrant, as amended (restated for SEC filing purposes only) (incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended January 1, 2015 (File No. 1-15723)).</u>
4.2	<u>Fourth Amended and Restated Bylaws of United Natural Foods, Inc. (incorporated by reference to the Registrant's Current Report on Form 8-K, filed October 18, 2018).</u>
5.1	<u>Opinion of Skadden, Arps, Slate, Meagher &amp; Flom LLP.</u>
23.1	<u>Consent of KPMG LLP, Independent Registered Public Accounting Firm.</u>
23.2	<u>Consent of Skadden, Arps, Slate, Meagher &amp; Flom LLP (included in Exhibit 5.1 to this Registration Statement).</u>
24.1	<u>Power of Attorney (included on the signature page of this Registration Statement).</u>
99.1	<u>United Natural Foods, Inc. Second Amended and Restated 2012 Equity Incentive Plan (Filed as Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on December 18, 2012).</u>

**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 Providence, State of Rhode Island, on October 22, 2018.

**UNITED NATURAL FOODS, INC.**

By: */s/ Michael P. Zechmeister*  
Michael P. Zechmeister  
Chief Financial Officer

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Steven Spinner and Michael P. Zechmeister, and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement (including all post-effective amendments), and to file the same with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each act and thing requisite and necessary to be done, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Steven L. Spinner Steven L. Spinner	President, Chief Executive Officer and Chairman (Principal Executive Officer)	October 22, 2018
/s/ Michael P. Zechmeister Michael P. Zechmeister	Chief Financial Officer (Principal Financial and Accounting Officer)	October 22, 2018
/s/ Ann Torre Bates Ann Torre Bates	Director	October 22, 2018
/s/ Eric F. Artz Eric F. Artz	Director	October 22, 2018
/s/ Denise M. Clark Denise M. Clark	Director	October 22, 2018
/s/ Daphne J. Dufresne Daphne J. Dufresne	Director	October 22, 2018
/s/ Michael J. Funk Michael J. Funk	Director	October 22, 2018
/s/ James P. Heffernan James P. Heffernan	Director	October 22, 2018
/s/ Peter A. Roy Peter A. Roy	Director	October 22, 2018