

Fresh Market, Inc.  
Form SC 14D9  
March 25, 2016  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 14D-9**  
**(Rule 14d-101)**  
**SOLICITATION/RECOMMENDATION STATEMENT**  
**UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934**

**THE FRESH MARKET, INC.**  
**(Name of Subject Company)**

**THE FRESH MARKET, INC.**  
**(Name of Person Filing Statement)**

**COMMON STOCK, PAR VALUE \$0.01 PER SHARE**  
**(Title of Class of Securities)**

**35804H106**

**(CUSIP Number of Class of Securities)**

**Scott Duggan**

**Senior Vice President - General Counsel**

**The Fresh Market, Inc.**

**628 Green Valley Road, Suite 500**

**Greensboro, NC 27408**

**(336) 272-1338**

**(Name, address and telephone numbers of person authorized to receive notices and communications**

**on behalf of the persons filing statement)**

*With a copy to:*

**Damien R. Zoubek, Esq.**

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- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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**ITEM 1. SUBJECT COMPANY INFORMATION**

*(a) Name and Address*

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this **Schedule 14D-9**) relates is The Fresh Market, Inc., a Delaware corporation (**TFM** or the **Company**). TFM's principal executive offices are located at 628 Green Valley Road, Suite 500, Greensboro, NC 27408. TFM's telephone number at this address is (336) 272-1338.

*(b) Securities*

The title of the class of equity securities to which this Schedule 14D-9 relates is the common stock, par value \$0.01 per share, of TFM (the **TFM Common Stock**). As of the close of business on March 9, 2016, there were 47,049,217 shares of TFM Common Stock (the **Shares**) issued and outstanding.

**ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON**

*(a) Name and Address*

The name, business address and business telephone number of TFM, which is the subject company and the person filing this Schedule 14D-9, are set forth in Item 1. Subject Company Information above.

*(b) Tender Offer*

This Schedule 14D-9 relates to the cash tender offer by Pomegranate Merger Sub, Inc., a Delaware corporation (**Purchaser**), and a wholly owned subsidiary of Pomegranate Holdings, Inc., a Delaware corporation (**Parent**), to purchase all of the outstanding Shares at a purchase price of \$28.50 per Share (the **Offer Price**), net to the seller in cash, without interest, less any applicable tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated March 25, 2016 (as amended or supplemented from time to time in accordance with the Merger Agreement described below, the **Offer to Purchase**), and the related Letter of Transmittal (the **Letter of Transmittal**), which, together with the Offer to Purchase and any amendments or supplements thereto from time to time in accordance with the Merger Agreement described below, constitutes the **Offer**). Parent and the Purchaser are controlled by certain equity funds managed by Apollo Management VIII, L.P. (**Management VIII**).

The Offer is being made pursuant to the Agreement and Plan of Merger, dated as of March 11, 2016 (as it may be amended from time to time, the **Merger Agreement**), by and among Parent, Purchaser and TFM. The consummation of the Offer is subject to various conditions, including that, as of the expiration of the Offer, the number of Shares validly tendered in accordance with the terms of the Offer, and not validly withdrawn prior to the expiration of the Offer, together with the Shares then owned by Purchaser (other than any Shares (referred to as the **Rollover Shares**) subject to the Rollover, Contribution and Exchange Agreement dated as of March 12, 2016 (the **Rollover Agreement**), by and among the stockholders affiliated with Ray Berry and Brett Berry party thereto (collectively, the **Rollover Stockholders**) and Parent) represent a majority of the then outstanding Shares. The Merger Agreement provides, among other things, that as soon as practicable after the consummation of the Offer, but in any event no later than the date of, and immediately following, the payment for the Shares in the Offer, unless another date is agreed to in writing by Parent and TFM, and subject to the satisfaction or waiver of certain customary conditions set forth in the Merger Agreement, Purchaser will merge with and into TFM (the **Merger**), with TFM continuing as the surviving corporation (the **Surviving Company**) and a wholly owned direct subsidiary of Parent. At the effective time of the Merger (the **Merger Effective Time**), all then outstanding Shares (other than Company Restricted Shares (as defined

below) which will be treated as described under Item 3. Past Contacts, Transactions, Negotiations and Agreements Arrangements with Current Executive Officers and Directors of TFM Treatment of Equity Awards in the Transactions , Shares owned by TFM as treasury stock and Shares owned by any stockholders who have properly exercised their appraisal rights under Section 262 of the General Corporation Law of the State of Delaware (the **DGCL** )), will be converted automatically into and will thereafter represent only the right to receive an amount equal to the Offer Price, net to the holder in cash, without interest, less any applicable tax

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withholding (the **Merger Consideration** ). See Item 3. Past Contacts, Transactions, Negotiations and Agreements Arrangements with Current Executive Officers and Directors of TFM Treatment of Equity Awards in the Transactions below for a description of the treatment of options to purchase Shares ( **Company Options** ), Shares subject to forfeiture conditions ( **Company Restricted Shares** ), restricted stock units that convey the right to receive Shares ( **Company RSUs** ), deferred stock units that convey the right to receive Shares ( **Company DSUs** ) and performance stock unit awards that convey the right to receive Shares ( **PSU Awards** ). As a result of the Merger, TFM will cease to be a publicly traded company and will become wholly owned by Parent. The Offer, the Merger and the other transactions contemplated by the Merger Agreement, but excluding the financing for the Offer and the Merger, are collectively referred to as the **Transactions** .

The Merger Agreement provides that the Merger will be effected pursuant to Section 251(h) of the DGCL, which permits completion of the Merger upon the irrevocable acceptance for payment by Purchaser in the Offer of at least such percentage of the stock of TFM as would be required to adopt the Merger Agreement at a meeting of stockholders, which in the case of TFM is Shares (other than Rollover Shares) that represent one Share more than 50% of the number of Shares that are then issued and outstanding. If the Merger is effected pursuant to Section 251(h) of the DGCL, no vote of the stockholders of TFM will be required to consummate the Merger.

The terms and conditions of the Offer are described in the Offer to Purchase and the Letter of Transmittal, copies of which are filed as Exhibits (a)(1)(A) and (a)(1)(B) hereto, respectively, and are incorporated herein by reference. As set forth in the Offer to Purchase, the principal executive office of each of Parent and Purchaser is located at 9 West 57th Street, 43rd Floor, New York, New York 10019, and the telephone number at such principal executive office is 212-515-3200. The Offer is also described in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time in accordance with the Merger Agreement, the **Schedule TO** ), which was filed by Parent, Purchaser and Management VIII with the U.S. Securities and Exchange Commission (the **SEC** ) on March 25, 2016.

The Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

For the reasons described in more detail below, the board of directors of TFM (the **TFM Board** or the **Board** ) (with the exception of Ray Berry, who recused himself from the Board meeting and all Board deliberations on the Transactions) unanimously recommends that TFM's stockholders accept the Offer and tender their Shares pursuant to the Offer. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Merger Agreement. The foregoing descriptions of the Merger Agreement and the Offer do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, the Offer to Purchase and the Letter of Transmittal.

**ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS**

Except as set forth in this Schedule 14D-9, or as otherwise incorporated by reference herein, to the knowledge of TFM, as of the date of this Schedule 14D-9, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between (i) TFM or any of its affiliates, on the one hand, and (ii)(x) any of TFM's executive officers, directors or affiliates, or (y) Parent or Purchaser or any of their respective executive officers, directors or affiliates, on the other hand.

**Relationship with Parent and Purchaser*****Merger Agreement***

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On March 11, 2016, TFM, Parent and Purchaser entered into the Merger Agreement. The summary of the material terms of the Merger Agreement set forth in Section 11 Purpose of the Offer and Plans for The Fresh Market; Transaction Documents The Merger Agreement of the Offer to Purchase, and the description of the conditions of the Offer set forth in Section 13 Conditions of the Offer of the Offer to Purchase, respectively,

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are incorporated herein by reference. Such summary and description do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated herein by reference.

The summary and description have been included in this Schedule 14D-9 to provide you with information regarding the terms of the Merger Agreement and are not intended to modify or supplement any factual disclosures about Parent, Purchaser, TFM or their respective affiliates. The representations and warranties of TFM contained in the Merger Agreement were made solely for the benefit of Parent and the Purchaser. In addition, such representations and warranties (a) were made only for purposes of the Merger Agreement, (b) are qualified by documents filed with, or furnished to, the SEC by TFM prior to the date of the Merger Agreement, (c) are qualified by confidential disclosures made to Parent and the Purchaser in connection with the Merger Agreement, (d) are subject to materiality qualifications contained in the Merger Agreement which may differ from what may be viewed as material by investors, (e) were made only as of the date of the Merger Agreement or such other date as is specified in the Merger Agreement and (f) were included in the Merger Agreement for the purpose of allocating risk between the contracting parties rather than establishing matters as facts. Accordingly, the Merger Agreement is incorporated by reference in this Schedule 14D-9 only to provide holders of Shares with information regarding the terms of the Merger Agreement, and not to provide holders of Shares with any other factual information regarding TFM or its subsidiaries or business. Holders of Shares should not rely on the representations and warranties or any descriptions thereof as characterizations of the actual state of facts or condition of TFM or any of its subsidiaries or business. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in TFM's public disclosures. The Merger Agreement should not be read alone, but should instead be read in conjunction with the other information regarding TFM that has been, is or will be contained in, or incorporated by reference into, the Forms 10-K, Forms 10-Q, Forms 8-K, proxy statements and other documents that TFM files with the SEC.

### ***The Limited Guarantee***

On March 11, 2016, simultaneously with the execution of the Merger Agreement, certain equity funds managed by Management VIII provided TFM with a limited guarantee (the **Limited Guarantee**) pursuant to which each such fund, severally and not jointly, and not jointly and severally, guarantees the payment and performance of Parent's and Purchaser's obligations to TFM with respect to certain payments as described in Section 11 Purpose of the Offer and Plans for The Fresh Market; Transaction Documents The Merger Agreement The Limited Guarantee of the Offer to Purchase, in each case subject to a maximum aggregate obligation of \$97 million and the other terms and conditions of the Limited Guarantee.

The foregoing summary and description of the Limited Guarantee does not purport to be complete and is qualified in its entirety by reference to the full text of the Limited Guarantee, which is filed as Exhibit (e)(2) to this Schedule 14D-9 and is incorporated herein by reference.

### ***Non-Disclosure Agreement***

TFM and Management VIII entered into a confidentiality and non-disclosure agreement dated as of December 9, 2015 (the **Non-Disclosure Agreement**). As a condition to being furnished Evaluation Material (as defined in the Non-Disclosure Agreement), Management VIII agreed that such Evaluation Material will be kept by it and representatives confidential and will be used solely for the purpose of evaluating a possible transaction involving TFM. The Non-Disclosure Agreement contains customary standstill provisions with a term of one year that would automatically terminate before the expiration of such term in certain situations, including the entry by TFM into a definitive acquisition agreement with a third party pursuant to which such third party agrees to acquire at least a



majority of the outstanding voting securities of TFM. The Non-Disclosure Agreement expires on the 18-month Anniversary of the date of the Non-Disclosure Agreement.

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The foregoing summary and description of the Non-Disclosure Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Non-Disclosure Agreement, which is filed as Exhibit (e)(3) hereto and is incorporated herein by reference.

### ***The Rollover Agreement and the Support Agreement***

On March 12, 2016, the Rollover Stockholders entered into the Rollover Agreement, as well as a Support Agreement, dated as of March 12, 2016, among the Rollover Stockholders, Parent and Purchaser (the **Support Agreement**). Pursuant to the Rollover Agreement, the Rollover Stockholders have agreed, among other things, to exchange their Rollover Shares for an indirect equity ownership in Parent (such exchange, the **Rollover**). Pursuant to the Support Agreement, the Rollover Stockholders have agreed, in order to affect the Rollover, not to tender the Rollover Shares in the Offer. As of March 11, 2016, the Rollover Shares represented approximately 9.8% of the Shares.

The foregoing summary and description of the Rollover Agreement and the Support Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Rollover Agreement and the Support Agreement, as applicable, which are filed as Exhibits (e)(4) and (e)(5) hereto respectively and are incorporated herein by reference.

### ***Equity Commitment Letter***

Parent has received an Equity Commitment Letter, dated March 11, 2016, from certain equity funds managed by Management VIII (the **Equity Investors**), pursuant to which the Equity Investors have committed, severally, and not jointly, subject to the conditions of the Equity Commitment Letter, equity financing (**Equity Financing**) in an aggregate amount equal to \$656 million, for the purpose of enabling (a) Parent to cause Purchaser to accept for payment and pay for any Shares tendered pursuant to the Offer, (b) Parent to make the payments due under the Merger Agreement to TFM stockholders and holders of Company Options, Company Restricted Shares, Company RSUs, Company DSUs and PSU Awards and (c) fees, costs and expenses required to be paid by Parent or Purchaser and, after the consummation of the Transactions, the Surviving Company in connection with the Transactions, in each case subject on the terms and subject to the conditions of the Equity Commitment Letter.

The Equity Investors' funding obligations under the Equity Commitment Letter will terminate automatically and immediately upon the earliest to occur of: (a) a valid termination of the Merger Agreement in accordance with its terms subject to certain exceptions (unless TFM has previously commenced an action for specific performance under the Equity Commitment Letter, in which case the Equity Commitment Letter will terminate upon the final, non-appealable resolution of such action by a court of competent jurisdiction and the satisfaction by such Equity Investor of any obligations finally determined or agreed to be owed by such Equity Investor, consistent with the terms of the Equity Commitment Letter), (b) the funding of the aggregate commitment under the Equity Commitment Letter, (c) TFM's accepting payment in full by the Equity Investors of the guaranteed obligations under the Limited Guarantee on the terms and subject to the conditions thereof, and (d) the assertion by TFM or any of its subsidiaries of certain claims against any Equity Investor and certain other related parties.

TFM is a third party beneficiary of the Equity Commitment Letter for the limited purpose of causing the Equity Financing to be funded, but only if (a) TFM is awarded specific performance pursuant to the Merger Agreement, (b) TFM is enforcing its right to consent to certain matters set forth in the Equity Commitment Letter or (c) TFM is enforcing the Equity Investors' obligations to fund certain expenses in accordance with the Equity Commitment Letter.

The foregoing summary and description of the Equity Commitment Letter does not purport to be complete and is qualified in its entirety by reference to the full text of the Equity Commitment Letter, which is filed as Exhibit (e)(6)

to this Schedule 14D-9 and is incorporated herein by reference.

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**Arrangements with Current Executive Officers and Directors of TFM**

Certain executive officers and directors of TFM may be deemed to have interests in the Transactions that may be different from, or in addition to, those of TFM's stockholders generally. In the course of making the determination to recommend the Transactions to the Board, the Strategic Transaction Committee of the Board (the **Strategic Transaction Committee**) was aware of and considered these interests, and in the course of making the determination that the Merger Agreement and the Transactions are advisable and fair to, and in the best interest of, TFM and its stockholders (other than the Rollover Stockholders) and to recommend that TFM's stockholders accept the Offer and tender their Shares pursuant to the Offer, the Board was also aware of and considered these interests. These interests include:

the exchange of the Rollover Shares for an indirect equity interest in Parent pursuant to the Rollover Agreement (as described above under Item 3. Past Contacts, Transactions, Negotiations and Agreements Relationship with Parent and Purchaser );

the accelerated vesting and cash-out of equity-based awards held by directors and executive officers in connection with the Transactions in accordance with the terms of the Merger Agreement (as described below in Treatment of Equity Awards in the Transactions );

the reduction of the post-employment non-competition period for certain executive officers in the event of a termination of employment in connection with a change of control (as described below in Employment Agreements and Restrictive Covenants );

certain contractual severance payments and benefits in the event an executive officer experiences a qualifying termination of employment (as described below in Severance Plan );

the accelerated payment of retention bonuses for certain executive officers in the event the executive officer experiences a qualifying termination of employment (as described below in Retention Bonus Agreements ),

the accelerated payment of account balances of executive officers under the Deferred Compensation Plan (as defined below) in the event of a termination of employment (as described below in Deferred Compensation Plan ); and

the entitlement to the indemnification, expense advancement and exculpation benefits in favor of the directors and executive officers of the Company (as described below in Indemnification and Exculpation of Directors and Officers ).

***Treatment of Shares in the Transactions***

Certain executive officers and directors of TFM hold Shares. If the executive officers and directors of TFM who own Shares were to tender their Shares for purchase pursuant to the Offer, they would receive the same consideration on

the same terms and conditions as the other stockholders of TFM who tender their Shares for purchase pursuant to the Offer. Pursuant to the Support Agreement, the Rollover Stockholders have agreed not to tender their Rollover Shares in the Offer. If the Merger occurs, at the Merger Effective Time, any Shares owned by TFM's executive officers and directors (other than any Rollover Shares) that were not tendered in the Offer will be entitled to receive the same consideration per Share on the same terms and conditions as the other stockholders of TFM whose Shares are converted into the right to receive the Merger Consideration in the Merger.

As of March 23, 2016, the executive officers and directors of TFM beneficially owned, in the aggregate, 68,975 Shares, excluding Rollover Shares, Company Restricted Shares, Shares issuable upon exercise of Company Options and Shares issuable with respect to Company RSUs, Company DSUs or PSU Awards. If the Transactions are consummated, the executive officers and directors would be entitled to receive an aggregate amount of \$1,965,788 in cash in respect of such Shares, subject to any required withholding of taxes and without interest.

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As described above under "The Rollover Agreement and the Support Agreement", pursuant to the Rollover Agreement, the Rollover Stockholders have agreed, among other things, to exchange their Rollover Shares for an indirect equity ownership in Parent. In order to effect such exchange, under the terms of the Support Agreement, the Rollover Stockholders have agreed not to tender their Rollover Shares in the Offer.

The following table sets forth, as of March 23, 2016, the consideration that each executive officer or director would be entitled to receive in respect of his or her outstanding Shares (other than any Rollover Shares) in the Transactions.

<b>Name</b>	<b>Position</b>	<b>Number of Shares<sup>(1)</sup></b>	<b>Consideration Payable in Respect of Shares</b>
Rick Anicetti	President and Chief Executive Officer; Director		
Jeff Ackerman	Executive Vice President and Chief Financial Officer	3,328	\$ 94,848
Pamela Kohn	Executive Vice President and Chief Merchandising Officer		
Scott Duggan	Senior Vice President - General Counsel	8,073	\$ 230,081
Matt Argano	Senior Vice President - Human Resources	4,655	\$ 132,668
Randy Young	Senior Vice President - Real Estate and Development	2,369	\$ 67,517
Karen Stout	Senior Vice President - Store Operations	5,132	\$ 146,262
Ray Berry	Director	(2)	
Michael D. Casey	Director	149	\$ 4,247
Jeffrey Naylor	Director	16,683	\$ 475,466
Richard Noll	Director	5,956	\$ 169,746
Bob Sasser	Director	4,287	\$ 122,180
Robert K. Shearer	Director	149	\$ 4,247
Michael Tucci	Director	9,042	\$ 257,697
Steven Tanger	Director	5,076	\$ 144,666
Jane Thompson	Director	4,076	\$ 116,166
<b>TOTAL</b>		<b>68,975</b>	<b>\$ 1,965,788</b>

- (1) In calculating the number of Shares beneficially owned for this purpose, Rollover Shares, Company Restricted Shares, Shares underlying Company Options (whether or not they are currently exercisable) and any Company RSUs, Company DSUs and PSU Awards held by the individual are excluded.
- (2) Beneficial ownership for Mr. Ray Berry does not include 1,974,481 Rollover Shares held of record by the Paiko Trust, as to which Mr. Berry is trustee and has sole voting and investment power, which Shares are subject to the Rollover Agreement.

***Treatment of Equity Awards in the Transactions***

Each of TFM's executive officers and directors holds outstanding Company Options, Company Restricted Shares, Company RSUs, Company DSUs and/or PSU Awards that will, in accordance with the terms of the Merger Agreement, be treated in the following manner:

each Company Option, whether vested or unvested, will be canceled as of the Merger Effective Time and converted into the right to receive a lump-sum cash payment promptly after the Merger Effective Time equal to the product of (i) the number of Shares for which the Company Option has not been exercised and (ii) the excess, if any, of the Merger Consideration over the exercise price per share of such Company Option without interest and less any applicable withholding tax;

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each Company Restricted Share outstanding immediately prior to the Merger Effective Time will be converted into the right to receive an amount in cash equal to the Merger Consideration without interest and less any applicable withholding tax promptly after the Merger Effective Time;

each Company RSU that is outstanding immediately prior to the Merger Effective Time will be cancelled at the Merger Effective Time and converted into the right to receive an amount in cash equal to the Merger Consideration without interest and less any applicable withholding tax promptly after the Merger Effective Time;

each PSU Award granted in calendar year 2016 that is outstanding immediately prior to the Merger Effective Time (each, a **New PSU Award** ) will be canceled and converted into the right to receive a payment equal to the greater of (i) the product of (A) the number of Shares subject to the New PSU Award at the target level and (B) the Merger Consideration without interest and less any applicable withholding tax or (ii) the product of (A) the number of Shares, if any, that would be earned under the New PSU Award based on the financial results for the fiscal quarters completed prior to the Merger Effective Time, as measured against prorated performance goals for the period from the beginning of the performance period through the last day of the most recently completed fiscal quarter prior to the Merger Effective Time and (B) the Merger Consideration without interest and less any applicable withholding tax;

each PSU Award that is not a New PSU Award (each, a **Non-New PSU Award** ) will be canceled and converted into the right to receive a payment equal to the product of (i) the number of Shares, if any, that would be earned under the Non-New PSU Award based on the financial results for the fiscal quarters completed prior to the Merger Effective Time, as measured against prorated performance goals for the period from the beginning of the performance period through the last day of the most recently completed fiscal quarter prior to the Merger Effective Time and (ii) the Merger Consideration without interest and less any applicable withholding tax; and

each Company DSU that is outstanding immediately prior to the Merger Effective Time will be cancelled at the Merger Effective Time and converted into the right to receive the Merger Consideration without interest and less any applicable withholding tax promptly after the Merger Effective Time.



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The following table sets forth the cash consideration that each executive officer would be entitled to receive in respect of his or her outstanding Company Options, Company Restricted Shares, Company RSUs and PSU Awards. The values shown were calculated assuming (i) a date of April 22, 2016, the assumed date of the closing of the Merger (the **assumed Merger closing date**) solely for purposes of this transaction-related compensation, (ii) that the price per share of Company Stock was \$28.50, which equals the per share Merger Consideration, (iii) as generally prohibited pursuant to the Merger Agreement, that no additional equity-based awards will be granted between the date of this Schedule 14D-9 and the assumed Merger closing date and (iv) that all stock options held by each executive officer as of the date of this Schedule 14D-9 remain unexercised at the assumed Merger closing date.

<b>Name</b>	<b>Number of Shares Subject to Company Options</b>	<b>Total Consideration for Company Options</b>	<b>Number of Restricted Shares</b>	<b>Total Consideration for Restricted Shares</b>	<b>Number of RSUs</b>	<b>Total Consideration for RSUs</b>	<b>Number of Shares Underlying PSU Awards<sup>(1)</sup></b>	<b>Total Consideration for PSU Awards</b>	<b>Aggregate Consideration for Equity Awards</b>
Rick Anicetti President and Chief Executive Officer	563,469	\$ 4,292,631		\$	24,077	\$ 686,195	32,102	\$ 914,907	\$ 5,893,732
Jeff Ackerman Executive Vice President and Chief Financial Officer	61,355	\$ 217,919	6,876	\$ 195,966	42,417	\$ 1,208,885	11,235	\$ 320,198	\$ 1,942,967
Pamela Kohn Executive Vice President and Chief Merchandising Officer	21,156	\$ 207,540		\$	20,709	\$ 590,207	10,700	\$ 304,950	\$ 1,102,697
Scott Duggan Senior Vice President General Counsel	97,331	\$ 297,615	660	\$ 18,810	29,460	\$ 839,610	8,025	\$ 228,713	\$ 1,384,748
Matt Argano Senior Vice President Human Resources	40,924	\$ 118,299	352	\$ 10,032	22,301	\$ 635,579	6,099	\$ 173,822	\$ 937,731
Randy Young Senior Vice President Real Estate and Development	36,248	\$ 124,518	3,481	\$ 99,209	10,306	\$ 293,721	6,420	\$ 182,970	\$ 700,418
Karen Stout Senior Vice President Store	58,936	\$ 291,523		\$	10,965	\$ 312,503	6,420	\$ 182,970	\$ 786,995

Operations

(1) The number of Shares in this column represents the number of Shares underlying the New PSU Awards at target level performance. Under the terms of the Merger Agreement, New PSU Awards will be settled at the greater of (i) target level performance or (ii) actual performance measured against prorated performance goals. Performance metrics for Non-New PSU Awards are not expected to be achieved, and under the terms of the Merger Agreement Non-New PSU Awards are therefore expected to be canceled for no consideration.

The following table sets forth, as of the assumed Merger closing date, the cash consideration that each non-employee director would be entitled to receive in respect of his or her outstanding Company RSUs and Company DSUs. The values shown were calculated assuming (i) that the price per share of Company Stock was \$28.50, which equals the per share

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Merger Consideration and (ii) as generally prohibited pursuant to the Merger Agreement, that no additional equity-based awards will be granted between the date of this Schedule 14D-9 and the assumed Merger closing date.

<b>Name</b>	<b>Number of RSUs</b>	<b>Total Consideration for RSUs</b>	<b>Number of DSUs</b>	<b>Total Consideration for DSUs</b>	<b>Aggregate Consideration for Equity Awards</b>
Ray Berry	2,768	\$ 78,888		\$	\$ 78,888
Michael Casey	2,768	\$ 78,888		\$	\$ 78,888
Jeffrey Naylor	2,768	\$ 78,888		\$	\$ 78,888
Richard Noll	2,768	\$ 78,888		\$	\$ 78,888
Bob Sasser	2,768	\$ 78,888	815	\$ 23,228	\$ 102,116
Robert Shearer	2,768	\$ 78,888		\$	\$ 78,888
Michael Tucci	2,768	\$ 78,888	815	\$ 23,228	\$ 102,116
Steven Tanger	2,768	\$ 78,888		\$	\$ 78,888
Jane Thompson	2,768	\$ 78,888		\$	\$ 78,888

***Treatment of TFM's Employee Stock Purchase Plan***

The Merger Agreement provides that TFM will take all actions necessary or required to (i) suspend the Employee Stock Purchase Plan (the **ESPP**) so that no further offering periods will commence after the date of the Merger Agreement, (ii) ensure that no new participants may join the offering period in existence under the Company ESPP on or after the date of the Merger Agreement, (iii) ensure that no participant may increase the amount of his or her salary deferrals with respect to such offering period, and (iv) cause the ESPP to terminate as of the Merger Effective Time. The current offering period ends March 31, 2016, and no new offering periods will begin after that date. No executive officers and no non-employee members of the Board hold rights to purchase Shares under the ESPP.

***Employment Agreements and Restrictive Covenants***

Each of our executive officers is party to an employment agreement. The employment agreements do not provide the executive officers with any compensation, benefits or other rights except as set forth in The Fresh Market, Inc. Severance Plan (the **Severance Plan**). The employment agreements bind the executive officers during the term of their employment, and, in certain cases, for a period of time thereafter, to restrictive covenants relating to non-competition, non-solicitation, non-disclosure of confidential information and non-disparagement. The duration of the post-employment non-competition period is two years for Mr. Anicetti and 1.5 years for the other executive officers.

The duration of the post-employment non-competition period may be reduced in connection with certain terminations. In the case of a termination of employment by TFM for cause (as defined below) or by the executive officer without good reason (as defined below), in each case, within six months prior to (provided that the executive officer demonstrates that the termination was related to the change in control) or two years following a change in control (collectively, the **Protection Period**), the post-employment non-competition period will expire nine months following the change in control. The post-employment non-competition period will expire immediately following a termination of employment if the executive officer's employment is terminated by TFM without cause or by the executive officer for good reason, in each case, during the Protection Period (a **Qualifying Termination**). The acceptance of the Shares for payment pursuant to the Offer constitutes a change in control for purposes of determining the reduction of the post-employment non-competition period in connection with a termination of employment. The provisions providing

for the reduction of the duration of the post-employment non-competition period do not apply to Mr. Anicetti.

***Severance Plan***

Each of our executive officers is a participant in the Severance Plan. The Severance Plan provides for payments and other benefits in the event of certain terminations occurring in connection with a change in control of TFM.

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The acceptance of the Shares for payment pursuant to the Offer constitutes a change in control under the terms of the Severance Plan. The change in control payments and benefits under the Severance Plan are "double trigger" payments and benefits, meaning that no payments and benefits are provided solely as a result of a change in control, and the executive officers do not become entitled to payments and benefits unless the executive officer has a Qualifying Termination.

The Severance Plan provides that in the event of a Qualifying Termination, the executive officer will be entitled to the following payments and benefits: (i) severance pay in an amount equal to the product of the executive officer's (a) annual base salary and target annual bonus (or, if the executive officer does not have a target annual bonus at the time of termination, the average bonus for the previous three years, or portion thereof) and (b) a severance multiple, which for Mr. Anicetti is two and for the other executive officers is 1.5; (ii) a prorated annual bonus on actual performance achievement; (iii) full vesting of all equity-based awards held by the executive officer on the date of termination; and (iv) continued medical and welfare benefits for the executive officer and his or her spouse and dependents for a number of years equal to the executive officer's severance multiple. The payments and benefits under the Severance Plan are conditioned on the executive officer executing a release of claims in favor of TFM.

The Severance Plan also provides that in the event that any payments made by TFM in connection with a change in control or termination would be subjected to the excise tax imposed by Section 4999 of the Internal Revenue Code, the payments to the executive officers would be reduced to the maximum amount that can be paid without the imposition of an excise tax under Section 4999, but only if such reduction provides a higher benefit on an after-tax basis to the executive officers.

For an estimate of the value of the payments and benefits described above that would become payable under the Severance Plan in the event of a Qualifying Termination with respect to Mr. Anicetti, Mr. Ackerman, Mr. Duggan and Mr. Young, TFM's named executive officers, see "Information Regarding Golden Parachute Compensation" below. We estimate the value of the potential severance payments and benefits (excluding payments for equity awards) that would become payable under the Severance Plan in the event of a Qualifying Termination for our executive officers, other than the named executive officers, will be \$1,303,849 for Ms. Kohn, \$738,800 for Mr. Argano and \$760,135 for Ms. Stout, with an estimated aggregate cash value of potential severance payments and benefits to these executive officers of approximately \$2,802,784. These values assume (i) a Qualifying Termination as of the assumed Merger closing date and (ii) a prorated annual bonus paid at target level. For an estimate of the cash payments in respect of each of the executive officer's equity award holdings, see "Treatment of Equity Awards in the Transactions" above.

For purposes of the Severance Plan, the below definitions generally apply.

Cause means:

- (i) the executive officer's willful and continued failure to perform substantially his or her duties with TFM or any of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness),
- (ii) the executive officer's willful engaging in gross misconduct that is materially injurious to TFM or any of its affiliates,

- (iii) the executive officer's willful engaging in illegal conduct,
- (iv) the executive officer's willful and material breach of any agreement with TFM or any of its affiliates,
- (v) the executive officer's willful violation of any material provision of TFM's Code of Business Conduct and Ethics, or
- (vi) the executive officer's willful failure to cooperate with an investigation by any governmental authority.

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Good reason means:

- (i) the failure of TFM to pay the executive officer any material compensation when due,
- (ii) the delivery by TFM of a notice to the executive officer of the intent to terminate the executive officer's employment for any reason, other than for cause or disability,
- (iii) any reduction of the executive officer's base salary, other than a reduction by no more than 10% within any two-year period that similarly affects substantially all executive officers of TFM and its affiliates, and other than any such reduction that results from a demotion of the executive officer into a position that the executive officer occupied within the 18 months immediately prior to such demotion,
- (iv) any change of the executive officer's principal place of employment to a location more than 50 miles from the executive officer's principal place of employment immediately prior to the change, which change increases the executive officer's commute from the executive officer's principal residence,
- (v) any reduction in the executive officer's target annual bonus or target long-term incentive opportunity from the target level in effect immediately prior to the change in control, other than a reduction by no more than 10% within any two-year period that similarly affects substantially all executive officers of TFM and its affiliates,
- (vi) any material reduction in the executive officer's retirement or welfare benefits from the levels in effect immediately prior to the change in control, other than a reduction that similarly affects substantially all executive officers of TFM and its affiliates,
- (vii) any material adverse change in the executive officer's positions, duties, responsibilities or reporting relationships from the executive officer's positions, duties, responsibilities or reporting relationships immediately prior to the change in control, or any assignment to the executive officer of duties or responsibilities that are materially inconsistent in an adverse respect with the executive officer's positions as in effect immediately prior to the change in control, or
- (viii) the removal of the executive officer from, or any failure to re-elect the executive officer to, any of the offices the executive officer held immediately prior to the change in control.

A termination of employment by the executive officer for good reason will be effectuated by giving written notice not later than 90 days following the date that the executive officer would reasonably be expected to be aware of the occurrence of the circumstance that constitutes good reason, with such notice setting forth in reasonable detail the specific conduct of TFM that constitutes good reason. TFM will be entitled, during the 30-day period following

receipt of such notice, to cure the circumstances that gave rise to good reason. If, at the end of such 30-day period, the circumstance that constitutes good reason has not been remedied, the executive officer will be entitled to terminate employment for good reason during the 180-day period that follows. If the executive officer does not terminate employment during such period, the executive officer will not be permitted to terminate employment for good reason as a result of such circumstance.

***Retention Bonus Agreements***

In January 2015, TFM entered into retention bonus agreements with Mr. Ackerman, Mr. Duggan, Mr. Young and Mr. Argano. Under the terms of the retention bonus agreements, the executive officers are entitled to receive a cash retention bonus award upon the earlier of (i) May 1, 2016, if they remain continuously employed by TFM through such date or (ii) the involuntary termination of the executive officer's employment without cause or the executive officer's death or disability. For purposes of the retention bonus agreements, cause has substantially the same definition as provided in the Severance Plan. The amount of the retention bonuses are \$425,000 for Mr. Ackerman, \$320,000 for Mr. Duggan, \$300,000 for Mr. Young and \$285,000 for Mr. Argano.



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**Table of Contents*****Deferred Compensation Plan***

TFM maintains a deferred compensation plan which permits certain employees, including the executive officers, to defer up to 80% of their base salary and 100% of their annual bonus on a pre-tax basis (the **Deferred Compensation Plan**). Deferred amounts may be invested notionally in a variety of funds. TFM makes certain matching credits to the executive officers' individual accounts, and the Deferred Compensation Plan permits TFM to make additional discretionary contributions. Deferred amounts will be distributed in a lump sum in the event of a termination of employment within two years following a change in control. The acceptance of the Shares for payment pursuant to the Offer constitutes a change in control under the terms of the Deferred Compensation Plan. As of March 21, 2016, the estimated value of payments under the Deferred Compensation Plan is \$63,646 for Mr. Ackerman, \$96,056 for Mr. Young and \$284,686 for Ms. Stout. None of the Company's other executive officers have deferred amounts under the Deferred Compensation Plan.

***Continuing Employees***

Under the Merger Agreement, Parent has agreed that, subject to the terms of any applicable collective bargaining agreement, for a period of at least one year following the Merger Effective Time, it will, or will cause the Surviving Company or any of their respective affiliates to, provide to each individual who immediately before the Merger Effective Time is an employee of TFM or any of its subsidiaries (each, a **Continuing Employee**) with (i) a base salary, annual cash bonus and severance benefits that are no less favorable, in each case, than those provided to such Continuing Employee by TFM or its subsidiaries immediately prior to the Merger Effective Time and (ii) employee benefit plans and arrangements (other than base salary, annual bonus opportunities, long-term incentive opportunities (including equity-based compensation), severance benefits, defined benefit pension benefits, retiree or other post-termination health and welfare benefits) that are no less favorable in the aggregate than those provided to the Continuing Employees immediately prior to the Merger Effective Time.

Parent has also agreed to honor, or cause the Surviving Company or any of their respective affiliates to honor, all Company benefit plans in accordance with their terms as in effect as of the date of the Merger Agreement. Nothing in the Merger Agreement prevents the amendment or termination of any specific plan, program, policy, practice or agreement, or will be construed to interfere with TFM's, the Surviving Company's or any of their respective affiliates' rights or obligations to make changes as are necessary to comply with applicable law, the terms of the Merger Agreement or any Company benefit plan.

For all purposes under any employee benefit plan or arrangement of TFM, the Surviving Company and their respective affiliates, including severance benefits and vacation or other paid time-off benefits, made available to any Continuing Employee after the Merger Effective Time, Parent has agreed to provide that (i) each Continuing Employee be given full service credit for all purposes, including determining eligibility to participate, level of benefits, vesting and benefit accruals under any vacation, paid time-off or severance plan maintained by Parent, the Surviving Company or any of their subsidiaries for such Continuing Employee's service with TFM or its subsidiaries to the same extent recognized prior to the Merger Effective Time by TFM and its subsidiaries (provided that no such service will be recognized (a) to the extent that such recognition would result in any duplication of benefits for the same period of service, (b) for purposes of any Parent benefit plan under which similarly situated employees of Parent and its subsidiaries do not receive credit for prior service, or (c) for purposes of any plan or arrangement that is grandfathered or frozen, either with respect to the level of benefits or participation), (ii) it will undertake commercially reasonable efforts to cause all preexisting conditions and exclusions, waiting periods and actively-at-work requirements with respect to participation and coverage requirements applicable to Continuing Employees and their eligible dependents and beneficiaries to be waived, to the extent such limitations were waived, satisfied or did not apply to such Continuing Employees or eligible dependents or beneficiaries under the corresponding Company

welfare plan in which such Continuing Employees participated immediately prior to the Merger Effective Time and (iii) to the extent commercially practicable, credit under any such welfare plan for any co-payments, deductibles, out-of-pocket maximum requirements and similar expenditures for the remainder of the coverage period during which any transfer of coverage occurs be provided.

**Table of Contents****Information Regarding Golden Parachute Compensation**

This section sets forth the information required by Item 402(t) of Regulation S-K regarding the compensation that is based on or otherwise relates to the Offer and the Merger for each of TFM's named executive officers, including those executive officers who were named executive officers in TFM's most recent filing with the Securities and Exchange Commission (the **SEC**) under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the **Securities Act**) or Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the **Exchange Act**) that required disclosure pursuant to Item 402(c) of Regulation S-K (the **named executive officers**). This compensation is referred to as golden parachute compensation by the applicable SEC disclosure rules. Craig Carlock, Sean Crane and Marc Jones are considered named executive officers for purposes of the SEC disclosure rules, although each was terminated without cause prior to the Offer. Messrs. Carlock, Crane and Jones are not entitled to any compensation that is based on or otherwise relates to the Offer and the Merger.

The table below assumes that (i) the acceptance of the Shares for payment pursuant to the Offer constitutes a change in control under the Severance Plan, (ii) the acceptance of the Shares for payment pursuant to the Offer and the Merger Effective Time occur on April 22, 2016, which is the assumed merger closing date solely for purposes of this golden parachute disclosure and (iii) the employment of each named executive officer will be terminated without cause or by the executive officer for good reason at such time. The amounts reported in the table regarding equity compensation are estimates based on the \$28.50 per share cash consideration payable in the Offer and subsequent Merger. In addition, all of the amounts set forth in the table are estimates based on multiple assumptions that may or may not actually occur, including assumptions described in this Schedule 14D-9 and in the narrative that follows the table. As a result, the actual amounts, if any, that a named executive officer receives may materially differ from the amounts set forth in the table.

As discussed previously in the section entitled **Employment Agreements and Restrictive Covenants**, payments and benefits under the Severance Plan are contingent on the executive officer's execution of a release of claims in favor of TFM. Additionally, each named executive officer is subject to confidentiality and non-disparagement restrictions at all times, as well as non-competition and non-solicitation restrictions, which in the case of Mr. Anicetti is for two years following a termination of employment and for the other named executive officers is for 1.5 years following a termination of employment. In the case of a termination of employment by TFM for cause or by the named executive officer without good reason, in each case, within the Protection Period, the post-employment non-competition restriction will expire nine months following the change in control. The post-employment non-competition covenant will expire immediately following a Qualifying Termination. The provisions providing for the reduction of the duration of the post-employment non-competition covenant do not apply to Mr. Anicetti.

***Potential Change in Control Payments to Named Executive Officers***

<b>Name</b>	<b>Cash (\$)<sup>(1)</sup></b>	<b>Equity (\$)<sup>(2)</sup></b>	<b>Perquisites/ Benefits (\$)<sup>(3)</sup></b>	<b>Other (\$)<sup>(4)</sup></b>	<b>Total (\$)<sup>(5)(6)</sup></b>
Rick Anicetti Chief Executive Officer	\$ 3,189,304	\$ 5,893,732	\$ 40,008	\$	\$ 9,123,044
Jeff Ackerman Chief Financial Officer	\$ 1,251,397	\$ 1,942,967	\$ 30,006	\$ 425,000	\$ 3,649,370
Scott Duggan	\$ 798,401	\$ 1,242,788	\$ 30,006	\$ 320,000	\$ 2,391,194

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Randy Young	\$ 736,055	\$ 700,418	\$ 30,006	\$ 300,000	\$
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