

Fresh Market, Inc.  
Form 10-K  
March 22, 2011  
Table of Contents

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

Washington, D.C. 20549

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2010**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_**

**Commission File Number: 001-34940**

**THE FRESH MARKET, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of

56-1311233  
(I.R.S. Employer

# Edgar Filing: Fresh Market, Inc. - Form 10-K

incorporation or organization)

**628 Green Valley Road, Suite 500**

identification number)

**Greensboro, North Carolina 27408**

(Address of principal executive offices)

**(336) 272-1338**

(Registrant's telephone number, including area code)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.) Yes  No

The registrant commenced the initial public offering of its common stock on November 5, 2010. Accordingly, there was no public market for the registrant's common stock as of June 27, 2010, the last business day of the registrant's most recently completed second fiscal quarter.

The number of shares of the registrant's common stock outstanding as of March 18, 2011 was 47,991,045.

## Documents Incorporated by Reference

Portions of the registrant's Proxy Statement for the 2011 Annual Meeting of Stockholders (hereinafter referred to as the 2011 Proxy Statement) are incorporated by reference into Part III.



---

**Table of Contents**

**Cautionary Note Regarding Forward-Looking Statements**

*This Form 10-K and our 2010 Annual Report to Stockholders contain forward-looking statements intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995, including some of the statements in this Form 10-K under Item 1, Business, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, and Item 8, Financial Statements and Supplementary Data, and in our 2010 Annual Report to Stockholders, including under Letter to Stockholders. Forward-looking statements are inherently subject to risks, uncertainties and potentially inaccurate assumptions. Such statements give our current expectations or forecasts of future events; they do not relate strictly to historical or current facts. We have generally identified such statements by using words such as anticipate, believe, could, estimate, expect, forecast, intend, looking forward, may, plan, potential, project, should, target, will and would or any variations of these words or other words with similar meanings. All statements that address activities, events or developments that we intend, expect or believe may occur in the future are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). These forward looking statements may relate to such matters as our industry, business strategy, goals and expectations concerning our market position, future operations, future performance or results, margins, profitability, capital expenditures, liquidity and capital resources, interest rates and other financial and operating information and the outcome of contingencies such as legal and administrative proceedings.*

*Our forward-looking statements contained in this Form 10-K and our 2010 Annual Report to Stockholders are based on management's current expectations and are subject to uncertainty and changes in circumstances. We cannot guarantee that the results and other expectations expressed, anticipated or implied in any forward-looking statement will be realized. Actual results may differ materially from these expectations due to unexpected expenses and risks associated with our business; our ability to remain competitive in the areas of merchandise quality, price, breadth of selection, customer service and convenience; the effective management of our merchandise buying and inventory levels; our ability to anticipate and/or react to changes in customer demand; changes in consumer confidence and spending; unexpected consumer responses to promotional programs; unusual, unpredictable and/or severe weather conditions; the effectiveness of our logistics and supply chain model, including the ability of our third-party logistics providers to meet our product demands and restocking needs on a cost competitive basis; the execution and management of our store growth and the availability of acceptable real estate locations for new store openings; the actions of third parties involved in our store growth activities, including property owners, landlords, property managers, those involved in the construction of our new store locations and current tenants who occupy one or more of our proposed new store locations, all of whom may be impacted by their financial condition, their lenders, their activities outside of those focused on our new store growth and other tenants, customers and business partners of theirs; global economies and credit and financial markets; our ability to maintain the security of electronic and other confidential information; serious disruptions and catastrophic events; competition; personnel recruitment and retention; acquisitions and divestitures including the ability to integrate successfully any such acquisitions; information systems and technology; commodity, energy and fuel cost increases; compliance with laws, regulations and orders; changes in laws and regulations; outcomes of litigation and proceedings; tax matters and other factors, many of which are beyond our control. We believe that these factors include those described in Item 1A Risk Factors of this Form 10-K. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, our actual results may vary in material respects from those projected in these forward-looking statements. You should bear this in mind as you consider forward-looking statements.*

*Any forward-looking statement made by us in this Form 10-K and our 2010 Annual Report to Stockholders speaks only as of the date on which we make it. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities*

**Table of Contents**

*laws. You are advised, however, to consult any further disclosures we may make in our future reports to the Securities and Exchange Commission (the SEC), on our website, or otherwise.*

**Table of Contents**

**The Fresh Market, Inc.**

**2010 Annual Report on Form 10-K**

**For Fiscal Year Ended December 31, 2010 and the One Month Ended January 30, 2011**

**TABLE OF CONTENTS**

	<b>Page Number</b>
<b>PART I</b>	
Item 1. <u>Business</u>	1
Item 1A. <u>Risk Factors</u>	12
Item 1B. <u>Unresolved Staff Comments</u>	23
Item 2. <u>Properties</u>	23
Item 3. <u>Legal Proceedings</u>	24
Item 4. <u>Removed and Reserved</u>	24
<b>PART II</b>	
Item 5. <u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	25
Item 6. <u>Selected Financial Data</u>	26
Item 7. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	28
Item 7A. <u>Quantitative and Qualitative Disclosures About Market Risk</u>	48
Item 8. <u>Financial Statements and Supplementary Data</u>	48
Item 9. <u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	48
Item 9A. <u>Controls and Procedures</u>	49
Item 9B. Other Information	
<b>PART III</b>	
Item 10. <u>Directors, Executive Officers and Corporate Governance</u>	50
Item 11. <u>Executive Compensation</u>	50
Item 12. <u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	50
Item 13. <u>Certain Relationships and Related Transactions, and Director Independence</u>	50
Item 14. <u>Principal Accountant Fees and Services</u>	50
<b>PART IV</b>	
Item 15. <u>Exhibits and Financial Statement Schedules</u>	51
<u>SIGNATURES</u>	53

---

**Table of Contents**

**PART I**

**Item 1. Business.**  
**General**

The Fresh Market is a high-growth specialty retailer focused on creating an extraordinary food shopping experience for our customers. Since opening our first store in 1982, we have offered high-quality food products, with an emphasis on fresh, premium perishables and an uncompromising commitment to customer service. We seek to provide an attractive, convenient shopping environment while offering our customers a compelling price-value combination. As of January 30, 2011, we operated 100 stores in 20 states, primarily in the Southeast, Midwest and Mid-Atlantic United States.

Our business is characterized by the following key elements:

*Differentiated food shopping experience.* We provide a differentiated shopping experience that generates customer loyalty and favorable word-of-mouth publicity. We offer fresh, carefully selected, high-quality food products focused on perishable categories. Examples of our offerings include hand-trimmed steaks that are aged for tenderness, fresh seafood delivered up to six times per week, hand-stacked produce that is colorfully displayed and French-style baguettes baked in-store each morning. We also provide a level of customer attention that we believe is superior to conventional grocers. We strive to create a neighborhood grocer atmosphere that encourages employee-customer interaction and offer full-service departments staffed with knowledgeable and accommodating employees. We believe our customers associate The Fresh Market with this distinct and superior food shopping experience.

*Smaller-box format and flexible real estate strategy.* Our stores average approximately 21,000 square feet, compared to the approximately 40,000 to 60,000 square foot stores operated by many conventional supermarkets. Within this relatively smaller size, we focus on higher-margin food categories and strive to deliver a more personal level of service and a more enjoyable shopping experience. Further, our smaller-box format is adaptable to different retail sites and configurations and has facilitated our successful growth. We expect this format will enable us to continue to extend our geographic presence without compromising our profitability or shopping experience.

*Disciplined, comprehensive approach to planning and merchandising.* We apply a systematic approach to planning and merchandising to support our stores. This comprehensive support includes employee training and scheduling, store design and layout, merchandising programs, product sourcing, and numerous inventory management systems, primarily focused on perishables. We believe our disciplined, comprehensive approach allows us to quickly integrate newly-hired employees, deliver predictable financial performance and expand our store base while delivering a consistent shopping experience.

We believe our high-quality perishable food offerings and smaller, customer-friendly store environment are the key drivers of our differentiated, profitable business model. We strive to offer an extraordinary shopping experience based on quality, consistency, fairness and integrity for our customers and employees.

**History**

The Fresh Market was founded by Ray and Beverly Berry and opened its first store in Greensboro, North Carolina in 1982. In the late 1980s and early 1990s, the company expanded its presence outside of North Carolina, entering Tennessee, Georgia and South Carolina. In 1996, the company entered Florida, where we currently have 24 stores, making Florida our largest market. In 2005, we entered the Midwest, opening stores in Ohio, Indiana and Illinois. In 2009, we entered the Northeast, opening a store in Connecticut, with subsequent store openings in Massachusetts and New York in 2010.

---

## **Table of Contents**

Throughout The Fresh Market's history, our company has been characterized by a culture of continuous growth and an innovative approach to perishable product offerings. As the company has grown, we have implemented numerous organizational, technological and process improvements that have standardized our systems and processes and contributed to our ability to scale our operations. At the same time we have fostered a spirit of innovation that encourages our management to continually challenge and enhance our product offerings and services.

### **Competitive Strengths**

We attribute our success in large part to the following competitive strengths:

***Outstanding food quality, store environment and customer service.*** We are dedicated to delivering a superior shopping experience that exceeds our customers' expectations by offering fresh, premium products and providing a high level of customer service. Our high-quality food offerings are the result of our careful selection of distinct products based on a range of attributes such as taste, color, size, grade, marbling, growing conditions, origins and freshness. Additionally, our stores are designed to delight our customers' senses with an aesthetically pleasing environment. Elements of this environment include colorful product presentations, ceramic tiled floors, darkened ceilings, incandescent lighting, classical music and various aromas including flowers, coffee and freshly baked goods. Additionally, we strive to engender employee pride and enthusiasm, reflecting our belief that a motivated, knowledgeable staff and a service-oriented, engaging shopping experience foster a strong relationship with our customers, generate favorable word-of-mouth publicity and drive sales.

***Business well positioned for changing industry trends.*** We believe that our company is well positioned to capitalize on evolving consumer preferences and other trends currently shaping the food retail industry. These trends include:

a growing emphasis on the customer shopping experience;

an increasing consumer focus on healthy eating choices and fresh, quality offerings, including regionally and locally sourced products;

an improving perception of private-label product quality; and

an increasing number of older people, a demographic that is expected to account for a disproportionately higher share of food-at-home spending by households.

We believe that our differentiated food shopping experience, product offerings and smaller-box format complement these industry dynamics and will enable us to continue growing successfully and profitably.

***Highly-profitable smaller-box format.*** Since our founding, we have exclusively operated a smaller-box format, which has proven to be highly profitable. Our stores average approximately 21,000 square feet and carry an edited assortment of approximately 9,000 to 10,000 SKUs at any one time, while many conventional supermarkets are approximately 40,000 to 60,000 square feet and carry an average of 45,000 SKUs. Within this smaller-box format, we focus on higher-margin food categories. Further, we believe our format facilitates interaction among our store managers, customers and staff, enhancing the customers' shopping experience. Our disciplined, exclusive focus on this format leads to consistent execution across our store base, which we believe allows us to generate higher operating margins than conventional supermarkets. Additionally, the smaller-box format is adaptable to different retail sites and configurations. We expect this format will enable us to continue to extend our geographic presence without compromising our profitability or shopping experience.

***Scalable operations and replicable store model.*** We believe that our infrastructure, including our management systems and distribution network, enables us to replicate our profitable store format and differentiated shopping experience. We expect this infrastructure to be capable of supporting significant expansion. We believe our standardized systems and processes, which rely on refined tools for procurement, inventory management, store operations and employee hiring, training and scheduling, are scalable to meet our expansion goals. We outsource substantially all of our logistics functions to third-party distributors and vendors whom we expect to have sufficient capacity to accommodate our anticipated growth. Additionally, each of our stores utilizes standard product display fixtures with flexible arrangement and design options that enable us to successfully replicate our customers' shopping experience in stores of various sizes and dimensions. Our store management mobility tracking system allows us to efficiently deploy staff across our stores and place experienced managers in each of our new stores,



helping provide a consistent shopping experience at each of our stores.

## Table of Contents

**Experienced management team with proven track record.** Our executive management team has extensive experience across a broad range of industries and employs an analytical, data-driven approach to decision-making that is designed to encourage innovation and stimulate continuous improvement throughout the organization. Our executive management team has an average of ten years of experience in the retail industry and an average of six years with our company, and is complemented by merchandising and operations management with an average of twenty-nine years of food retail experience and an average of eleven years with our company.

While we have set forth our competitive strengths above, food retail is a large and competitive industry and our business involves numerous risks and uncertainties. These risks include the possibility that our competitors may be more successful than us in terms of attracting customers. Some of these competitors have been in business longer or may have greater financial resources than us, which may give them a competitive advantage in sourcing, promoting and selling products. In addition, achieving our store growth and margin improvement objectives will be subject to a number of important challenges. For a more complete description of these challenges and the other risks associated with an investment in our common stock, see Risk Factors .

## **Growth Strategy**

**Expand our store base.** We intend to continue to expand our store base and penetrate new markets. We view expansion as a core competency and have more than tripled our store count since 2000. Our disciplined approach to expansion relies upon a structured and rigorous process for market analysis and real estate selection that we believe maximizes the prospects for successful new store openings. We opened eight new stores in 2010. Based upon our operating experience and research conducted for us by The Buxton Company, a customer analytics research firm, we believe that the U.S. market can support at least 500 The Fresh Market stores operating under our current format. Our historical growth is summarized below:

	2007	Year Ended December 31			One Month Ended
		2008	2009	2010	January 30
					2011
Stores at beginning of fiscal year	63	77	86	92	100
Stores opened	15	9	7	8	
Store closures	(1)		(1)		
Stores at end of fiscal year	77	86	92	100	100
Relocations and remodels	3	4	2	1	
Total gross square footage	1,584,000	1,811,000	1,955,000	2,129,000	2,129,000
Year-over-year change	25%	14%	8%	9%	0%

Our new store operating model, which is based on our historical performance, assumes a target store size of approximately 17,000 to 22,000 gross square feet and assumes we achieve first year sales of \$8.0 million to \$10.0 million. Our target net investment to open a new store varies based on the approach we take to developing the applicable new store site. For example, we may enter into a build-to-suit lease, in which the owner develops a store site to our specifications prior to us occupying the premises. For build-to-suit stores, depending on site characteristics and other factors, our target net investment is approximately \$3.0 million to \$4.0 million per store, including build-out costs and initial inventory, net of payables. Alternatively, we may enter into a lease as-is for existing structures, in which we take the premises in its current state and develop. For opening stores in as-is existing structures, depending on the age of the building, our target net investment is approximately \$3.5 to \$4.5 million per store. Occasionally, we enter into a lease for or acquire land and then build the entire structure. In this case, depending on the site work and scope of the project, the net investment excluding the cost of land is typically \$5.5 million to \$6.5 million.

## **Table of Contents**

Our operating model targets a cash flow contribution of greater than 10% of sales in the first year of operations, increasing to the low- to mid-teens by the fifth year of operation. In addition, our investment criteria and internal rate of return thresholds remain consistent across store site types. We target a payback period of less than 4 years.

***Drive comparable store sales.*** We aim to increase our comparable store sales by generating growth in the number and average size of customer transactions at our existing stores. The key elements of our strategy to increase the number of customer transactions at our existing stores include:

continuing to offer a differentiated food shopping experience that leads to favorable word-of-mouth publicity;

continuing to provide an assortment of distinctive, high-quality product offerings to generate new and repeat visits to our stores; and

generating customer loyalty through expansion of products offered under our private-label brands.

The key elements of our strategy to increase the amount our customers spend when they visit our stores include:

continuing to introduce new and creative products, including products offered under our private label brands, to accommodate our customers' evolving preferences;

expanding our selection of local and regional products;

utilizing in-store cross-marketing; and

enhancing our product offering displays.

We believe that our commitment to providing differentiated and creative product offerings in response to customer needs and preferences and our focus on customer service will continue to build customer loyalty and favorable word-of-mouth publicity and lead to increased customer transactions at our stores and growth in the amount our customers spend when they visit our stores.

***Increase our highly-attractive operating margins.*** We intend to continue to increase our highly attractive operating margins through scale efficiencies, improved systems, continued cost discipline and enhancements to our merchandise offerings. Our anticipated store growth will permit us to benefit from economies of scale in sourcing products and will allow us to leverage our existing infrastructure, corporate overhead and fixed costs to reduce labor and supply chain management costs as a percentage of sales. In addition to our continued expansion, as we refine and improve our various ordering, tracking and product allocation systems, we expect to benefit from additional margin improvement opportunities by increasing sales and reducing inventory shrinkage. We also believe that we can make profitable enhancements to our merchandise offerings by, for example, increasing our selection of local and regional products. Finally, over time, we believe we will have the opportunity to pursue new pricing and promotional strategies that will improve our margins.

---

**Table of Contents**

**Industry Overview and Trends**

The U.S. food retail industry encompasses store formats ranging from small grocery shops and convenience stores to large supermarkets. According to Nielsen TDLinX and 2010 Progressive Grocer Market Research the U.S. food retail industry had approximately \$1 trillion of sales in 2009. The supermarket format represents the largest segment of the food retail industry, with sales totaling approximately \$557 billion, or 55% of U.S. food retail industry sales, according to Nielsen TDLinX and 2010 Progressive Grocer Market Research. This format, of which we are a part, includes conventional, warehouse, supercenter, limited assortment, military commissaries and natural/gourmet foods. We do not believe, however, that we neatly fit into any of these categories. With an average store size of approximately 21,000 square feet, a focus on perishables and only 9,000 to 10,000 SKUs in stock at any one time, we believe we are best defined as a specialty food retailer.

Key trends that will continue to shape our market include:

*Increasing focus on the customer shopping experience:* Supermarkets are enhancing or attempting to enhance the consumer's shopping experience in stores even as price competition is increasing. Many conventional supermarkets have reduced new store expansion to direct capital expenditure budgets toward remodeling existing stores. In addition, supermarkets are striving to be more innovative and responsive to consumer preferences with their consumer interactions and product offerings. According to the Food Marketing Institute 96% of grocery stores now offer prepared foods, 86% have floral departments, 84% carry ethnic foods and 83% carry natural and organic foods.

*Emphasis on healthy, fresh and quality offerings:* Supermarkets are increasingly providing and marketing fresh food items consistent with ongoing health trends and greater consumer awareness of the negative aspects of processed foods. Many conventional supermarkets are attempting to complement center aisle grocery formats with fresh formats that emphasize high-quality perishables and prepared foods. The increased popularity of farmers' markets over the past few years is also indicative of a consumer preference for fresh food items. Additionally, the growing consumer demand for fresh, quality offerings has improved the infrastructure for, and increased the supply of, these items, resulting in improved sourcing, distribution and pricing.

*Localization:* An increasing number of consumers believe that locally-grown products are fresher and taste better. Consumers often purchase locally-grown food because they prefer to support local growers. In addition, these consumers may believe that locally-grown food results in a reduced environmental impact.

*Rise of private label:* Supermarkets are increasingly developing and promoting private-label brands to distinguish themselves from their competitors and promote customer loyalty. These private-label brands can also offer benefits to retailers through increased margins and, in certain instances, to customers through lower prices compared to branded products. Another key contributor to private label growth has been the improved product quality image and exclusivity of certain brands, which can further help to differentiate supermarkets from each other.

*Aging customer demographic:* According to the U.S. Census Bureau, by 2030, one in five U.S. residents will be 65 or older, driven by an aging Baby Boomer population (which, according to Nielsen, has the largest overall annual grocery spend per household and also tends to make a greater number of shopping trips per household than younger age groups). In addition, according to a McKinsey & Company study, in 2015, those 50-years and older will account for a disproportionately higher share of food at home spending by households.

**Table of Contents****Products and Stores**

We offer fresh, carefully-selected, high-quality food products focused on perishable categories in a store format that has been successful in diverse geographic and demographic markets.

***Products***

We have a significant focus on perishable product categories, which include meat, seafood, produce, deli, bakery, floral, sushi and prepared foods. Our non-perishable product categories consist of traditional grocery and dairy products as well as specialty foods, including bulk, coffee and candy, and beer and wine. We emphasize fresh items that are distinct and of premium quality as compared to our conventional competitors. The following is a breakdown of our perishable and non-perishable sales mix:

	Year Ended			One Month Ended
	2008	2009	2010	January 30, 2011
Perishable	67.1%	66.8%	66.5%	65.9%
Non-perishable	32.9%	33.2%	33.5%	34.1%

Our in-house merchants actively seek high-quality products from a wide range of sources. Our product selection includes:

*Meat.* Our meat department offers our customers a unique Old World butcher shop experience set apart by its flexibility, quality and service. Our professional meat cutters are available during all hours of operation to answer customers' questions, offer cooking tips and provide custom cuts of meat. Our offerings include steaks that are expertly trimmed and aged for 14 to 21 days to provide restaurant-quality taste and tenderness, fresh turkeys year-round and ground beef that is ground daily in-store from steak trimmings and whole roasts.

*Seafood.* We offer our customers a distinctive selection of fresh seafood and choose our suppliers based on the quality of their offerings. Our stores receive deliveries of fresh seafood up to six times a week, demonstrating our dedication to freshness. One of the distinguishing characteristics of the department is the prepared or value-added seafood selections, such as our popular bourbon-marinated salmon and lobster-stuffed tilapia.

*Produce.* We offer our customers a farmers market experience focused on freshness, variety and abundant displays. For example, our mushroom selection alone consists of around 15 varieties, including French horn, hen-of-the-woods and porcini. We also pride ourselves on offering our customers the best eating varieties year-round, and offer a mix of conventional, certified organic and local produce throughout the year depending on quality and availability. An example of our best eating varieties is our Sweet Tango apple that may not be available in conventional supermarkets.

*Grocery and Dairy.* We carefully select our grocery and dairy products to provide hard-to-find and premium-quality offerings to our customers, such as truffle oil and Devonshire cream. We have a growing line of our distinctive private-label dairy and non-perishable grocery products that address the wants and needs of our food-savvy shoppers and we employ these products as a vehicle for building and supporting our brand. These include our private-label omega-3 eggs and our private-label dairy products, which comprise a significant share of the dairy products we sell.

*Prepared Foods.* We have a growing prepared foods department with a broad selection of quality products. Our prepared foods operations are focused on simplicity of execution, often relying on standardized recipes and instructions provided to the stores to maintain consistency in quality and food safety across the stores while maintaining a homemade, fresh look and great taste. Our prepared foods include entrees such as turkey meatloaf and stuffed shells, rotisserie selections such as whole chickens and baby back ribs and freshly made sandwiches and sides.



---

**Table of Contents**

*Deli.* Our European-style delicatessen features a broad assortment of high-quality deli meats and typically offers more than 200 varieties of imported and domestic cheeses. Our cheese selection includes Parmesan Reggiano, fresh mozzarella, manchego, gruyere and imported brie. Our deli meats are sliced to customer specifications and most cheese is cut, wrapped and weighed in-store.

*Bakery.* We utilize a combination of on-site and third-party bakeries to produce our baked goods. The presence of daily on-site baking enhances the customer's shopping experience and reinforces the freshness and value provided in each store. The open layout of our on-site bakery contributes to our aesthetically-pleasing store environment by, for example, allowing our customers to see and smell warm cookies as they come out of the oven and watch birthday cakes being decorated.

*Bulk, Coffee and Candy.* A number of products are offered in bulk format including nuts, dried fruits, snack mixes, coffee and candy. We take pride in the quality and selection we provide, including nut varieties that we believe are larger than those offered by many conventional supermarkets. In addition, we carry only 100% Arabica coffee beans. The substantial number of options and presentation utilizing wooden stands, crates and barrels in these departments helps reinforce the open-air Old World market feeling.

*Beer and Wine.* We believe that wine enhances our customers' food experience. We offer a carefully selected assortment of highly-ranked wines at affordable prices, everyday wines and wine from local vintners. We also offer beers from local, domestic and foreign brewers.

*Floral and Gifts.* Lively, elegant floral displays greet our customers when they enter the store. In order to offer our customers attractive seasonal flowers at peak blooming, we regularly vary the selection of our floral offerings, which include our top-selling roses, orchids and tulips. Our gift selection includes candles, cookbooks, kitchen items and seasonal and holiday gift baskets.

We believe our ability to identify, source, merchandise and market differentiated products is critical to our success. We carefully select new products based on a variety of attributes including taste, color, size, grade, marbling, growing conditions, origins and freshness. Our centralized merchandising team rigorously rotates, updates and re-evaluates our existing merchandise offerings and regularly tests new products in our stores to excite our customers and to better understand customer preferences. Although our typical store carries approximately 9,000 to 10,000 SKUs at any one time, our stores carry approximately 17,000 to 20,000 SKUs over the course of a year. This allows us to maintain a consistent flow of new products in our stores and keep our product assortment fresh and relevant.

***Pricing Strategy***

By maintaining our commitment to providing premium products at reasonable prices, we believe we are able to communicate to our customers a sense of value and foster a relationship of trust, which in turn generates customer loyalty. We attract customers to our stores based on the quality of our products and a differentiated shopping experience, in contrast to many conventional food retailers who frequently use non-discretionary products or promotional pricing to drive sales.

Our pricing decisions are driven by the limited direct overlap between our product offerings and the products offered by most conventional supermarkets. Where our products are directly comparable to those offered by our competitors, such as grocery and dairy staples, beer and wine, we aim to price them competitively, and where our products are recognizably distinct from those offered by our competitors, such as our produce, meat and seafood, we aim to price them at a premium that is commensurate with the product's higher quality. For example, our Fuji apples, because of their size, color and lack of bruising, are priced at a premium to those carried at many conventional supermarkets. In addition, our ground beef, because it is ground fresh in our stores everyday, is priced at a premium to that which is carried by many conventional supermarkets, which may purchase their ground beef frozen and in bulk.

## **Table of Contents**

### ***Stores***

Our stores are organized around distinct departments with engaging merchandise displays that reinforce our emphasis on freshness and service. In addition, our stores are decorated and designed to evoke a neighborhood grocer feel, and in some cases are customized to local and regional tastes. The careful design of our stores creates a warm, inviting atmosphere that evokes a simple elegance, with colorful product presentations, ceramic tiled floors, darkened ceilings, incandescent lighting and classical music. The aroma of flowers, coffee and freshly baked goods permeates the stores and other amenities, such as free coffee daily and cut-to-order meats, enhance the shopping experience for our customers. The Fresh Market store atmosphere is meant to encourage the customer to slow down, interact with employees and have an enjoyable shopping experience.

Each of our stores uses standardized product display fixtures with flexible arrangement and design options that enable us to accommodate each store's distinct customer base and location. Each of our discrete departments, such as deli, bakery, seafood and meat, has several well-developed merchandising and display alternatives to optimize the available space. We position our full-service departments adjacent to each other to provide a market feel and foster interaction between employees and customers. As a result, although departments are systematically arranged, they appear customized to local tastes. This further reinforces our ability to successfully replicate our customers' shopping experience and retain the charm of a neighborhood grocer.

We employ a detailed, analytical process to identify new store locations. We target locations based on demographic characteristics, including income and education levels, drive times and population density, as well as other key characteristics including convenience for customers, visibility, access, signage and parking availability. We generally visit a potential location multiple times to perform on-site diligence and interview potential customers. We supplement our in-house efforts by leveraging the expertise of our extensive regional broker network. Our real estate committee, which includes members of senior management, approves all new stores.

### ***Store Staffing and Operations***

Our typical store is staffed with approximately 70-80 full- and part-time employees including a store manager, two to three assistant store managers and five department heads. The store management team is responsible for all aspects of store execution including managing inventory and cash, maintaining a clean and engaging store environment, and hiring, training and supervising our store employees. Importantly, we encourage our employees, especially our store managers, to engage regularly with our customers. To facilitate staff customer interaction, our store managers are typically positioned on our selling floor, near our service counters.

In addition, we employ a dedicated new store opening team, including a new store operations manager, which is exclusively focused on the new store opening process. We believe this allows us to seamlessly open new stores while our field management team can focus on continuing to improve the performance of our existing stores.

Our stores are generally open seven days a week from 9:00 am to 9:00 pm Monday through Saturday, and 10:00 am to 8:00 pm on Sunday.



## **Table of Contents**

### *Training and Development*

We believe that our success and our growth are dependent upon hiring, training, retaining, developing, and promoting qualified and enthusiastic employees who share our passion for delivering an extraordinary food shopping experience. Nearly all of our store managers and district managers are promoted from within, and we actively track and reward mobility to ensure a sufficient pipeline of store managers and assistant store managers.

We provide our store management a number of analytical tools and training programs designed specifically to support the demands of operating a small-box, perishables-focused format. These tools include order review systems, production tools and labor scheduling programs, all of which ensure that we maintain high in-stock levels, minimize shrink and match staffing levels to sales volume and mix. In addition, we provide hands-on training and educational programs to our store employees and assistant managers.

We believe this comprehensive support allows our store management and employees to optimize the operating performance of our stores while fostering a neighborhood grocer feel for our customers.

### *Performance-based Compensation*

We employ a performance-based compensation program for all levels of our management. We regularly communicate individual store performance and company performance to our employees to encourage store management to improve the financial performance of our store base.

## **Sourcing and Distribution**

We source our products from approximately 1,000 vendors and suppliers and, unlike most conventional supermarkets, separately utilize third-party logistics providers for distribution. Our in-house merchants source only those products that meet our high specifications for quality, and we maintain strict control over the products that are sold in our stores.

Our distribution strategy is to capitalize on the capabilities of best-in-class third-party logistics providers and, as such, we do not own warehouses, distribution facilities or transportation equipment. We outsource substantially all of our logistics functions to third-party distributors and vendors.

We believe that our sourcing model and distribution strategy enable us to:

focus on our core competency of in-store food retail rather than logistics;

grow our geographic footprint and operate profitably in new markets without a need for critical mass in any one market;

benefit from best-in-class logistics solutions and related, rapidly evolving technologies; and

capture scale efficiencies and increase negotiating power with both our suppliers and our distributors.

With each of our sourcing and logistics contracts we seek to increase our efficiency, generate higher margins and achieve better returns. As a result, we are willing to switch logistics providers from time to time when appropriate.

Since 2007, Burris Logistics has been our primary logistics provider, and has managed inventory replenishment, warehouse operations and transportation for all of our stores. Burris Logistics warehoused and distributed products that accounted for approximately 56% of the merchandise we purchased during 2010. We expect that Burris Logistics will have sufficient capacity to accommodate our anticipated growth through the medium term and that we have various alternatives, including Burris Logistics, available to us for long-term growth. Our current five-year contract with this provider expires during 2012, unless we and the provider agree to renew the agreement on mutually agreeable terms.



## **Table of Contents**

We also have certain grocery, candy, bulk and spice vendors that distribute across all our stores, as well as individual, store-managed relationships with bread and bakery vendors.

## **Marketing and Advertising**

We believe that the distinct and superior food shopping experience we offer our customers, and our customers' association of that shopping experience with The Fresh Market, are major drivers of our comparable store sales and enable us to spend less on advertising than our conventional competitors. We rely primarily on favorable word-of-mouth publicity to drive sales growth rather than traditional marketing activities, such as weekly newspaper circulars that are focused on price promotions. In 2010, our marketing expense was 0.2% of annual revenues, which we believe is significantly lower than that of most of our competitors. Our stores spend most of their marketing budgets on in-store merchandising-related activities, including promotional signage and events such as taste fairs, classes, tours, cooking demonstrations and product samplings. We use in-store signage to highlight new products and any differentiated aspects of our products. We also distribute a weekly electronic newsletter named "Fresh Ideas" to share new products, seasonal produce, recipes and weekly specials with our customers.

## **Competition**

Food retail is a large and competitive industry. Our competition varies and includes national conventional supermarkets such as Kroger and Safeway, regional supermarkets such as Harris Teeter and Publix, national superstores such as Wal-Mart and Target, alternative food retailers such as Whole Foods and Trader Joe's, and local supermarkets, natural foods stores, smaller specialty stores and farmers' markets. Each of these stores competes with us on the basis of product selection, quality, customer service, price or a combination of these factors. We believe our commitment to high-quality perishable offerings at competitive prices and our focus on customer service differentiate us in this marketplace.

## **Intellectual Property**

We believe that our intellectual property has substantial value and has contributed significantly to the success of our business. In particular, our trademarks, including our registered *The Fresh Market*, *Experience the Food* and *TFM* trademarks, are valuable assets that reinforce our customers' favorable perception of our stores. In addition to our trademarks, we believe that our trade dress, which includes the design, arrangement, color scheme and other physical characteristics of our stores and product displays, is a large part of the neighborhood grocer atmosphere we create in our stores and enables customers to distinguish our stores and products from those of our competitors.

From time to time, third parties have used names similar to ours, have applied to register trademarks similar to ours and, we believe, have infringed or misappropriated our intellectual property rights. Third parties have also, from time to time, opposed our trademarks and challenged our intellectual property rights. We respond to these actions on a case-by-case basis. The outcomes of these actions have included both negotiated out-of-court settlements as well as litigation.

As part of our ongoing efforts to protect our intellectual property rights, on February 2, 2010, we filed a Notice of Opposition with the United States Patent and Trademark Office, Trademark Trial and Appeal Board (the "TTAB") in response to an application filed by Associated Food Stores, Inc. ("Associated"), which operates supermarkets under the name "A Fresh Market" in Utah, to register the trademark "A Fresh Market". Associated subsequently filed an answer and counterclaim on March 15, 2010, in which it, among other things, sought to cancel our registrations for the trademarks *The Fresh Market* and *The Fresh Market* Name and Design, alleging that we cannot prevent other entities from registering confusingly similar marks to ours, because our marks are generic names for the goods and services for which they are registered. On March 18, 2011, the TTAB granted a Motion

## **Table of Contents**

on Consent to Withdraw and Dismiss, which, dismissed all proceedings before the TTAB. In the Motion the parties consented and stipulated to (1) Associated's withdrawal with prejudice of its application to register the trademark "A Fresh Market" and (2) Associated's withdrawal without prejudice of its counterclaim to cancel our registrations based on its allegations that the registered *The Fresh Market* and *The Fresh Market* Name and Design trademarks are generic names for the goods and services described in our registrations. Despite the conclusion of these proceedings with Associated, there may be future disputes with Associated or others regarding our trademark rights.

In the ordinary course of our business, we evaluate the branding of our stores and products and how they are perceived by our customers. As part of this evaluation, we regularly develop new marks and explore using existing marks in new ways. Whether or not our *The Fresh Market* trademark rights are challenged in the future, we may decide (1) to continue to use *The Fresh Market* name and related design, (2) to use our other existing trademarks on a wider or different basis or (3) to develop new trademarks, which could also incorporate *The Fresh Market* name. If we undertake such an effort, we cannot assure you that it would be successful in strengthening our brand or improving our brand recognition or image to our customers, and any such initiative runs the risk of harming our brand recognition or image and, in turn, our business. We believe, however, that the strength of our business is driven by the distinct and superior food shopping experience we offer our customers, and we therefore believe that we will be able to expand our business and pursue our growth strategy even if *The Fresh Market* trademark and related design mark are impaired.

## **Regulatory**

Our stores are subject to various local, state, federal and international laws, regulations and administrative practices affecting our business. We must comply with provisions regulating health and sanitation standards, food labeling, equal employment, minimum wages, licensing for the sale of food and, in many stores, licensing for beer and wine or other alcoholic beverages. The manufacturing, processing, formulating, packaging, labeling and advertising of products are subject to regulation by various federal agencies including the Food and Drug Administration, the Federal Trade Commission, the United States Department of Agriculture, the Consumer Product Safety Commission and the Environmental Protection Agency.

## **Insurance**

We use a combination of insurance and self-insurance to provide for potential liability for workers' compensation, automobile and general liability, product liability, director and officers' liability, employee healthcare benefits, and other casualty and property risks. Changes in legal trends and interpretations, variability in inflation rates, changes in the nature and method of claims settlement, benefit level changes due to changes in applicable laws, insolvency or insurance carriers, and changes in discount rates could all affect ultimate settlements of claims. We evaluate our insurance requirements on an ongoing basis to ensure we maintain adequate levels of coverage.

## **Employees**

As of January 30, 2011, we employed approximately 7,300 people, consisting of approximately 4,600 full-time employees and approximately 2,700 part-time employees, none of whom are subject to a collective bargaining agreement. We believe our employee relations are satisfactory.

## **Seasonality**

The food retail industry and our sales are affected by seasonality. Our average weekly sales fluctuate during the year and are usually highest in the fourth quarter when customers make holiday purchases.

## **Table of Contents**

### **Item 1A. Risk Factors.**

*Our business, financial condition and results of operations can be impacted by a number of risk factors, any one of which could cause our actual results to vary materially from recent results or from our anticipated future results. Any of these risks could materially and adversely affect our business, financial condition and results of operations, which in turn could materially and adversely affect the price of our common stock or other securities.*

***We may not be able to successfully implement our growth strategy on a timely basis or at all. Additionally, new stores may place a greater burden on our existing resources and adversely affect our existing business.***

Our continued growth depends, in large part, on our ability to open new stores and to operate those stores successfully. Successful implementation of this strategy depends upon, among other things:

the identification of suitable sites for store locations;

the negotiation of acceptable lease terms;

the ability to continue to attract customers to our stores largely through favorable word-of-mouth publicity, rather than through conventional advertising;

the hiring, training and retention of skilled store personnel;

the identification and relocation of experienced store management personnel;

the effective management of inventory to meet the needs of our stores on a timely basis;

the availability of sufficient levels of cash flow or necessary financing to support our expansion; and

the ability to successfully address competitive merchandising, distribution and other challenges encountered in connection with expansion into new geographic areas and markets.

We, or our third party vendors, may not be able to adapt our distribution, management information and other operating systems to adequately supply products to new stores at competitive prices so that we can operate the stores in a successful and profitable manner. We do not participate in many of the traditional marketing activities of conventional food retailers, but instead rely primarily on favorable word-of-mouth publicity to drive sales. We cannot assure you that we will continue to grow through new store openings or through favorable word-of-mouth publicity in the future. Although we believe, based upon our experience and research conducted by a third-party research firm, that the U.S. market can support at least 500 The Fresh Market stores operating under our current format, we anticipate that it will take years to grow our store count to that number. We cannot assure you that we will grow our store count to at least 500 stores. Additionally, our proposed expansion will place increased demands on our operational, managerial and administrative resources. These increased demands could cause us to operate our existing business less effectively, which in turn could cause deterioration in the financial performance of our existing stores. Further, new store openings in markets where we have existing stores may result in reduced sales volumes at our existing stores in those markets. If we experience a decline in performance, we may slow or discontinue store openings, or we may decide to close stores that we are unable to operate in a profitable manner. In the past ten years, we have closed two stores before the expiration of their primary lease terms. If we fail to successfully implement our growth strategy, including by opening new stores, our financial condition and operating results may be adversely affected.



## **Table of Contents**

***Our new store base, or stores opened or acquired in the future, may not achieve sales and operating levels consistent with our mature store base on a timely basis or at all or may negatively impact our results.***

We have actively pursued new store growth in existing and new markets and plan to continue doing so in the future. Our growth continues to depend, in part, on our ability to open and operate new stores successfully. New stores may not achieve sustained sales and operating levels consistent with our mature store base on a timely basis or at all. This may have an adverse effect on our financial condition and operating results. In addition, if we acquire stores in the future, we may not be able to successfully integrate those stores into our existing store base and those stores may not be as profitable as our existing stores.

We cannot assure you that our new store openings will be successful or result in greater sales and profitability for the company. New stores build their sales volume and their customer base over time and, as a result, generally have lower gross margin rates and higher operating expenses, as a percentage of sales, than our more mature stores. There may be a negative impact on our results from a lower contribution of new stores, along with the impact of related pre-opening and applicable store management relocation costs. Any failure to successfully open and operate new stores in the time frames and at the costs estimated by us could result in a decline of the price of our common stock.

***Our inability to maintain or improve levels of comparable store sales could cause our stock price to decline.***

We may not be able to maintain or improve the levels of comparable store sales that we have experienced in the recent past. In addition, our overall comparable store sales have fluctuated in the past and will likely fluctuate in the future. A variety of factors affect comparable store sales, including consumer preferences, competition, economic conditions, pricing, in-store merchandising-related activities and our ability to source and distribute products efficiently. In addition, many specialty retailers have been unable to sustain high levels of comparable store sales growth during and after periods of substantial expansion. These factors may cause our comparable store sales results to be materially lower than in recent periods, which could harm our business and result in a decline in the price of our common stock.

***Our inability to maintain or increase our operating margins could adversely affect the price of our stock.***

We intend to continue to increase our operating margins through scale efficiencies, improved systems, continued cost discipline and enhancements to our merchandise offerings. If we are unable to successfully manage the potential difficulties associated with store growth, we may not be able to capture the scale efficiencies that we expect from expansion. If we are not able to continue to capture scale efficiencies, improve our systems, continue our cost discipline and enhance our merchandise offerings, we may not be able to achieve our goals with respect to operating margins. In addition, if we do not adequately refine and improve our various ordering, tracking and allocation systems, we may not be able to increase sales and reduce inventory shrinkage. As a result, our operating margins may stagnate or decline, which could adversely affect the price of our stock.

***Economic conditions that impact consumer spending could materially affect our business.***

Ongoing economic uncertainty continues to negatively affect consumer confidence and discretionary spending. Our results of operations may be materially affected by changes in overall economic conditions that impact consumer confidence and spending, including discretionary spending. This risk may be exacerbated if customers choose lower-cost alternatives in response to economic conditions. Future economic conditions affecting disposable consumer income such as employment levels, business conditions, changes in housing market conditions, the availability of credit, interest rates, tax rates, fuel and energy costs and other matters could reduce consumer spending or cause consumers to shift their spending to lower-priced competitors. As a result, our results of operations could be materially adversely affected.

---

**Table of Contents**

***We face competition in our industry, and our failure to compete successfully may have an adverse effect on our profitability and operating results.***

Food retail is a competitive industry. Our competition varies and includes national, regional and local conventional supermarkets, national superstores, alternative food retailers, natural foods stores, smaller specialty stores, and farmers' markets. Each of these stores competes with us on the basis of product selection, product quality, customer service, price or a combination of these factors. In addition, some competitors are aggressively expanding their number of stores or their product offerings. In their new or remodeled stores, our competitors often increase the space allocated to perishable food and specialty food categories, which are our core categories. Some of these competitors may have been in business longer or may have greater financial or marketing resources than we do and may be able to devote greater resources to sourcing, promoting and selling their products. As competition in certain areas intensifies or competitors open stores within close proximity to one of our stores, our results of operations may be negatively impacted through a loss of sales, reduction in margin from competitive price changes or greater operating costs. Further, any attempt by a competitor to copy or mimic our smaller-box format or operating model could materially impact our business, results of operations and financial condition by causing a decrease in our market share and our sales and operating results. Increased competition may also make employee retention more difficult and raise our cost of hiring and retaining qualified employees.

***We may be unable to protect or maintain our intellectual property, including The Fresh Market trademark, which could result in customer confusion and adversely affect our business.***

We believe that our intellectual property has substantial value and has contributed significantly to the success of our business. In particular, our trademarks, including our registered *The Fresh Market*, *Experience the Food* and *TFM* trademarks, are valuable assets that reinforce our customers' favorable perception of our stores.

From time to time, third parties have used names similar to ours, have applied to register trademarks similar to ours and, we believe, have infringed or misappropriated our intellectual property rights. Third parties have also, from time to time, opposed our trademarks and challenged our intellectual property rights. We respond to these actions on a case-by-case basis. The outcomes of these actions have included both negotiated out-of-court settlements as well as litigation.

As part of our ongoing efforts to protect our intellectual property rights, on February 2, 2010, we filed a Notice of Opposition with the United States Patent and Trademark Office, Trademark Trial and Appeal Board (the "TTAB") in response to an application filed by Associated Food Stores, Inc. ("Associated"), which operates supermarkets under the name "A Fresh Market" in Utah, to register the trademark "A Fresh Market". Associated subsequently filed an answer and counterclaim on March 15, 2010, in which it, among other things, sought to cancel our registrations for the trademarks *The Fresh Market* and *The Fresh Market* Name and Design, alleging that we cannot prevent other entities from registering confusingly similar marks to ours, because our marks are generic names for the goods and services for which they are registered. On March 18, 2011, the TTAB granted a Motion on Consent to Withdraw and Dismiss, which dismissed all proceedings before the TTAB. In the Motion the parties consented and stipulated to (1) Associated's withdrawal with prejudice of its application to register the trademark "A Fresh Market" and (2) Associated's withdrawal without prejudice of its counterclaim to cancel our registrations based on its allegations that the registered *The Fresh Market* and *The Fresh Market* Name and Design trademarks are generic names for the goods and services described in our registrations. Despite the conclusion of these proceedings with Associated, there may be future disputes with Associated or others regarding our trademark rights.

In the ordinary course of our business, we evaluate the branding of our stores and products and how they are perceived by our customers. As part of this evaluation, we regularly develop new marks and explore using existing marks in new ways. Whether or not our *The Fresh Market* trademark rights are challenged in the future, we may decide (1) to continue to use *The Fresh Market* name and related design, (2) to use our other existing trademarks on a wider or different basis or (3) to develop new trademarks,



## **Table of Contents**

which could also incorporate *The Fresh Market* name. If we undertake such an effort, we cannot assure you that it would be successful in strengthening our brand or improving our brand recognition or image to our customers, and any such initiative runs the risk of harming our brand recognition or image and, in turn, our business. We believe, however, that the strength of our business is driven by the distinct and superior food shopping experience we offer our customers, and we therefore believe that we will be able to expand our business and pursue our growth strategy even if *The Fresh Market* trademark and related design mark are impaired.

***Our success depends upon our ability to source and market new products to meet our high standards and customer preferences and our ability to offer our customers an aesthetically pleasing shopping environment.***

Our success depends on our ability to source and market new products that both meet our standards for quality and appeal to customers preferences. A small number of our employees, including our in-house merchants, are primarily responsible for both sourcing products that meet our high specifications and identifying and responding to changing customer preferences. Failure to source and market such products, or to accurately forecast changing customer preferences, could lead to a decrease in the number of customer transactions at our stores and a decrease in the amount customers spend when they visit our stores. In addition, the sourcing of our products is dependent, in part, on our relationships with our vendors. If we are unable to maintain these relationships we may not be able to continue to source products at competitive prices that both meet our standards and appeal to our customers. We also attempt to create a pleasant and appealing shopping experience. If we are not successful in creating a pleasant and appealing shopping experience we may lose customers to our competitors. If we do not succeed in maintaining good relationships with our vendors, introducing and sourcing new products that consumers want to buy or are unable to provide a pleasant and appealing shopping environment or maintain our level of customer service, our sales, operating margins and market share may decrease, resulting in reduced profitability.

***Our stores rely heavily on sales of perishable products, and ordering errors or product supply disruptions may have an adverse effect on our profitability and operating results.***

We have a significant focus on perishable products. Sales of perishable products accounted for approximately two-thirds of our total sales in 2010. We rely on various suppliers and vendors to provide and deliver our perishable product inventory on a continuous basis. We could suffer significant product inventory losses in the event of the loss of a major supplier or vendor, disruption of our distribution network, extended power outages, natural disasters or other catastrophic occurrences. We have implemented certain systems to ensure our ordering is in line with demand. We cannot assure you, however, that our ordering system will always work efficiently, in particular in connection with the opening of new stores, which have no, or a limited, ordering history. If we were to over-order, we could suffer inventory losses, which would negatively impact our operating results. Furthermore, we could suffer significant product inventory losses in the event of the loss of a major supplier or vendor, disruption of our distribution network, extended power outages, natural disasters or other catastrophic occurrences.

***Increased commodity prices and availability may impact profitability.***

Many of our products include ingredients such as wheat, corn, oils, cocoa and other commodities. Commodity prices worldwide have been increasing. While commodity price inputs do not typically represent the substantial majority of our product costs, any increase in commodity prices may cause our vendors to seek price increases from us. Although we typically are able to mitigate vendor efforts to increase our costs, we may be unable to continue to do so, either in whole or in part. In the event we are unable to continue mitigating our vendor efforts to obtain price increases, we may in turn consider raising our prices, and our customers may be deterred by any such price increases. Our profitability may be impacted through increased costs to us which may impact gross margins, or through reduced revenue as a result of a decline in the number and average size of customer transactions.

## **Table of Contents**

***The current geographic concentration of our stores creates an exposure to local economies, regional downturns or severe weather or catastrophic occurrences that may materially adversely affect our financial condition and results of operations.***

We currently operate 24 stores in Florida, making Florida our largest market and representing 24% of our total stores. We also have store concentration in North Carolina and Georgia, operating 15 stores and 11 stores in those states, respectively. As a result, our business is currently more susceptible to regional conditions than the operations of more geographically diversified competitors, and we are vulnerable to economic downturns in those regions. Any unforeseen events or circumstances that negatively affect these areas could materially adversely affect our revenues and profitability. These factors include, among other things, changes in demographics and population.

Severe weather conditions and other catastrophic occurrences in areas in which we have stores or from which we obtain products may materially adversely affect our results of operations. Such conditions may result in physical damage to our stores, loss of inventory, closure of one or more of our stores, inadequate work force in our markets, temporary disruption in the supply of products, delays in the delivery of goods to our stores and a reduction in the availability of products in our stores. Any of these factors may disrupt our businesses and materially adversely affect our financial condition and results of operations.

***Our business could be harmed by a failure of our information technology, administrative or outsourcing systems.***

We rely on our information technology, administrative and outsourcing systems to effectively manage our business data, communications, supply chain, order entry and fulfillment and other business processes. The failure of our information technology, administrative or outsourcing systems to perform as we anticipate could disrupt our business and result in transaction errors, processing inefficiencies and the loss of sales and customers, causing our business to suffer. In addition, our information technology and administrative and outsourcing systems may be vulnerable to damage or interruption from circumstances beyond our control, including fire, natural disasters, systems failures, viruses and security breaches, including breaches of our transaction processing or other systems that could result in the compromise of confidential customer data. Any such damage or interruption could have a material adverse effect on our business, cause us to face significant fines, customer notice obligations or costly litigation, harm our reputation with our customers, require us to expend significant time and expense developing, maintaining or upgrading our information technology, administrative or outsourcing systems or prevent us from paying our suppliers or employees, receiving payments from our customers or performing other information technology, administrative or outsourcing services on a timely basis. Data security breaches suffered by well-known companies and institutions have attracted a substantial amount of media attention, prompting new federal and state laws and legislative proposals addressing data privacy and security, as well as increased data protection obligations imposed on merchants by credit card issuers. As a result, we may become subject to more extensive requirements to protect the customer information that we process in connection with the purchase of our products.

***Energy costs are a significant component of our operating expenses and increasing energy costs, unless offset by more efficient usage or other operational responses, may impact our profitability.***

We utilize gas, water, sewer and electricity in our stores and our third-party logistics providers use gas and diesel in the trucks that deliver products to our stores. Increases in energy costs, whether driven by increased demand, decreased or disrupted supply or an anticipation of any such events will increase the costs of operating our stores and may increase the costs of our products. We may not be able to recover these rising costs through increased prices charged to our customers, and any increased prices may exacerbate the risk of customers choosing lower-cost alternatives. In addition, if we are unsuccessful in attempts to protect against these increases in energy costs through long-term energy contracts, improved energy procurement, improved efficiency and other operational improvements, the overall costs of operating our stores will increase which would impact our profitability.

---

**Table of Contents**

*We are substantially dependent on a few key third-party vendors to provide logistical services for our stores, including services related to inventory replenishment and the storage and transportation of many of our products. A disruption in these relationships or a key distribution center, or a failure to renew or replace existing contractual relationships, may have a negative effect on our results of operations and financial condition.*

We currently rely upon independent third-party service providers for all product shipments to our stores. In particular, we rely on one third-party service provider to provide key services related to inventory management, warehousing and transportation, and, as a result, much of our inventory is stored at a single warehouse maintained by this provider. See Business Sourcing and Distribution . Products sourced and distributed through this provider accounted for approximately 56% of the merchandise we purchased during 2010, and, therefore, our relationship with this provider is important to us. Our current five-year contract with this provider expires during 2012, unless we and the provider agree to renew the agreement on mutually agreeable terms. Although we have not experienced difficulty in our inventory management, warehousing and transportation to date with this third-party service provider, interruptions could occur in the future. Further, although we expect that this third-party vendor, and our other key vendors, will have sufficient capacity to accommodate our anticipated growth, it or they may not have the resources or desire to do so. Any significant disruptions in our relationship with this provider or the single distribution center this provider uses to service our stores, or our relationships with our other key vendors, including due to their inability to accommodate our growth, or any failure to renew or replace our existing contractual relationship with our largest logistics provider, would make it difficult for us to continue to operate our existing business or pursue our growth plans until we execute replacement agreements or develop and implement self-distribution processes. While we believe that other third-party service providers could provide similar services on reasonable terms, they are limited in number and we cannot assure you that we would be able to find a replacement distributor on a timely basis or that such distributor would be able to fulfill our demands on commercially reasonable terms, which could have a material adverse effect on our results of operations and financial condition.

*We may experience negative effects to our reputation from real or perceived quality or health issues with our food products, which could have an adverse effect on our operating results.*

We believe customers count on us to provide them with fresh, high-quality food products. Concerns regarding the safety of our food products or the safety and quality of our food supply chain could cause shoppers to avoid purchasing certain products from us, or to seek alternative sources of food, even if the basis for the concern is outside of our control. Adverse publicity about these concerns, whether or not ultimately based on fact, and whether or not involving products sold at our stores, could discourage consumers from buying our products and have an adverse effect on our operating results. Furthermore, the sale of food products entails an inherent risk of product liability claims, product recall and the resulting negative publicity. Food products containing contaminants could be inadvertently distributed by us and, if processing at the consumer level does not eliminate them, these contaminants could result in illness or death. We cannot assure you that product liability claims will not be asserted against us or that we will not be obligated to perform product recalls in the future. Any such claims, recalls or adverse publicity with respect to our private-label products may have an even greater negative effect on our sales and operating results , in addition to generating adverse publicity for our private label brand.

Any lost confidence on the part of our customers would be difficult and costly to reestablish. Any such adverse effect could be exacerbated by our position in the market as a purveyor of fresh, high-quality food products and could significantly reduce our brand value. Issues regarding the safety of any food items sold by us, regardless of the cause, could have a substantial and adverse effect on our sales and operating results.

*The loss of key employees could negatively affect our business.*

A key component of our success is the experience of our key employees, including our President and Chief Executive Officer, Craig Carlock, our Senior Vice President Real Estate and Development, Randy Kelley, our Senior Vice President Store Operations, Sean Crane, and our Senior Vice President Merchandising and Marketing, Marc Jones. These employees have extensive experience in our industry and are familiar with our business, systems and processes. The loss of services of one or more of our key employees could impair our ability to manage our business effectively. We do not maintain key person insurance on any employee.

## **Table of Contents**

In addition to these key employees, we have other employees in positions, including those employees responsible for our merchandising and operations departments, that, if vacant, could cause a temporary disruption in our business until such positions are filled.

*Union attempts to organize our employees could negatively affect our business.*

None of our employees are currently subject to a collective bargaining agreement. As we continue to grow, and enter different regions, unions may attempt to organize all or part of our employee base at certain stores or within certain regions. Responding to such organization attempts may distract management and employees and may have a negative financial impact on individual stores, or on our business as a whole.

*Our management has limited experience managing a public company and our current resources may not be sufficient to fulfill our public company obligations.*

As a result of our initial public offering in November, 2010, we are subject to various regulatory requirements, including those of the Securities and Exchange Commission (the "SEC") and The NASDAQ Stock Market. These requirements include record keeping, financial reporting and corporate governance rules and regulations. Our management team has limited experience in managing a public company and, historically, has not had the resources typically found in a public company. Our internal infrastructure may not be adequate to support our increased reporting obligations and we may be unable to hire, train or retain necessary staff and may be reliant on engaging outside consultants or professionals to overcome our lack of experience or employees. Our business could be adversely affected if our internal infrastructure is inadequate, we are unable to engage outside consultants or are otherwise unable to fulfill our public company obligations.

*The terms of our revolving credit facility may restrict our current and future operations, which could adversely affect our ability to respond to changes in our business and to manage our operations.*

Our revolving credit facility contains, and any additional debt financing we may incur would likely contain, covenants that restrict our operations, including limitations on our ability to grant liens, incur additional debt, pay dividends, redeem our common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions. A failure by us to comply with the covenants or financial ratios contained in our revolving credit facility could result in an event of default, which could adversely affect our ability to respond to changes in our business and manage our operations. Upon the occurrence of an event of default, the lenders could elect to declare all amounts outstanding to be due and payable and exercise other remedies as set forth in the unsecured revolving credit facility. If the indebtedness under our revolving credit facility were to be accelerated, our future financial condition could be materially adversely affected.

*We will require significant capital to fund our expanding business, which may not be available to us on satisfactory terms or at all.*

To support our expanding business and pursue our growth strategy, we will utilize significant amounts of cash generated by our operations to pay our lease obligations, build out new store space, purchase inventory, pay personnel, further invest in our infrastructure and facilities, and pay for the increased costs associated with operating as a public company. We primarily depend on cash flow from operations and borrowings under our revolving credit facility to fund our business and growth plans. If our business does not generate sufficient cash flow from operations to fund these activities, and sufficient funds are not otherwise available to us under our revolving credit facility, we may need additional equity or debt financing. If such financing is not available to us, or is not available to us on satisfactory terms, our ability to operate and expand our business or to respond to competitive pressures would be limited and we could be required to delay, significantly curtail or eliminate planned store openings or operations or other elements of our growth strategy.

## **Table of Contents**

*We may incur additional indebtedness in the future which could adversely affect our financial health and our ability to react to changes to our business.*

We may incur additional indebtedness in the future. Any increase in the amount of our indebtedness could require us to divert funds identified for other purposes for debt service and impair our liquidity position. If we cannot generate sufficient cash flow from operations to service our debt, we may need to refinance our debt, dispose of assets or issue equity to obtain necessary funds. We do not know whether we will be able to take any of such actions on a timely basis, on terms satisfactory to us or at all. Our level of indebtedness has important consequences to you and your investment in our common stock.

For example, our level of indebtedness may:

require us to use a substantial portion of our cash flow from operations to pay interest and principal on our debt, which would reduce the funds available to us for working capital, capital expenditures and other general corporate purposes;

limit our ability to pay future dividends;

limit our ability to obtain additional financing for working capital, capital expenditures, expansion plans and other investments, which may limit our ability to implement our business strategy;

heighten our vulnerability to downturns in our business, the food retail industry or in the general economy and limit our flexibility in planning for, or reacting to, changes in our business and the food retail industry; or

prevent us from taking advantage of business opportunities as they arise or successfully carrying out our plans to expand our store base and product offerings.

We cannot assure you that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in amounts sufficient to enable us to make payments on our indebtedness or to fund our operations.

*If our stock price declines, you could lose a significant part of your investment.*

The market price of our stock may be influenced by many factors, some of which are beyond our control, including those described herein and the following:

the failure of securities analysts to cover or continue to cover our common stock;

changes in financial estimates by securities analysts;

the inability to meet the financial estimates of analysts who follow our common stock;

the failure to meet, or delay in meeting, our growth targets;

## Edgar Filing: Fresh Market, Inc. - Form 10-K

strategic actions by us or our competitors;

announcements by us or our competitors of significant contracts, acquisitions, joint marketing relationships, joint ventures or capital commitments;

variations in our quarterly operating results and those of our competitors;

---

**Table of Contents**

general economic and stock market conditions;

risks related to our business and our industry, including those discussed above;

changes in conditions or trends in our industry, markets or customers;

terrorist acts;

future sales of our common stock or other securities;

investor perceptions of the investment opportunity associated with our common stock relative to other investment alternatives; and

guidance, if any, that we provide to the public, any changes in this guidance or our failure to meet this guidance.

As a result of these factors, investors in our common stock may not be able to resell their shares at or above purchase price or may not be able to resell them at all. These broad market and industry factors may materially reduce the market price of our common stock, regardless of our operating performance. In addition, price volatility may be greater if the trading volume of our common stock is low.

***Future sales, or the perception of future sales, of our common stock may depress the price of our common stock.***

The market price of our common stock could decline significantly as a result of sales of a large number of shares of our common stock in the market, including shares that might be offered for sale by the Berry family. The sales, or the perception that these sales might occur, could depress the market price. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

The Berry family has rights to require us to file registration statements registering additional sales of shares of common stock or to include sales of such shares of common stock in registration statements that we may file for ourselves or other stockholders. Subject to compliance with applicable lock-up restrictions, shares of common stock sold under these registration statements can be freely sold in the public market. In the event such registration rights are exercised and a large number of shares of common stock are sold in the public market, such sales could reduce the trading price of our common stock. These sales also could impede our ability to raise future capital. Additionally, we will bear all expenses in connection with any such registrations (other than stock transfer taxes and underwriting discounts or commissions).

In connection with our initial public offering, we, our directors and executive officers and the Berry family have each agreed to lock-up restrictions, meaning that we and they and their permitted transferees will not be permitted to sell any shares of our common stock for 180 days after the date of the final prospectus, subject to exceptions, without the prior consent of J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated. J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated may, in their sole discretion and without notice, release all or any portion of the shares of our common stock from the restrictions in any of the lock-up agreements described above.

Also, in the future, we may issue shares of our common stock in connection with investments or acquisitions. The amount of shares of our common stock issued in connection with an investment or acquisition could constitute a material portion of our then outstanding shares of our common stock.

---

**Table of Contents**

***Failure to establish and maintain effective internal controls in accordance with Section 404 of Sarbanes-Oxley could have a material adverse effect on our business and stock price.***

As a public company, beginning in fiscal 2011, we will be required to document and test our internal control procedures in order to satisfy the requirements of Section 404 of Sarbanes-Oxley, which will require annual management assessments of the effectiveness of our internal control over financial reporting and a report by our independent registered public accounting firm that addresses the effectiveness of internal control over financial reporting. During the course of our testing, we may identify deficiencies that we may not be able to remediate in time to meet our deadline for compliance with Section 404. Testing and maintaining internal control can divert our management's attention from other matters that are important to the operation of our business. We also expect the regulations to increase our legal and financial compliance costs, make it more difficult to attract and retain qualified officers and members of our board of directors, particularly to serve on our audit committee, and make some activities more difficult, time consuming and costly. We may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404 or our independent registered public accounting firm may not be able or willing to issue an unqualified report on the effectiveness of our internal control over financial reporting. If we conclude that our internal control over financial reporting is not effective, we cannot be certain as to the timing of completion of our evaluation, testing and remediation actions or their effect on our operations because there is presently no precedent available by which to measure compliance adequacy.

In connection with the initial public offering we reviewed our accounting policies. As part of this review, and in connection with audits of our financial statements for certain prior periods, our independent registered public accountants identified three material weaknesses in our internal control over financial reporting related to our accounting for (1) compensated absences of our employees, which we had not been accruing over the service period during which the entitlement was earned, (2) license revenue with respect to sales of sushi, and (3) the reversal of certain non-cash compensation expenses in 2007 which, based on the timing of formal documentation, should have been recorded in 2008. We corrected these accounting treatments and restated our prior year financial statements and reflected these changes in our Registration Statement on Form S-1 initially filed May 3, 2010 in connection with our initial public offering.

If we are unable to conclude that we have effective internal control over financial reporting, our independent auditors are unable to provide us with an unqualified report as required by Section 404 or we are required to restate our financial statements, we may fail to meet our public reporting obligations and investors could lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock.

***We are a controlled company within the meaning of The NASDAQ Stock Market rules, and, as a result, will rely on exemptions from certain corporate governance requirements that provide protection to stockholders of other companies.***

As of January 30, 2011, the Berry family owns more than 50% of the total voting power of our common shares for the election of directors and we are a controlled company under The NASDAQ Stock Market corporate governance standards. As a controlled company, certain exemptions under The NASDAQ Stock Market standards free us from the obligation to comply with certain corporate governance requirements of The NASDAQ Stock Market, including the requirements:

that a majority of our board of directors consists of independent directors, as defined under the rules of The NASDAQ Stock Market;

that our director nominees be selected, or recommended for our board of directors selection, either (1) by a majority of independent directors in a vote by independent directors, pursuant to a nominations process adopted by a board resolution, or (2) by a nominating and governance committee comprised solely of independent directors with a written charter addressing the nominations process; and

that the compensation of our executive officers be determined, or recommended to the board for determination, by a majority of independent directors in a vote by independent directors, or a compensation committee comprised solely of independent directors.



## **Table of Contents**

Accordingly, for so long as we are a controlled company, you will not have the same protections afforded to stockholders of companies that are subject to all of The NASDAQ Stock Market corporate governance requirements.

***Prior to our initial public offering, we were treated as an S-corporation under Subchapter S of the Internal Revenue Code, and claims of taxing authorities related to our prior status as an S-corporation could harm us.***

Prior to November 9, 2010, we were treated as an S-corporation. If the unaudited, open tax years in which we were an S-corporation are audited by the Internal Revenue Service, and we are determined not to have qualified for, or to have violated, our S-corporation status, we will be obligated to pay back taxes, interest and penalties, and we do not have the right to reclaim tax distributions we have made to our stockholders during those periods. These amounts could include taxes on all of our taxable income while we were an S-corporation. Any such claims could result in additional costs to us and could have a material adverse effect on our results of operations and financial condition.

***We have entered into tax indemnification agreements with certain members of the Berry family and could become obligated to make payments to them for any additional federal, state or local income taxes assessed against them for fiscal periods prior to the initial public offering.***

Prior to November 9, 2010, we were treated as an S-corporation. In the event of an adjustment to our reported taxable income for a period or periods prior to termination of our S-corporation status, our stockholders at that time could be liable for additional income taxes for those prior periods. Therefore, we have entered into tax indemnification agreements with our stockholders prior to the offering. Pursuant to the tax indemnification agreements, we agreed that upon filing any tax return (amended or otherwise), or in the event of any restatement of our taxable income, in each case for any period during which we were an S-corporation, we will make a payment to each stockholder on a pro rata basis in an amount sufficient so that the stockholder with the highest incremental estimated tax liability (calculated as if the stockholder would be taxable on its allocable share of our taxable income at the highest applicable federal, state and local tax rates and taking into account all amounts we previously distributed in respect of taxes for the relevant period) receives a payment equal to its incremental tax liability. We also agreed to indemnify the stockholders for any interest, penalties, losses, costs or expenses (including reasonable attorneys' fees) arising out of any claim under the agreements.

***The Berry family continues to have substantial control over us and maintains the ability to control the election of directors and other matters submitted to stockholders for approval, which will limit your ability to influence corporate matters and may result in actions that you do not believe to be in our interests or your interests.***

As of January 30, 2011, the Berry family beneficially owns, in the aggregate, approximately 67% of our outstanding common stock. As a result, the Berry family will be able to exert a significant degree of influence or actual control over our management and affairs and over matters requiring stockholder approval, including the election of directors, a merger, consolidation or sale of all or substantially all of our assets and any other significant transaction.

This concentrated control will limit your ability to influence corporate matters, and the interests of the Berry family may not coincide with our interests or your interests. As a result, we may take actions that you do not believe to be in our interests or your interests and that could depress our stock price.

**Table of Contents**

*If securities or industry analysts do not publish or continue to publish research reports about our business, if they adversely change their recommendations regarding our stock or if our operating results do not meet their expectations, our stock price could decline.*

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. Moreover, if one or more of the analysts who cover our company downgrades our stock or if our operating results do not meet their expectations, our stock price could decline.

**Item 1B. Unresolved Staff Comments.**

Not applicable.

**Item 2. Properties.**

Our corporate headquarters are located in Greensboro, North Carolina and, as of January 30, 2011 we operated 100 stores in 20 states. In 2009 we increased our store base by six stores and in 2010 we increased our store base by eight stores. The following store list shows the number of stores operated in each state as of January 30, 2011:

State	Total Number of Stores	State	Total Number of Stores
Alabama	4	Mississippi	1
Arkansas	1	New York	1
Connecticut	1	North Carolina	15
Florida	24	Ohio	5
Georgia	10	Pennsylvania	3
Illinois	6	South Carolina	4
Indiana	3	Tennessee	6
Kentucky	3	Virginia	6
Louisiana	3	Wisconsin	1
Maryland	2		
Massachusetts	1	<b>Total</b>	<b>100</b>

We currently lease all of the properties for our 100 stores as well as our corporate headquarters; however, we purchased land in the latter part of 2010 for a store we expect to open in 2011. Our typical lease has a primary term of ten or fifteen years, with multiple options to renew that extend the term of our control. We do not believe that any individual store property is material to our financial condition or results of operation. Of the leases for our stores, one expires in 2011, one expires in 2012 and the balance expire at varying terms thereafter. We control options to renew and extend the terms of each of the active-store leases scheduled to expire in 2011 and 2012. As of January 30, 2011, we have executed twelve leases, one of which is a ground lease, for planned new store openings through 2011 and beyond.

In addition to new store openings, we occasionally remodel and relocate existing stores to improve operating performance. Despite the relative youth of our store base, we continuously consider whether any of our stores needs to be remodeled or relocated. We generally relocate stores to improve site characteristics or if customer demographics in the area have changed. We plan to relocate two stores and remodel two stores in 2011.

**Table of Contents**

**Item 3. Legal Proceedings.**

In the ordinary course of our business, we are subject to periodic lawsuits, investigations and claims, including, but not limited to, intellectual property disputes, contractual disputes, premises claims and employment, environmental, health, and safety matters. Although we cannot predict with certainty the ultimate resolution of any lawsuits, investigations and claims asserted against us, we do not believe any currently pending legal proceeding to which we are a party will have a material adverse effect on our business, prospects, financial condition, cash flows or results of operations.

As part of our ongoing efforts to protect our intellectual property rights, on February 2, 2010, we filed a Notice of Opposition with the United States Patent and Trademark Office, Trademark Trial and Appeal Board (the "TTAB") in response to an application filed by Associated Food Stores, Inc. ("Associated"), which operates supermarkets under the name "A Fresh Market" in Utah, to register the trademark "A Fresh Market". Associated subsequently filed an answer and counterclaim on March 15, 2010, in which it, among other things, sought to cancel our registrations for the trademarks *The Fresh Market* and *The Fresh Market* and Design, alleging that we cannot prevent other entities from registering confusingly similar marks to ours, because our marks are generic names for the goods and services for which they are registered. On March 18, 2011, the TTAB granted a Motion on Consent to Withdraw and Dismiss, which dismissed all proceedings before the TTAB. In the Motion the parties consented and stipulated to (1) Associated's withdrawal with prejudice of its application to register the trademark "A Fresh Market" and (2) Associated's withdrawal without prejudice of its counterclaim to cancel our registrations based on its allegations that the registered *The Fresh Market* and *The Fresh Market* and Design trademarks are generic names for the goods and services described in our registrations. Despite the conclusion of these proceedings with Associated, there may be future disputes with Associated or others regarding our trademark rights.

**Item 4. (Removed and Reserved)**

**Table of Contents****PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Our common stock has been quoted on The Nasdaq Global Select Market under the symbol TFM since November 5, 2010, following our initial public offering. Prior to this time, there was no public market for our common stock. The following table shows the high and low sale prices per share of our common stock as reported on The Nasdaq Global Select Market for the one month transition period ending on January 30, 2011 and the fiscal year ended December 31, 2010:

	High	Low
<b>2011</b>		
January 1, 2011 to January 30, 2011	\$ 42.07	\$ 35.81
<b>2010</b>		
November 5, 2010 to December 31, 2010	\$ 44.62	\$ 30.97

As of January 30, 2011, we had approximately 26 holders of record of our common stock. We believe that the number of beneficial owners of our common stock is substantially greater than the number of record holders because a large portion of our common stock is held of record in broker street names.

We currently expect to retain future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying any cash dividends on our common stock for the foreseeable future. The declaration and payment of future dividends to holders of our common stock will be at the discretion of our board of directors and will depend upon many factors, including our financial condition, earnings, legal requirements, restrictions in our debt agreements and other factors our board of directors deems relevant.

**Performance Graph**

The graph set forth below compares the cumulative total stockholder return on our common stock between November 5, 2010 (the date our common stock began trading on The Nasdaq Global Select Market) and January 30, 2011, with the cumulative total return of (i) the Nasdaq Composite Index and (ii) S&P Food Retail Index, over the same period. This graph assumes the investment of \$100 on November 5, 2010 in our common stock at the closing price of \$32.11 on such date, rather than the initial public offering price of \$22.00 per share, the Nasdaq Composite Index and the S&P Food Retail Index and assumes the reinvestment of dividends, if any.

The comparisons shown in the graph below are based on historical data. We caution that the stock price performance presented in the graph below is not necessarily indicative of, or is it intended to forecast, the potential future performance of our common stock. Information used in the graph was obtained from the Nasdaq Stock Market website, but we do not assume responsibility for any errors or omissions in such information.

**Use of Proceeds**

On November 4, 2010, our registration statement on Form S-1 (File No. 333-166473) was declared effective for our initial public offering, pursuant to which we registered the offering and sale of 13,175,000 shares of common stock by selling stockholders and the additional sale pursuant to the underwriters' over-allotment option of an additional 1,976,250 shares of common stock by the selling stockholders, at a public offering price of \$22.00 per share. The selling stockholders sold an aggregate of 15,151,250 shares of common stock, including 1,976,250 shares pursuant to the underwriters' over-allotment option, for an aggregate offering price of \$333,327,500 and the offering terminated. The expenses of the offering, not including the underwriting discount, amounted to \$4,815,000, and were paid by the company. The underwriting discount amounted to \$23,332,925 and was deducted from the selling stockholders proceeds. The managing underwriters were Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, and Goldman Sachs & Co.

**Table of Contents**

As a result of the offering, the selling stockholders received all of the net proceeds from the sale of the shares offered hereby. We did not receive any proceeds from the initial public offering.

**Item 6. Selected Financial Data.**

The following tables set forth our selected historical financial and other data, as well as certain pro forma information that reflects the income tax effect of our conversion from an S-corporation to a C-corporation.

The historical balance sheet data as of December 31, 2009, 2010 and the one month ended January 30, 2011, and the historical statement of income data for the years ended December 31, 2008, 2009, 2010 and the one month ended January 30, 2011 have been derived from our audited financial statements, which are included elsewhere in this Form 10-K. The historical balance sheet data as of December 31, 2007 and 2008 and our historical statement of income for December 31, 2007 has been derived from our audited financial statements as of December 31, 2007 and 2008, which are not included in this Form 10-K. Our financial statements as of and for the years ended December 31, 2009, 2010 and the one month ended January 30, 2011, were audited by Ernst and Young LLP, independent registered public accounting firm, and our financial statements as of and for the years ended December 31, 2007 and 2008 were audited by Grant Thornton LLP, independent registered public accounting firm.

The historical balance sheet data as of December 31, 2006, and the historical statements of income data for the years ended December 31, 2006 have been derived from our unaudited financial statements that are not included in this Form 10-K. The unaudited financial statements have been prepared on a basis consistent with our audited financial statements and, in the opinion of management, include all adjustments that management considers necessary for the fair presentation of the information for the unaudited periods.

You should read the selected historical financial and other data in conjunction with the information included under the heading **Management's Discussion and Analysis of Financial Condition and Results of Operations**, our audited financial statements and related notes which are included elsewhere in this Form 10-K. Our historical results set forth below are not necessarily indicative of results to be expected for any future period.

	December 31, 2006 (unaudited)	Year Ended				One Month Ended
		December 31, 2007	December 31, 2008	December 31, 2009	December 31, 2010	January 30, 2011
		(dollars in thousands, except share and per share amounts)				
<b>Statement of Income Data:</b>						
Sales	\$ 589,262	\$ 728,414	\$ 797,805	\$ 861,931	\$ 974,213	\$ 78,149
Cost of goods sold	414,897	506,458	554,969	585,360	654,986	53,302
Gross profit	174,365	221,956	242,836	276,571	319,227	24,847
Selling, general and administrative expenses (1)	137,425	164,731	180,765	191,250	244,378	17,623
Store closure and exit costs		2,151	562	4,361	792	37
Depreciation	12,954	19,163	24,482	27,880	33,122	2,729
Income from operations	23,986	35,911	37,027	53,080	40,935	4,458
Interest expense	3,427	5,469	5,267	3,806	2,374	87
Other income, net	(28)	(48)	(123)	(236)	(170)	(1)
Income before provision for income taxes	20,587	30,490	31,883	49,510	38,731	4,372
Recognition of net deferred tax liabilities upon C-corporation conversion (2)					19,125	
Tax provision (benefit), current year (2)	258	201	326	308	(3,309)	1,712

Edgar Filing: Fresh Market, Inc. - Form 10-K

Net income	\$	20,329	\$	30,289	\$	31,557	\$	49,202	\$	22,915	\$	2,660
------------	----	--------	----	--------	----	--------	----	--------	----	--------	----	-------

Net income per share

Basic and diluted	\$	0.42	\$	0.63	\$	0.66	\$	1.03	\$	0.48	\$	0.06
-------------------	----	------	----	------	----	------	----	------	----	------	----	------

Dividends declared per common share	\$	0.32	\$	0.36	\$	0.54	\$	0.42	\$	1.00	\$	
-------------------------------------	----	------	----	------	----	------	----	------	----	------	----	--

Shares used in computation of net income per share,

Basic	47,991,045	47,991,045	47,991,045	47,991,045	47,991,045	47,991,045	47,991,045
-------	------------	------------	------------	------------	------------	------------	------------

Diluted	47,991,045	47,991,045	47,991,045	47,991,045	47,991,045	48,059,882	48,095,459
---------	------------	------------	------------	------------	------------	------------	------------

**Table of Contents**

	December 31, 2006 (unaudited)	Year Ended				One Month Ended
		December 31, 2007	December 31, 2008	December 31, 2009	December 31, 2010	January 30, 2011
<b>Pro Forma Data (unaudited):</b>						
Income before provision for income taxes	\$ 20,587	\$ 30,490	\$ 31,883	\$ 49,510	\$ 38,731	
Pro forma provision for income taxes (3)	8,041	11,919	12,489	19,299	15,113	
Pro forma net income (3)	\$ 12,546	\$ 18,571	\$ 19,394	\$ 30,211	\$ 23,618	
<b>Pro forma net income per share (3)</b>						
Basic and diluted	\$ 0.26	\$ 0.39	\$ 0.40	\$ 0.63	\$ 0.49	
<b>Other Operating Data (unaudited):</b>						
Number of stores at end of period	63	77	86	92	100	100
Comparable store sales growth (4)	7.0%	4.5%	(1.5)%	(1.1)%	5.0%	1.4%
Gross square footage at end of period (in thousands)	1,267	1,584	1,811	1,955	2,129	2,129
Average comparable store size (gross square feet) (5)	19,004	19,786	20,641	20,936	21,205	21,273
Comparable store sales per gross square foot during period (5)	\$ 529	\$ 533	\$ 498	\$ 472	\$ 481	\$ 37
<b>Balance Sheet Data (end of period):</b>						
Total assets	\$ 147,557	\$ 187,695	\$ 233,550	\$ 235,541	\$ 258,002	\$ 258,857
Total long-term debt	\$ 66,500	\$ 92,670	\$ 130,000	\$ 98,200	\$ 82,450	\$ 81,850
Total stockholders' equity	\$ 22,387	\$ 34,242	\$ 37,905	\$ 68,302	\$ 69,212	\$ 72,077

- (1) During 2010, we recorded share-based compensation and related payroll tax expenses of \$28.8 million in connection with our initial public offering.
- (2) Income tax provision for 2010 included a \$19.1 million charge to recognize a net deferred tax liability resulting from the tax reorganization carried out in connection with our initial public offering. Additionally, from November 9, 2010 through the end of 2010, we recognized a \$3.7 million income tax benefit that resulted from our net loss from November 9, 2010 through the end of 2010.
- (3) Prior to November 9, 2010, we were treated as an S-corporation for U.S. federal income tax purposes. As a result, our income was not subject to U.S. federal income taxes or state income taxes where S-corporation status is recognized. In general, the corporate income or loss of an S-corporation is allocated to its stockholders for inclusion in their personal federal income tax returns and state income tax returns in those states where S-corporation status is recognized. We terminated our S-corporation status and converted to a C-corporation on November 9, 2010 in connection with our initial public offering, and we are now subject to additional entity-level taxes that will be reflected in our financial statements. The pro forma provision for income taxes reflects combined federal and state income taxes on a pro forma basis, as if we had been treated as a C-corporation, using blended statutory federal and state income tax rates of 39.1%, 39.1%, 39.2% and 39.0% in 2006, 2007, 2008 and 2009, respectively, and 39.0% for 2010. These tax rates reflect the sum of the federal statutory rate and a blended state rate based on our calculation of income apportioned to each state for each period.
- (4) Our practice is to include sales from a store in comparable store sales beginning on the first day of the sixteenth full month following the store's opening. When a store that is included in comparable store sales is remodeled or relocated, we continue to consider sales from that store to be comparable store sales. There may be variations in the way that our competitors calculate comparable or same store sales. As a result, data in this Form 10-K regarding our comparable store sales may not be comparable to similar data made available by our competitors. The January 2011 period has one less day than the same period last year, which negatively impacts the comparison by 3.4%.

## Edgar Filing: Fresh Market, Inc. - Form 10-K

See further discussion in Management's Discussion and Analysis of Financial Condition and Results of Operations.

- (5) Average comparable store size and comparable store sales per gross square foot are calculated using the gross square footage and sales for stores included within our comparable store base for each month during the given period.



---

**Table of Contents**

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.**

*This management's discussion and analysis of financial condition and results of operations contains forward-looking statements that involve risks and uncertainties. See Cautionary Note Regarding Forward-Looking Statements for a discussion of the uncertainties, risks and assumptions associated with those statements. You should read the following discussion in conjunction with Selected Historical Financial and Other Data and our audited financial statements and related notes which are included elsewhere in this Form 10-K. Our actual results may differ materially from those discussed in the forward-looking statements as a result of various factors, including but not limited to those described under Cautionary Note Regarding Forward-Looking Statements, Item 1A Risk Factors, and included in other portions of this Form 10-K.*

**Overview**

The Fresh Market is a high-growth specialty retailer focused on creating an extraordinary food shopping experience for our customers. Since opening our first store in 1982, we have offered high-quality food products, with an emphasis on fresh, premium perishables and an uncompromising commitment to customer service. We seek to provide an attractive, convenient shopping environment while offering our customers a compelling price-value combination. As of January 30, 2011, we operated 100 stores in 20 states, primarily in the Southeast, Midwest and Mid-Atlantic United States.

We believe several key differentiating elements of our business have enabled us to execute our strategy consistently and profitably across our expanding store base. We believe the differentiated shopping experience we provide has helped us to expand our business primarily through favorable word-of-mouth publicity. Within our smaller-box format, we focus on higher-margin food categories and strive to deliver a more personal level of service and a more enjoyable shopping experience. Further, our smaller-box format is adaptable to different retail sites and configurations and has facilitated our successful growth. Additionally, we believe our disciplined, comprehensive approach to planning and merchandising and the support we provide our stores allow us to deliver a consistent shopping experience and financial performance across our store base.

In addition to presenting the Company's financial results in conformity with U.S. generally accepted accounting principles ( GAAP ), the Company is also presenting results on an adjusted basis in order to exclude the impact of certain charges related to our initial public offering and the tax effect of converting from an S-corporation to a C-corporation in connection with our initial public offering. Adjusted results are non-GAAP financial measures. For a reconciliation of adjusted results to GAAP results and a discussion of why we use non-GAAP financial measures, see Non-GAAP Adjusted Financial Results and Results of Operations Year Ended December 31, 2010 Compared to the Year Ended December 31, 2009 below.

Operating income for 2010 decreased \$12.2 million, or 23.0%, to \$40.9 million from \$53.1 million in 2009. Share-based compensation and related payroll tax expense incurred in connection with our initial public offering reduced operating income in 2010 by \$28.8 million compared to 2009. Net income for 2010 was \$22.9 million, which includes the impact of the share-based compensation and related payroll tax expense incurred in connection with our initial public offering and the establishment of \$19.1 million of beginning deferred tax balances, compared to net income for 2009 of \$49.2 million. Diluted earnings per share for 2010 were \$0.48 compared to diluted earnings per share for 2009 of \$1.03.

Excluding the share-based compensation and related payroll tax expense incurred in connection with our initial public offering, adjusted operating income increased \$16.6 million, or 31.3%, to \$69.7 million in 2010 from \$53.1 million in 2009. Additionally, excluding the establishment of beginning deferred tax balances, adjusted net income increased 36.4% to \$41.2 million in 2010 from pro forma net income of \$30.2 million in 2009. Diluted adjusted earnings per share increased 36.5% to \$0.86 in 2010 compared to diluted pro forma earnings per share of \$0.63 in 2009.

---

## **Table of Contents**

Through our effort to expand our store base, we have achieved strong growth in store count and operating results. We grew from 53 stores at December 31, 2005, to 100 stores at December 31, 2010, a compound annual growth rate ( CAGR ) of approximately 13.5%. Our sales increased from \$459.7 million in 2005 to \$974.2 million in 2010, a CAGR of 16.2%.

### **Outlook**

We intend to continue our profitable growth by expanding our store base, driving comparable store sales and increasing our highly-attractive operating margins. Consistent with our history of growth, we intend to open new stores in existing markets and penetrate new markets. We view expansion of our store base as a core competency and have more than tripled our store count since 2000. We opened eight new stores in 2010 and believe there is a significant opportunity to continue to increase our number of stores. In addition, if attractive opportunities arise, we may acquire stores as a way to expand our store base and penetrate new markets. Our results of operations have been, and may continue to be, affected by the timing and number of new store openings, primarily because new stores generally have different performance profiles and greater variability in sales volumes than our mature stores.

We aim to increase our comparable store sales by generating growth in the number and size of customer transactions. Key elements of our strategy include increasing customer awareness, offering new and differentiated products and continuing to provide a distinctive in-store experience. We also intend to increase our operating margins through scale efficiencies, improved systems, continued cost discipline and enhancements to our merchandise offerings. We expect store growth will permit us to benefit from economies of scale in sourcing products and will allow us to leverage our existing infrastructure for scale efficiencies.

We believe that we are well-positioned to capitalize on evolving consumer preferences and other trends currently shaping the food retail industry. These trends include: a growing emphasis on the customer shopping experience; an increasing consumer focus on healthy eating choices and fresh, quality offerings, including regionally and locally sourced products; an improving perception of private-label product quality; and an increasing number of older people, a demographic that is expected to account for a disproportionately higher share of food-at-home spending by households.

We expect continued sales growth in fiscal 2011. The magnitude of expected growth could vary significantly due to overall economic and competitive conditions, and due to volatility in the supply and costs of commodities such as meat, cheese and produce. The Company expects that the development and maturation of new stores will also drive future sales growth. We anticipate opening an additional 12 to 14 new stores by the end of fiscal 2011 or early in fiscal 2012, in addition to remodeling two stores and relocating two stores during the same period.

### **How We Assess the Performance of Our Business**

In assessing our performance, we consider a variety of performance and financial measures. The key measures that we assess to evaluate the performance of our business are set forth below:

#### *Sales*

Our sales comprise gross sales net of coupons, commissions and discounts. Sales include sales from all of our stores.

The food retail industry and our sales are affected by general economic conditions and seasonality, as well as the other factors, discussed below, that affect our comparable store sales. Consumer purchases of specialty food products are particularly sensitive to a number of factors that influence the levels of consumer spending, including economic conditions, the level of disposable consumer income, consumer debt, interest rates and consumer confidence. In addition, our business is seasonal and, as a result, our

average weekly sales fluctuate during the year and are usually highest in the fourth quarter when customers make holiday purchases.

## **Table of Contents**

Improved economic conditions in 2010 resulted in improved sales, while adverse economic conditions resulted in lower sales in 2008 and 2009 due to decreased levels of consumer spending, disposable income and confidence. We believe that during 2008 and 2009, these factors led to decreases in both the number and average size of customer transactions at our comparable stores. The adverse effect on sales of the economic conditions in 2008 and 2009, however, was more than offset by growth in sales attributable to the new stores we opened in 2008 and 2009. In addition, growth in sales attributable to the new stores we opened in 2010 contributed significantly to improved sales.

### *Comparable Store Sales*

Our practice is to include sales from a store in comparable store sales beginning on the first day of the sixteenth full month following the store's opening. We believe that comparability is achieved approximately fifteen months after opening. When a store that is included in comparable store sales is remodeled or relocated, we continue to consider sales from that store to be comparable store sales. There may be variations in the way that our competitors calculate comparable or same store sales. As a result, data in this Form 10-K regarding our comparable store sales may not be comparable to similar data made available by our competitors.

Various factors may affect comparable store sales, including:

overall economic trends and conditions;

consumer preferences and buying trends;

our competition, including competitor store openings or closings near our stores;

the pricing of our products, including the effects of inflation or deflation;

the number of customer transactions at our stores;

our ability to provide an assortment of distinctive, high-quality product offerings to generate new and repeat visits to our stores;

the level of customer service that we provide in our stores;

our in-store merchandising-related activities;

our ability to source products efficiently;

our opening of new stores in the vicinity of our existing stores; and

the number of stores we open, remodel or relocate in any period.

As we continue to pursue our growth strategy, we expect that a significant percentage of our sales will continue to come from new stores not included in comparable store sales. Accordingly, comparable store sales is only one measure we use to assess our performance.

*Gross Profit*

Gross profit is equal to our sales minus our cost of goods sold. Gross margin rate measures gross profit as a percentage of our sales. Cost of goods sold includes the direct costs of purchased merchandise, distribution and supply chain costs, buying costs, supplies and store occupancy costs. Store occupancy costs include rent, common area maintenance, real estate taxes, personal property taxes, insurance, licenses and utilities. The components of our cost of goods sold may not be identical to those of our competitors. As a result, data in this Form 10-K regarding our gross profit and gross margin rate may not be comparable to similar data made available by our competitors.

## **Table of Contents**

Our cost of goods sold is directly correlated with sales. Changes in the mix of products sold may also impact our gross margin rate.

Gross margin rate enhancements are driven by:

economies of scale resulting from expanding our store base;

reduced shrinkage as a percentage of sales; and

productivity gains through process and program improvements.

In 2010, and during the adverse economic environment of 2008 and 2009, we were able to continue to improve our gross margin rate because our overall store growth allowed us to benefit from economies of scale. Our continued growth, at a time when many other purchasers of premium food products were not growing, further allowed us to benefit from greater purchasing power in sourcing products. Although not implemented in response to macroeconomic conditions, we have also benefited from our implementation of various technological and process improvements related to inventory management.

### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses consists of certain retail store and corporate costs, including compensation (both cash and share-based), benefit costs, pre-opening expenses, advertising and other direct store and corporate administrative costs. Share-based compensation expenses include those incurred in connection with our initial public offering as well as those arising from grants made under our 2010 Omnibus Incentive Compensation Plan. Pre-opening expenses are costs associated with the opening of new stores including recruiting, relocating and training personnel and other miscellaneous costs. Pre-opening costs and costs incurred for producing and communicating advertising are expensed when incurred.

Labor and corporate administrative costs generally decrease as a percentage of sales as sales increase. Accordingly, selling, general and administrative expenses as a percentage of sales is usually higher in lower volume quarters and lower in higher-volume quarters. Store-level labor costs are generally the largest component of our selling, general and administrative expenses. The components of our selling, general and administrative expenses may not be identical to those of our competitors. As a result, data in this Form 10-K regarding our selling, general and administrative expenses may not be comparable to similar data made available by our competitors. We expect that our selling, general and administrative expenses will increase in future periods due to our continuing store growth and in part due to additional legal, accounting, insurance and other expenses we expect to incur as a result of being a public company.

In 2009 and 2010, we continued the efforts we began in 2008, to reduce selling, general and administrative expenses. In 2010, we continued to refine labor scheduling and management staffing at our stores to better match employee staffing to expected customer traffic. In 2008 and 2009, we also implemented broad-based cost-savings measures at our corporate office.

These broad-based cost savings measures included a headcount reduction, reduced bonuses and merit pay increases, a reduction in our 401(k) matching contributions, reduced expenditures in connection with delivering corporate communications to our stores and reduced expenditures associated with travel and certain outside advisers.

## **Table of Contents**

In 2009, a stockholder of the Company granted stock options to certain key employees pursuant to separate arrangements between the stockholder and the respective employees. These options vested on November 4, 2010, in connection with our initial public offering and as a result we recognized share-based compensation expense of \$28.4 million and payroll related tax expense of \$0.4 million.

### *Income from Operations*

Income from operations consists of gross profit minus selling, general and administrative expenses, store closure and exit costs and depreciation.

### *Income Taxes*

Until November 9, 2010, we operated as an S-corporation, and did not pay federal corporate income tax or state corporate income tax in states that recognize S-corporation status. Instead, the stockholders of the S-corporation were responsible for income tax on the S-corporation's taxable income. Accordingly, our income tax provision in 2009 and for the portion of 2010 prior to our initial public offering only reflect state taxes owed by us in certain states in which we operate. Since November 9, 2010, we have operated as a C-corporation. In the fourth quarter of 2010, in connection with our conversion to a C-corporation, we recognized a \$19.1 million charge to establish deferred tax balances.

## **Change in Fiscal Year-End and Transition Period Financial Statements**

On January 26, 2011 our Board of Directors approved a change in our fiscal year-end from a calendar year-end of December 31 to a fiscal year-end ending on the last Sunday of January commencing with fiscal 2011. In connection with the change of our fiscal year-end, we have a 30-day transition period from January 1, 2011 to January 30, 2011, the audited results of which are reported below.

We changed our fiscal year-end in order to offer more comparable quarterly and annual data to our investors. As a specialty retailer focused on foods, our operations are more active during the periods surrounding holidays and can be subject to seasonal differences in the event that holiday periods fall within a particular fiscal period one year and a different fiscal period in a subsequent year. By changing our fiscal year end, revenues, including the use of gift cards given as holiday gifts, in the months of December and January will now appear in the same fiscal quarter and fiscal year resulting in greater comparability of our period to period financial results regardless of whether significant shopping occurs at the end of December or the beginning of January. In addition, the Easter holiday and the time periods surrounding Easter, are significant shopping periods for us and the change in our fiscal year end means that these periods will always be in our first fiscal quarter rather than occurring variously from one year to the next in the first quarter or the second quarter. We believe that this change in fiscal year end will provide investors with a more comparable quarterly and annual picture of our Company's operations.

As a result of the change in our fiscal year end, our fiscal quarters, each of which will now consist of three periods of four, four and five weeks, will also end on different dates from prior periods. Accordingly, we expect to recast our prior quarters' financial information in fiscal 2011 quarterly reports on Form 10-Q so that the prior period quarterly information is comparable to the quarterly information for fiscal 2011.

## **Results of Operations**

The following tables summarize key components of our results of operations for the periods indicated, both in dollars and as a percentage of sales.

**Table of Contents**

	December 31, 2008	Year Ended December 31, 2009	December 31, 2010	One Month Ended January 30, 2011
(dollars in thousands, except share and per share amount)				
<b>Statement of Income Data:</b>				
Sales	\$ 797,805	\$ 861,931	\$ 974,213	\$ 78,149
Cost of goods sold	554,969	585,360	654,986	53,302
Gross profit	242,836	276,571	319,227	24,847
Selling, general and administrative expenses	180,765	191,250	244,378	17,623
Store closure and exit costs	562	4,361	792	37
Depreciation	24,482	27,880	33,122	2,729
Income from operations	37,027	53,080	40,935	4,458
Interest expense	5,267	3,806	2,374	87
Other income, net	(123)	(236)	(170)	(1)
Income before provision for income taxes	31,883	49,510	38,731	4,372
Recognition of net deferred tax liabilities upon C-corporation conversion			19,125	
Tax provision (benefit), current year	326	308	(3,309)	1,712
Net income	\$ 31,557	\$ 49,202	\$ 22,915	\$ 2,660
<b>Net income per share</b>				
Basic and diluted	\$ 0.66	\$ 1.03	\$ 0.48	\$ 0.06
Dividends declared per common share	\$ 0.54	\$ 0.42	\$ 1.00	\$
Shares used in computation of net income per share,				
Basic	47,991,045	47,991,045	47,991,045	47,991,045
Diluted	47,991,045	47,991,045	48,059,882	48,095,459
<b>Pro Forma Data (unaudited):</b>				
Income before provision for income taxes	\$ 31,883	\$ 49,510	\$ 38,731	
Pro forma provision for income taxes (1)	12,489	19,299	15,113	
Pro forma net income (1)	\$ 19,394	\$ 30,211	\$ 23,618	

**Table of Contents****The Fresh Market, Inc.****Selected Historical Financial and Other Data**

	Year Ended			One Month Ended
	December 31, 2008	December 31, 2009	December 31, 2010	January 30, 2011
(dollars in thousands, except share and per share amounts)				
<b>Other Operating Data (unaudited):</b>				
Number of stores at end of period	86	92	100	100
Comparable store sales growth (2)	(1.5)%	(1.1)%	5.0%	1.4%
Gross square footage at end of period (in thousands)	1,811	1,955	2,129	2,129
Average comparable store size (gross square feet) (3)	20,641	20,936	21,205	21,273
Comparable store sales per gross square foot during period (3)	\$ 498	\$ 472	\$ 481	\$ 37

- (1) Prior to November 9, 2010, we were treated as an S-corporation for U.S. federal income tax purposes. As a result, our income was not subject to U.S. federal income taxes or state income taxes where S-corporation status is recognized. In general, the corporate income or loss of an S-corporation is allocated to its stockholders for inclusion in their personal federal income tax returns and state income tax returns in those states where S-corporation status is recognized. We terminated our S-corporation status and converted to a C-corporation on November 9, 2010 in connection with our initial public offering, and we are now subject to additional entity-level taxes that will be reflected in our financial statements. The pro forma provision for income taxes reflects combined federal and state income taxes on a pro forma basis, as if we had been treated as a C-corporation, using blended statutory federal and state income tax rates of 39.2% and 39.0% in 2008 and 2009, respectively, and 39.0 % for 2010. These tax rates reflect the sum of the federal statutory rate and a blended state rate based on our calculation of income apportioned to each state for each period.
- (2) Our practice is to include sales from a store in comparable store sales beginning on the first day of the sixteenth full month following the store's opening. When a store that is included in comparable store sales is remodeled or relocated, we continue to consider sales from that store to be comparable store sales. There may be variations in the way that our competitors calculate comparable or same store sales. As a result, data in this Form 10-K regarding our comparable store sales may not be comparable to similar data made available by our competitors. The January 2011 period has one less day than the same period last year, which negatively impacted the comparison by 3.4%. For further discussion see --Results of Operations--One Month Audited Transition Period Ended January 30, 2011 Compared to the One Month Unaudited Period Ended January 31, 2010.
- (3) Average comparable store size and comparable store sales per gross square foot are calculated using the gross square footage and sales for stores included within our comparable store base for each month during the given period.



**Table of Contents**

	Year Ended			One Month Ended
	December 31, 2008	December 31, 2009	December 31, 2010	January 30, 2011
Cost of goods sold	69.6%	67.9%	67.2%	68.2%
Gross profit	30.4%	32.1%	32.8%	31.8%
Selling, general and administrative expenses	22.7%	22.2%	25.1%	22.6%
Store closure and exit costs	0.1%	0.5%	0.1%	0.0%
Depreciation	3.1%	3.2%	3.4%	3.5%
Income from operations	4.6%	6.2%	4.2%	5.7%
Interest expense	0.7%	0.4%	0.2%	0.1%
Other income, net	0.0%	0.0%	0.0%	0.0%
Income before provision for income taxes	4.0%	5.7%	4.0%	5.6%
Recognition of net deferred tax liabilities upon C-corporation conversion	0.0%	0.0%	2.0%	0.0%
Tax provision (benefit), current year	0.0%	0.0%	(0.3)%	2.2%
Net income	4.0%	5.7%	2.4%	3.4%

Percentage totals in the above table may not equal the sum of the components due to rounding.

***One-Month Audited Transition Period Ended January 30, 2011 ( January 2011 ) Compared to the One-Month Unaudited Period Ended January 31, 2010 ( January 2010 )***

The transition period ended January 30, 2011 had 30 days while the comparable period in January 2010 had 31 days.

Sales for January 2011 increased by \$6.2 million, or 8.6%, to \$78.2 million, from \$72.0 million for January 2010. Our comparable store sales increased 1.4% for January 2011 compared to January 2010. The January 2011 period had one less day than the same period in 2010, which negatively impacted the comparison by 3.4%. Gross profit increased by \$1.8 million, or 7.8%, to \$24.8 million for January 2011, from \$23.0 million for January 2010. The gross margin rate decreased 10 basis points due to a LIFO charge of \$0.4 million in the one month ending January 2011 compared to a charge of \$0.1 million in January 2010. Selling, general and administrative expenses increased by \$1.6 million, or 10.0%, to \$17.6 million for January 2011, from \$16.0 million for January 2010. The increase was primarily attributable to eight additional stores operating during the 2011 period compared to 2010, which led to higher overall store-level labor expenses and other costs to operate our stores. Selling, general and administrative expenses increased as a percent of sales by 30 basis points in January 2011, mostly due to new public company costs and incremental share based compensation expense. In addition to the items above, depreciation expense had a negative impact on income from continuing operations due to accelerated depreciation associated with planned store relocations and remodels in 2011 and 2012. Income from continuing operations decreased by 2.2% to \$4.5 million for January 2011 compared to \$4.6 million for January 2010. Net income was \$2.7 million, for diluted earnings of \$0.06 per share, for January 2011 compared to \$4.2 million, or diluted earnings of \$0.09 per share for January 2010. The decrease in net income is attributable to our conversion from an S-corporation to a C-corporation, which resulted in additional entity-level taxes of \$1.7 million for the one month ended January 30, 2011 as compared to January 31, 2010.

***Non-GAAP Adjusted Financial Results***

In addition to presenting our financial results in conformity with GAAP within this Form 10-K, we are also presenting results on an adjusted basis in order to exclude the impact of certain charges related to our initial public offering and the tax effect of converting from an S-corporation to a C-corporation in connection with our initial public offering. Specifically, 2010 results include share-based compensation and related payroll tax expenses arising from the vesting of equity awards at the time of the initial public offering, as well as income tax charges incurred in order to establish beginning deferred tax balances arising from our conversion from an S-corporation to a C-corporation. Additionally, from January 1, 2010 through November 8, 2010, we did not incur corporate income tax due to our S-corporation status. Our adjusted results exclude the impact of the charges related to our initial public offering and reflect a pro forma provision for corporate income taxes for the portion of 2010 that we had S-corporation status. These adjusted financial results are non-GAAP financial measures. We believe that the presentation of adjusted financial results facilitates an understanding of our operations without the one-time impact associated with the initial public offering. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information prepared in accordance with GAAP.



---

**Table of Contents**

***Year Ended December 31, 2010 Compared to the Year Ended December 31, 2009***

*Sales*

Sales increased 13.0%, or \$112.3 million, to \$974.2 million in 2010, from \$861.9 in 2009. The 2010 increase in sales was attributable primarily to sales from eight stores that were not open in 2009, increased sales from seven stores that were only opened during a portion of 2009 and an overall increase in comparable store sales. There were 90 comparable stores and 10 non-comparable stores open at December 31, 2010.

Comparable store sales increased 5.0% in 2010 compared to 2009, as a result of a 3.0% increase in the number of transactions and a 2.0% increase in the average transaction size at our comparable stores. Average customer transaction size increased to \$30.10 for 2010, from \$29.51 for 2009.

*Gross Profit*

Gross profit, which includes occupancy costs, increased 15.4%, or \$42.6 million, to \$319.2 million for 2010, from \$276.6 million for 2009. The amount of the increase in gross profit attributable to increased sales was \$36.0 million and the amount of the increase in gross profit attributable to increased gross margin rate was \$6.6 million. Our cost of goods sold (exclusive of depreciation) increased by \$69.6 million for 2010 compared to 2009, which was primarily attributable to a \$62.9 million increase in merchandise product costs and a \$4.3 million increase in store occupancy costs. Gross margin rate increased 70 basis points to 32.8% for 2010 from 32.1% for 2009. The increase in our gross margin rate was primarily attributable to lower product costs as a percentage of sales. During 2010 and 2009, we continued to grow our order volume faster than that of many other businesses that purchase premium food products, which allowed us to benefit from greater purchasing power in sourcing our products. In addition, our gross margin rate benefited from the leverage achieved from comparable store sales growth, as certain fixed expenses, principally occupancy costs, did not increase at the same rate as comparable store sales. In 2010, the increase in the gross margin rate was also favorably impacted by reduced supplies expense as a percent of sales compared to 2009 and was partially offset by a higher LIFO inventory charge.

*Selling, General and Administrative Expenses*

Selling, general and administrative expenses increased 27.8%, or \$53.1 million, to \$244.4 million for 2010, from \$191.3 million for 2009. The increase in selling, general and administrative expenses was primarily attributable to share-based compensation and related payroll tax expense of \$28.8 million associated with our initial public offering. Also, an increase in the number of stores in operation and an increase in customer traffic during 2010 compared to 2009 led to higher overall store-level labor expenses and other costs to operate our stores. With more stores in operation during 2010, our salary and benefit expenses increased \$16.3 million and our other store operating expenses increased \$3.7 million, compared to 2009. In addition, our corporate administrative expenses increased \$31.9 million for 2010 as compared to 2009, primarily attributable to increased headcount, payroll and related expenses, and share-based compensation expenses for corporate employees.

Selling, general and administrative expenses as a percentage of sales for 2010 increased 290 basis points to 25.1% from 22.2% for 2009. Share-based compensation and related payroll tax expense incurred in connection with our initial public offering accounted for 300 basis points of increased expense and the remainder of selling, general and administrative expenses primarily from store payroll and benefit costs accounted for a 10 basis point decrease.

**Table of Contents**

Excluding the share-based compensation and related payroll tax expense associated with our initial public offering, adjusted selling, general, and administrative expenses for the year increased \$24.3 million to \$215.6 million. As a percent of sales, adjusted selling, general, and administrative expenses for 2010 were 22.1%, or 10 basis points lower than 2009. The following table provides an unaudited reconciliation of adjusted selling, general and administrative expenses, a non-GAAP financial measure, to selling, general and administrative expenses in accordance with GAAP:

	<b>2010</b>
	<i>(amounts in thousands)</i>
Selling, general and administrative expenses	\$ 244,378
Share-based compensation and related payroll tax expense associated with our initial public offering	(28,821)
<b>Adjusted selling, general and administrative expenses</b>	<b>\$ 215,557</b>

*Income from Operations*

For 2010, operating income decreased \$12.2 million, or 23.0%, to \$40.9 million from \$53.1 million in 2009. Income from operations as a percentage of sales for 2010 decreased to 4.2% from 6.2% for 2009. For 2010, share-based compensation and related payroll tax expense related to our initial public offering reduced operating income by \$28.8 million. Excluding these items, adjusted operating income increased \$16.6 million, or 31.3%, to \$69.7 million in 2010 from \$53.1 million in 2009. As a percent of sales, adjusted operating margin for 2010 was 7.2%, which was 100 basis points higher than for 2009. Store closure and exit costs decreased by \$3.6 million, to \$0.8 million for 2010 from \$4.4 million for 2009. During 2010, we did not record any charges related to additional store closures, whereas during 2009, we recorded charges for the closure of our store in Grand Rapids, Michigan in 2009 and also increased our estimated future net lease obligations associated with a store which closed in 2007. Depreciation increased 18.8%, or \$5.2 million, to \$33.1 million for 2010 from \$27.9 million for 2009 which was attributable to store unit growth and accelerated depreciation due to the early replacement of certain store equipment. The following table provides an unaudited reconciliation of adjusted income from operations, a non-GAAP financial measure, to income from operations in accordance with GAAP:

	<b>2010</b>
	<i>(amounts in thousands)</i>
Income from operations	\$ 40,935
Share-based compensation and related payroll tax expense associated with our initial public offering	28,821
<b>Adjusted income from operations</b>	<b>\$ 69,756</b>

*Interest Expense*

Interest expense decreased 36.8%, or \$1.4 million, to \$2.4 million for 2010 from \$3.8 million for 2009, due primarily to reduced weighted average borrowings under our revolving credit facility. In addition, our effective interest rate on our long-term debt, including our interest rate swaps, was lower for 2010 than 2009. We benefited from a reduced base rate and applicable margin on our revolving credit facility as well as the expiration of two of our interest rate swaps in 2010 for which we paid a fixed rate of 4.95% and 3.9% on the notional amounts of \$12.5 million and \$15.0 million, respectively.

**Table of Contents***Income Tax Expense*

In 2010 we incurred a \$19.1 million charge to recognize a net deferred tax liability resulting from the tax reorganization carried out in connection with our initial public offering. Additionally, from November 9, 2010 through the end of 2010, we recognized a \$3.7 million income tax benefit that resulted from our pre-tax loss from November 9, 2010 through the end of 2010. The pre-tax loss was primarily attributable to the \$28.8 million in share-based compensation expense and related payroll tax expense incurred in connection with our initial public offering.

*Net Income*

Net income decreased 53.5%, or \$26.3 million, to \$22.9 million for 2010, from \$49.2 million for 2009. Net income as a percentage of sales for 2010 decreased to 2.4% from 5.7% for 2009. Adjusted net income increased 36.4%, or \$11.0 million, to \$41.2 million for 2010, from pro forma net income of \$30.2 million for 2009. Adjusted net income as a percentage of sales increased to 4.2% for 2010 from pro forma net income as a percentage of sales of 3.5% for 2009. The following table provides an unaudited reconciliation of adjusted net income, a non-GAAP financial measure, to net income in accordance with GAAP:

	(amounts in thousands, except per share amounts)	
	Net Income	2010 Diluted Earnings Per Share
Net income	\$ 22,915	\$ 0.48
Share-based compensation expense (1)	17,575	0.37
Recognition of net deferred tax liabilities upon C-corporation conversion	19,125	0.40
Tax provision (2)	(18,422)	(0.39)
Adjusted net income	\$ 41,193	\$ 0.86

- (1) Represents share based compensation expense of \$28.8 million including related payroll taxes incurred in connection with our initial public offering, net of tax benefit.
- (2) Represents estimated income taxes from January 1, 2010 to November 8, 2010, the time period we were an S-corporation, using a blended statutory rate of 39.0%, which reflects combined federal and state income taxes, as if we had been treated as a C-corporation.

***Year Ended December 31, 2009 Compared to the Year Ended December 31, 2008****Sales*

Sales increased 8.0%, or \$64.1 million, to \$861.9 million in 2009 from \$797.8 million in 2008, resulting from a \$72.6 million increase in non-comparable store sales, partially offset by an \$8.5 million decrease in comparable store sales. The increase in sales was primarily due to the opening of seven new stores in 2009, partially offset by the closure of one store and a decrease in comparable store sales. There were 80 comparable stores and 12 non-comparable stores open at December 31, 2009.

Comparable store sales decreased 1.1% in 2009, as a result of a 2.7% decrease in average transaction size, partially offset by a 1.6% increase in the number of transactions at our comparable stores. The number of customer transactions at our stores, as compared to the prior year period, began to improve in the second quarter of 2009. Average customer transaction size decreased to \$29.57 in 2009 from \$30.37 in 2008, however, average customer transaction size began to improve in the fourth quarter of 2009. For the second half of 2009, we experienced positive comparable store sales, with comparable store sales increasing 6.2% in the fourth quarter of 2009 compared to the fourth quarter of 2008.



---

**Table of Contents***Gross Profit*

Gross profit increased 13.9%, or \$33.8 million, to \$276.6 million in 2009 from \$242.8 million in 2008. The amount of the increase in gross profit attributable to increased sales was \$19.5 million and the amount of the increase in gross profit attributable to increased gross margin rate was \$14.2 million. Our cost of goods sold (exclusive of depreciation) increased by \$30.4 million for 2009 compared to 2008, primarily attributable to a \$25.6 million increase in product costs and a \$6.5 million increase in store occupancy costs. Gross margin rate increased 170 basis points to 32.1% for 2009 from 30.4% for 2008. In 2009, we achieved lower cost of goods sold as a percentage of sales, compared to 2008, as our overall growth allowed us to benefit from economies of scale and as various organizational, technological and process refinements improved ordering and decreased shrinkage.

*Selling, General and Administrative Expenses*

Selling, general and administrative expenses increased 5.8%, or \$10.5 million, to \$191.3 million in 2009 from \$180.8 million in 2008. The increase in selling, general and administrative expenses was primarily attributable to an increase in the number of stores in operation during 2009 compared to 2008, which led to higher overall store-level labor expenses and costs to operate our stores. With more stores in operation during 2009, our store-level labor expenses increased \$7.8 million and our other store operating expenses increased \$1.2 million, compared to 2008. In addition, our corporate administrative expenses increased \$2.0 million in 2009 as compared to 2008, primarily attributable to increased compensation expenses for corporate employees, partially offset by a \$0.6 million decrease in loss on disposal of assets.

Selling, general and administrative expenses as a percentage of sales for 2009 decreased by 50 basis points to 22.2% from 22.7% for 2008. The decrease in selling, general and administrative expenses as a percentage of sales was primarily the result of cost-containment measures in response to adverse economic conditions, and because our overall growth allowed us to benefit from economies of scale. In 2009, we improved our store-level labor expense by refining labor scheduling and management staffing to better match employee staffing to expected customer traffic. Overall, our store-level labor expense as a percentage of sales decreased by 30 basis points, contributing approximately 65% of the overall expense improvement. We were able to make these refinements by training employees in multiple areas of our store operations and introducing various organizational, technological and process improvements. By training employees to work in more than one store department as needs dictate we were able to improve the efficiency of our labor scheduling. The ability of our employees to work across departments has allowed us to reduce the total labor hours required to staff our stores. We also implemented broad-based cost-savings measures at our corporate office to manage our expenses.

*Income from Operations*

Income from operations increased 43.4%, or \$16.1 million, to \$53.1 million in 2009 from \$37.0 million in 2008. Income from operations as a percentage of sales for 2009 increased to 6.2% from 4.6% for 2008. Store closure and exit costs increased by \$3.8 million, to \$4.4 million in 2009 from \$0.6 million in 2008. The increase in store closure and exit costs resulted from the closure of our store in Grand Rapids, Michigan in 2009 as well as a change in our estimated future net lease obligations associated with a store we closed in 2007. We did not close any stores in 2008. Depreciation increased by \$3.4 million, to \$27.9 million in 2009 from \$24.5 million in 2008, primarily attributable to store growth over that time.

*Interest Expense*

Interest expense decreased 27.7%, or \$1.5 million, to \$3.8 million in 2009 from \$5.3 million in 2008, due primarily to a reduced average interest rate under our revolving credit facility.

*Net Income*

As a result of the foregoing, net income increased 55.9%, or \$17.6 million, to \$49.2 million in 2009 from \$31.6 million in 2008. Net income as a percentage of sales for 2009 increased to 5.7% from 4.0% for 2008.

**Table of Contents****Liquidity and Capital Resources**

Our primary sources of liquidity are cash generated from operations and borrowings under our revolving credit facility. Our primary uses of cash are purchases of inventory, operating expenses, capital expenditures primarily for opening new stores and relocating and remodeling existing stores, debt service, corporate taxes and, while we were an S-corporation, distributions to our stockholders. We believe that the cash generated from operations, together with the borrowing availability under our revolving credit facility, will be sufficient to meet our working capital needs for at least the next twelve months, including investments made, and expenses incurred, in connection with opening new stores and relocating and remodeling existing stores and other strategic initiatives. These strategic initiatives include the replacement of store equipment and product display fixtures, and investments in information technology and merchandising enhancements. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day or, in the case of credit or debit card transactions, within seven days of the related sale.

While adverse economic conditions in 2008 and 2009 materially impacted our comparable store sales, these conditions did not materially affect our liquidity or borrowing costs. The adverse economic conditions did not materially affect our liquidity or borrowing costs because (1) our increased net income resulted in increased net cash provided by operating activities, (2) we reduced capital expenditures in 2009 in response to the adverse economic conditions and (3) we were able to access committed financing through our revolving credit facility, the covenants and pricing of which are unrelated to comparable store sales.

At January 30, 2011, we had \$7.9 million in cash and cash equivalents and \$86.2 million in borrowing availability pursuant to our 2007 Credit Facility (defined below). On February 22, 2011, we terminated the 2007 Credit Facility and entered into the 2011 Credit Facility (defined below). At closing, approximately \$74.7 million was drawn under the 2011 Credit Facility to repay borrowings under the 2007 Credit Facility. The 2007 Credit Facility and 2011 Credit Facility are discussed under Financing Activities and Revolving Credit Facility below.

While we believe we have sufficient liquidity and capital resources to meet our current operating requirements and expansion plans, we may elect to pursue additional expansion opportunities within the next year which could require additional debt or equity financing. If we are unable to secure additional financing at favorable terms in order to pursue such additional expansion opportunities, our ability to pursue such opportunities could be materially adversely affected.

A summary of our operating, investing and financing activities are shown in the following table:

	December 31, 2008	Year Ended December 31, 2009	December 31, 2010	One Month Ended January 30, 2011
Net cash provided by operating activities	\$ 60,388	\$ 84,774	\$ 111,438	\$ 9,230
Net cash used in investing activities	(64,493)	(36,386)	(41,926)	(4,424)
Net cash provided by (used in) financing activities	7,589	(51,901)	(68,675)	(600)
Net increase (decrease) in cash and cash equivalents	\$ 3,484	\$ (3,513)	\$ 837	\$ 4,206

*Operating Activities*

Cash provided by operating activities consists primarily of net income adjusted for non-cash items, including depreciation, the effect of working capital changes and realized losses on disposal of property and equipment. In 2010, these non-cash items included an increase in share-based compensation expense as a result of our initial public offering and the recognition of deferred income taxes due to our conversion from an S-corporation to a C-corporation.



**Table of Contents**

	December 31, 2008	Year Ended December 31, 2009	December 31, 2010	One Month Ended January 30, 2011
Net income	\$ 31,557	\$ 49,202	\$ 22,915	\$ 2,660
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation and amortization	24,534	27,929	33,171	2,734
Impairments and loss on disposal of property and equipment	1,322	1,985	817	21
Share-based compensation associated with liability awards		232	29,420	
Share-based compensation - new awards			358	197
Deferred income taxes			15,444	1,612
Change in working capital	2,975	5,426	9,313	2,006
<b>Net cash provided by operating activities</b>	<b>\$ 60,388</b>	<b>\$ 84,774</b>	<b>\$ 111,438</b>	<b>\$ 9,230</b>

Net cash provided by operating activities increased 31.4%, or \$26.6 million, to \$111.4 million for 2010 from \$84.8 million for 2009. The increase in net cash provided by operating activities was primarily due to an increase in our net income adjusted for non-cash items.

Net cash provided by operating activities increased 40.4%, or \$24.4 million, to \$84.8 million in 2009 from \$60.4 million in 2008. The \$24.4 million increase in net cash provided by operating activities was primarily due to an increase in our net income adjusted for non-cash items, and reduced working capital needs, primarily driven by lower inventory values.

*Investing Activities*

Cash used in investing activities consists primarily of capital expenditures for opening new stores and relocating and remodeling existing stores, as well as investments in information technology and merchandising enhancements.

	December 31, 2008	Year Ended December 31, 2009	December 31, 2010	One Month Ended January 30, 2011
Purchases of property and equipment	\$ (64,571)	\$ (36,424)	\$ (41,983)	\$ (4,424)
Proceeds from sale of property and equipment	78	38	57	
<b>Net cash used in investing activities</b>	<b>\$ (64,493)</b>	<b>\$ (36,386)</b>	<b>\$ (41,926)</b>	<b>\$ (4,424)</b>

Capital expenditures increased 15.4%, or \$5.6 million, to \$42.0 million for 2010 from \$36.4 million for 2009. The increase in capital expenditures was primarily due to \$4.7 million being spent on new merchandising and information technology initiatives during 2010. The remainder of the increase was related to the timing differences in construction billings for 2010 compared to 2009.

Capital expenditures decreased 43.6%, or \$28.2 million, to \$36.4 million in 2009 from \$64.6 million in 2008. The decrease in capital expenditures in 2009 was primarily a result of fewer new store openings. In response to adverse economic conditions, we decreased our new store openings from nine new stores in 2008 to seven new stores in 2009, which was less than the number of stores we aimed to open before economic conditions deteriorated.

**Table of Contents**

We plan to spend approximately \$85 million to \$90 million on capital expenditures during fiscal 2011, of which approximately 90% will be in connection with opening new stores and relocating and remodeling existing stores, with the remainder being used for other capital expenditures.

*Financing Activities*

Cash provided by (used in) financing activities consists principally of borrowings and payments under our revolving credit facility, equity issuance costs associated with our initial public offering and, prior to our initial public offering, distributions to our stockholders. Prior to our initial public offering the distributions to our stockholders consisted of both discretionary distributions and distributions to enable our stockholders to pay their tax obligations due to our S-corporation status, which we funded through borrowings under our revolving credit facility. We currently do not intend to pay cash dividends on our common stock. See Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities for a discussion of our dividend policy.

	Year Ended			One Month Ended
	December 31, 2008	December 31, 2009	December 31, 2010	January 30, 2011
Borrowings on revolving credit note	\$ 140,220	\$ 230,896	\$ 326,641	\$ 23,886
Payments made on revolving credit note	(102,890)	(262,696)	(342,391)	(24,486)
Decrease in bank overdrafts	(3,743)			
Equity issuance costs			(4,815)	
Distributions to stockholders	(25,998)	(20,101)	(48,110)	
Net cash provided by (used in) financing activities	\$ 7,589	\$ (51,901)	\$ (68,675)	\$ (600)

Net cash used in financing activities during 2010 and 2009 was \$68.7 million and \$51.9 million, respectively. The \$16.8 million increase in net cash used in financing activities was primarily due to distributions to our stockholders of \$48.1 million during 2010, compared to \$20.1 million in distributions to our stockholders during 2009. In addition, we incurred equity issuance costs of \$4.8 million as a result of our initial public offering. Net repayments under our revolving credit facility during 2010 and 2009 were \$15.7 million and \$31.8 million, respectively.

Net cash used in financing activities during 2009 was \$51.9 million and net cash provided by financing activities was \$7.6 million in 2008. The \$59.5 million change in net cash used in financing activities was due primarily to net repayments of \$31.8 million under our revolving credit facility in 2009, compared to net borrowings of \$37.3 million under our revolving credit facility during 2008. Due to the refinement in our cash management activities implemented during 2009, the frequency with which we borrowed and repaid amounts under our revolving credit facility increased in 2009 compared to 2008, resulting in higher levels of borrowings and repayments. In addition, distributions to our stockholders during 2009 totaled \$20.1 million, compared to \$26.0 million in distributions to our stockholders during 2008.

*Revolving Credit Facility*

On February 22, 2011, we terminated our revolving credit facility that had been in place at January 30, 2011 and entered into a credit agreement with Bank of America, N.A. as Administrative Agent, Swing Line Lender, and Letter of Credit Issuer, and several other lending institutions (the 2011 Credit Facility). The 2011 Credit Facility refinances and replaces our credit agreement dated February 27, 2007 by and among the Company, Bank of America, N.A. as Administrative Agent, Swing Line Lender, and Letter of Credit Issuer, and the several other lending institutions (the 2007 Credit Facility). The 2011 Credit Facility matures February 22, 2016, and is available to provide support for working capital, capital expenditures and other general corporate purposes, including permitted acquisitions, issuance of letters of credit, refinancing and payment of fees. While we currently have no material domestic subsidiaries, other entities will guarantee our obligations under the 2011 Credit Facility if and when they become material domestic subsidiaries during the term of the 2011 Credit Facility.

---

**Table of Contents**

The 2011 Credit Facility provides for total borrowings of up to \$175 million. Under the terms of the 2011 Credit Facility, we are entitled to request an increase in the size of the facility by an amount not exceeding \$75 million in the aggregate. If the existing lenders elect not to provide the full amount of a requested increase, or in lieu of accepting offers from existing lenders to increase their commitments, we may designate one or more other lender(s) to become a party to the 2011 Credit Facility, subject to the approval of the Administrative Agent. The 2011 Credit Facility includes a letter of credit sublimit of \$25 million and a swing line sublimit of \$10 million. At closing, approximately \$74.7 million was drawn under the 2011 Credit Facility to repay borrowings under the 2007 Credit Facility.

At our option, outstanding borrowings bear interest at (i) the London Interbank Offered Rate plus an applicable margin that ranges from 1.00% to 2.25%, (ii) the Eurodollar rate plus an applicable margin that ranges from 1.00% to 2.25%, or (iii) the base rate plus an applicable margin that ranges from 0% to 1.25%, where the base rate is defined as the greatest of: (a) the federal funds rate plus 0.50%, (b) Bank of America's prime rate, and (c) the Eurodollar rate plus 1.00%. The commitment fee calculated on unused portions of the credit facility ranges from 0.30% to 0.45% per annum.

The 2011 Credit Facility contains a number of affirmative and restrictive covenants, including limitations on our ability to grant liens, incur additional debt, pay dividends, redeem our common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions.

In addition, the 2011 Agreement provides that we will be required to maintain the following financial ratios:

a consolidated maximum leverage ratio as of the end of any quarter of not more than 4.25 to 1.00, based upon the ratio of (i) adjusted funded debt (as defined in the 2011 Credit Facility) to (ii) EBITDAR (as defined in the 2011 Credit Facility) over the period consisting of the four fiscal quarters ending on or before the determination date, and

a consolidated fixed charge coverage ratio of not less than 1.70 to 1.00, based upon the ratio of (i) EBITDAR (as defined in the 2011 Credit Facility) less cash taxes paid by the company and certain discretionary distributions over the period consisting of the four fiscal quarters ending on or immediately prior to the determination date to (ii) the sum of interest expense, lease expense, rent expense and the current portion of capitalized lease obligations for such period and the current portion of long-term liabilities for the four fiscal quarters ending as of the end of any quarter on or prior to the determination date.

We were in compliance with all debt covenants under the 2007 Credit Facility as of December 31, 2010.

**Table of Contents****Contractual Obligations**

The following table summarizes our contractual obligations, as of January 30, 2011.

	Payments Due by Period				
	Total	Less than 1 year	1 - 3 years (in thousands)	3 - 5 years	More than 5 years
Long-term debt obligations (1)	\$ 81,850	\$	\$ 81,850	\$	\$
Estimated interest on long-term debt obligations (2)	1,400	1,326	74		
Operating lease obligations (3)	317,882	31,547	67,646	63,239	155,450
Purchase obligations (4)	2,398	2,398			
Contractual obligations for construction-related activities	11,111	11,111			
<b>Total</b>	<b>\$ 414,641</b>	<b>\$ 46,382</b>	<b>\$ 149,570</b>	<b>\$ 63,239</b>	<b>\$ 155,450</b>

1. Reflects the outstanding balance under the 2007 Credit Facility at January 30, 2011. Our balance outstanding fluctuates as we routinely draw new advances or make payments against outstanding advances based on our liquidity. For a more detailed description of our 2011 Credit Facility, see Note 19 to our financial statements found elsewhere in this document.
2. The outstanding balances under the 2007 Credit Facility bore variable interest at one-month LIBOR plus an applicable margin, or 0.9% at January 30, 2011. We had one interest rate swap in place that covered a notional amount of \$15.0 million, or 18.3%, of the outstanding balance under the 2007 Credit Facility at January 30, 2011, which expires in November 2011. Our interest rate swap effectively fixed the interest rate on the notional amount at approximately 4.9%. This interest rate swap remains in place to cover a corresponding notional amount under the 2011 Credit Facility. For the purposes of this table, we estimated interest expense to be paid during the remaining term of the 2007 Credit Facility using the outstanding balance, interest rate and terms of our interest rate swap in place as of January 30, 2011. Our actual cash payments for interest under the 2011 Credit Facility will fluctuate as the outstanding balance changes with our cash needs and the one-month LIBOR rate fluctuates. For a more detailed description of the interest requirement for our long-term debt and our interest rate swaps, see Note 3 and Note 4 to our financial statements found elsewhere in this Form 10-K.
3. Represents the minimum lease payments due under our operating leases, excluding annual common area maintenance, insurance and taxes related to our operating lease obligations, which combined represented approximately 31% of our minimum lease obligations. For a more detailed description of our operating leases, see Note 7 to our financial statements found elsewhere in this Form 10-K.
4. Purchase obligations include agreements to purchase goods and services made in the normal course of business that are enforceable and legally binding on us. Our purchase obligations consist predominantly of contracts to purchase certain inventory items. This amount does not include any payment obligations with respect to products on hand at our logistics providers as we do not typically take title or have any obligation to pay for products delivered by our logistics provider until we receive the products at our store locations. Although we occasionally have obligations to purchase any inventory on-hand in the event a contract with a logistics provider is terminated, we also generally enter into arrangements with any subsequent logistics provider pursuant to which the subsequent logistics provider purchases the inventory on-hand at the former logistics provider or we deplete the inventory on-hand at the former logistics provider as the termination date approaches.

We periodically make other commitments and become subject to other contractual obligations that we believe to be routine in nature and incidental to the operation of our business. We believe that such routine commitments and contractual obligations do not have a material impact on our business, financial condition or results of operations.



## **Table of Contents**

### **Off-Balance Sheet Arrangements**

We are not party to any off-balance sheet arrangements.

### **Critical Accounting Policies**

In presenting our financial statements in conformity with U.S. generally accepted accounting principles, or GAAP, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures.

Some of the estimates and assumptions that we are required to make relate to matters that are inherently uncertain as they pertain to future events. We base these estimates and assumptions on historical experience or on various other factors that we believe to be reasonable and appropriate under the circumstances. On an ongoing basis, we reconsider and evaluate our estimates and assumptions. Actual results may differ significantly from these estimates. Future results may differ from our estimates under different assumptions or conditions.

We believe that the critical accounting policies listed below involve our more significant judgments, assumptions and estimates and, therefore, could have the greatest potential impact on our financial statements.

For further information on our critical and other significant accounting policies, see the notes to our financial statements included elsewhere in this Form 10-K.

#### *Inventories*

Our inventories are stated at the lower of cost or market. Predominantly all of our inventories are valued using the last-in, first-out, or LIFO, method whereby the costs of the first items purchased remain in inventory and are used to value ending inventory. We use the link chain method for computing dollar value LIFO, whereby the base year values of beginning and ending inventories are determined using cumulative price indexes published by the Bureau of Labor Statistics. Valuing inventory using LIFO requires management to select from different available methods. Using a different method could result in a change in our estimate of the LIFO value of our inventory and that difference could be materially different.

The current cost of our inventories is determined using the first-in, first-out, or FIFO, method. Our FIFO cost includes purchase price net of vendor allowances. The excess of the current cost of inventories over the LIFO value, or the LIFO reserve, was approximately \$4.5 million and \$4.7 million at December 31, 2009 and 2010, respectively, and \$5.1 million at January 30, 2011.

#### *Impairment of Long-Lived Assets*

We assess our long-lived assets, principally property and equipment, for possible impairment whenever events or changes in circumstances indicate the carrying value of a long-lived asset or group of assets may not be recoverable. Recoverability is measured by a comparison of the carrying amount of the assets to the future undiscounted cash flows expected to be generated by the assets. If an impairment is indicated, a loss is recognized for any excess of the carrying value over the estimated fair value of the asset.

Our judgment regarding the existence of circumstances that indicate an asset's carrying value may not be recoverable, and therefore potentially impaired, is based on several factors, including a decision to close a store or an unexpected decline in long-term cash flows. Determining whether an impairment exists requires that we use estimates and assumptions of projected cash flows and operating results for the asset or assets being assessed. Our cash flow projections look several years into the future and include assumptions concerning variables such as the potential impact of operational changes, competitive factors, inflation and the economy. Our estimate of fair value used in calculating an impairment loss is based on market values, if available, or our estimated future cash flow projections discounted to their present value. Using different assumptions and definitions could result in a change in our estimates of cash flows and fair value and those differences could produce materially different results.

#### *Closed Store Reserves*

We record a reserve for future lease obligations associated with stores that are no longer being utilized in our current operations. The fair value of the closed store liability is estimated using a discount rate to calculate the present value of the remaining noncancelable lease payments at the cease use date for the store, net of an estimate of subtenant income. Lease payments for operating leases included in our closed store reserve are expected to be paid over the remaining terms of the respective leases.



---

## **Table of Contents**

Our assumptions about future cash payments to be made as part of the lease agreements are based on the terms contained in the lease agreement. In determining the fair value of the liability, we offset the future lease payments with an estimate of the amount of subtenant income that could be reasonably obtained for the store properties. Our expectations of potential subtenant income are based on variable factors including our knowledge of the geographical area in which the closed property is located, and existing economic conditions. We seek advice from local real estate professionals to develop our assumptions. While we believe our current estimates of reserves for closed properties are adequate, it is possible that market and economic conditions could cause us to change our assumptions and may require additional reserves. We review our estimates used in determining the closed store reserve on a quarterly basis and record adjustments, if necessary, in the period in which the change becomes known.

### *Insurance Reserves*

We use a combination of insurance and self-insurance to provide for potential liability for workers' compensation, automobile and general liability, product liability, director and officers' liability, employee health care benefits, and other casualty and property risks. Liabilities associated with the risks that are retained by us are estimated, in part, by considering historical claims experience, demographic factors, severity factors and other actuarial assumptions. While we believe that our assumptions are appropriate, the estimated accruals for these liabilities could be significantly affected if future occurrences and claims differ from these assumptions and historical trends.

We have not made any material changes in the accounting methodology used to establish our insurance and self-insured liabilities during the past three years.

Because of the significance of the judgments and estimation processes, it is likely that materially different amounts could be recorded if we used different assumptions or if the underlying circumstances were to change. A 10% change in our insurance liabilities at January 30, 2011 would have affected our annual net income by approximately \$0.8 million.

### *Income Taxes*

On November 9, 2010, the Company converted from S-corporation status to a C-corporation under Subchapter C of the Internal Revenue Code, thereby ceasing to be a pass-through entity for income tax purposes. As a result, the Company recorded deferred tax assets and liabilities using the estimated corporate effective tax rate.

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Effective January 1, 2007, the Company adopted the provisions of the authoritative guidance on accounting for uncertainty in income taxes that was issued by the Financial Accounting Standards Board, or FASB. Pursuant to this guidance, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The authoritative guidance also addresses other items related to uncertainty in income taxes including derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition.

### *Shadow Equity Bonus Plan*

We sponsor a bonus plan under which variable bonus awards are granted to certain key employees at different times during the year. Bonus awards are effective as of January 1 of the year of grant and fully vest on January 1 of the fifth year after the award is granted if the employee remains employed by that date. As of January 30, 2011, other events triggering vesting of bonus awards include the disability or death of the employee or a sale of the Company, which is defined as a sale of all or substantially all of our assets or equity as defined in the shadow equity bonus plan agreement. However, in March 2011, in order to clarify the intent of our board of directors at the time the shadow equity bonus awards were granted, our board of directors amended the form of shadow equity bonus award agreement to provide that a sale of the company includes a transaction as a result of which the Berry family holds less than 50% of the equity interests in the company.





## Table of Contents

We determine the value of a vested bonus award using a formula defined in the plan document that is based on our actual audited annual earnings less interest, tax, depreciation and amortization expense for the three years immediately preceding both the effective grant date and the vesting date as defined in the plan document. In March 2011, in connection with the amendment described above, the form of shadow equity bonus award agreement was revised to provide that the calculation of annual earnings less interest, tax, depreciation and amortization expense will exclude closed store expenses from prior years and certain charges related to offerings, including the initial public offering, of the Company's equity by the Company's pre-initial public offering stockholders, which is consistent with our historical accounting treatment. We recognize compensation expense for the bonus awards ratably over the five-year vesting period.

In order to estimate our liability for shadow equity bonus awards, and accordingly, our periodic compensation expense, we must make certain assumptions about our annual earnings over the vesting period. Computing the value of a bonus award by applying the formula defined in the plan document may require data that is not currently available to us including our annual performance in future years. Therefore, in order to determine the adjustment to our bonus awards liability, and accordingly, the related compensation expense, we must develop estimates of our future annual performance and incorporate these estimates into the formula. We base our estimates of future annual performance on our own internally-developed models and projections. These models are developed using a wide range of factors including our knowledge of the company, our expectations for future growth and our assumptions about operating results to be achieved. These estimated future annual earnings may, or may not, be reasonable when compared to our actual operating results. Application of alternative assumptions in determining our estimated future annual earnings could produce significantly different estimates of the shadow equity bonus plan liability and consequently, the related amounts recognized as compensation expense.

Beginning in 2011, we are no longer issuing new shadow equity bonuses awards because this plan was replaced by other long-term incentive plans. We will, however, continue to recognize expenses associated with existing shadow equity awards that have not yet vested.

### *Share-based Compensation – 2010 Omnibus Incentive Compensation Plan*

We grant options to purchase common stock under The Fresh Market, Inc. 2010 Omnibus Incentive Compensation Plan ( *Plan* ), which was adopted and approved by the Board of Directors during 2010. The Plan provides for the grant of options intended to qualify as incentive stock options ( *ISOs* ), nonqualified stock options ( *NSOs* ), stock appreciation rights ( *SARs* ), restricted share awards, restricted stock units ( *RSUs* ), performance compensation awards, cash incentive awards, deferred share units and other equity-based and equity-related awards.

In accordance with ASC 718, *Compensation – Stock Compensation*, we determine the fair value of options using the Black-Scholes option-pricing model which requires the input of certain assumptions, including the expected life of the share-based awards, stock price volatility and interest rates. The awards are based on a four year graded vesting schedule over the requisite service period and we recognize compensation expense on a straight line basis for all share-based awards net of actual forfeitures.

The fair value of RSUs and restricted stock awards is based on the fair market value of our common stock on the date of grant. The RSU awards are based on a four year graded vesting schedule over the requisite service period and we recognize compensation expense on a straight line basis for RSUs net of actual forfeitures. Restricted share awards issued to independent directors vest at the earlier of one year or the next annual meeting of the stockholders pursuant to the applicable award agreement and we recognize compensation expense on a straight line basis for the restricted stock awards net of actual forfeitures.

### *Share-based Compensation – Stockholder Plan*

In 2009 a stockholder of our company granted stock options to certain of our key employees pursuant to separate arrangements between the stockholder and the respective employees. All awards were to fully vest in July 2019 or upon the occurrence of certain events, including an initial public offering. The stock options also were to vest in part in the event that the Berry family otherwise completed a partial sale of our common stock, pro rata in proportion to the percentage of equity sold. We did not have a history of market prices for our common stock. Our board determined the exercise price of the options based upon its estimate of our enterprise value, net of debt, at the time of grant, applying a 40% discount for lack of marketability assuming that the occurrence of other triggering events would take place in 1-2 years. Based on authoritative accounting guidance, we determined that we should account for the stock options granted by the stockholder as if the awards were made pursuant to a formal plan adopted by us.

Because these awards do not meet equity accounting criteria, we recognized a liability at the end of each reporting period for the portion of the fair value of the awards equal to the percentage of the requisite service rendered to date by the employee and a corresponding amount of compensation expense. Because the awards vested upon satisfaction of either a service or performance condition, in accordance with applicable accounting guidance, we recognized compensation expense over the service term based on our estimated enterprise value as a private company because the triggering events at that time were not considered probable. Upon the consummation of our initial public offering, all awards

## Edgar Filing: Fresh Market, Inc. - Form 10-K

outstanding prior to the initial public offering vested and the entire value of the awards, measured at the initial public offering price less the exercise price, less compensation expense recognized in prior periods, were recognized as compensation expense. We determined the additional share-based compensation expense to be incurred in connection with the initial public offering and the full vesting of the stock options to be \$28.4 million based upon the initial public offering price of \$22.00 per share.

## **Table of Contents**

### **Recent Accounting Pronouncements**

For a description of a complete list of recent accounting pronouncements, see the notes to our financial statements included elsewhere in this Form 10-K.

### **Disclaimer on Forward-Looking Statements**

Except for the historical information contained herein, the matters discussed in this analysis are forward-looking statements that involve risks and uncertainties, including but not limited to general business conditions, the timely development and opening of new stores, the integration of acquired stores, the impact of competition and changes in government regulation. For a discussion of these and other risks and uncertainties that may affect our business, see *Cautionary Note Regarding Forward-Looking Statements* and *Item 1A. Risk Factors*. We do not undertake any obligation to update forward-looking statements.

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

We are exposed to interest rate changes and changes in market values of our investments and long-term debt. We do not use financial instruments for trading or other speculative purposes.

#### *Interest Rate Risk*

Our principal exposure to market risk relates to changes in interest rates. Our revolving credit facility carries floating interest rates that are tied to LIBOR, the federal funds rate or the prime rate, and therefore, our statements of income and our cash flows will be exposed to changes in interest rates to the extent that we do not have effective hedging arrangements in place. We historically have used interest rate swap agreements to hedge a portion of the variable cash flows associated with the interest on our revolving credit facility and at January 30, 2011 we were party to an interest rate swap agreement which covers \$15.0 million of the indebtedness under our revolving credit facility. The fair market value of our interest rate swaps was a loss of \$1.6 million, \$0.6 million, and \$0.5 million at December 31, 2009, December 31, 2010 and January 30, 2011, respectively, which is recorded in accrued liabilities and other long-term liabilities on our balance sheets. Changes in the fair value of the interest rate swap agreements are recognized as a component of comprehensive income and are recorded in accumulated other comprehensive loss in the stockholders' equity section of our balance sheets. Even after giving effect to these agreements, we are exposed to risks due to fluctuations in the market value of these agreements and changes in interest rates with respect to the portion of our revolving credit facility that is not covered by these agreements. Based upon a sensitivity analysis at January 30, 2011, a hypothetical 1.0% change in interest rates would have changed our annual interest expense by approximately \$0.7 million. We do not use derivative financial instruments for speculative or trading purposes, however, this does not preclude our adoption of specific hedging strategies in the future.

### **Item 8. Financial Statements and Supplementary Data.**

Our financial statements and related notes begin on Page F-1, which are included in this Form 10-K.

### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

[Not applicable]

---

**Table of Contents**

**Item 9A. Controls and Procedures.**

*Internal Control Over Financial Reporting*

We completed our initial public offering in November 2010. The rules and regulations of the SEC provide a transition period for newly public companies pursuant to which a newly public company is not required to include either a report of management's assessment of the effectiveness of the newly public company's internal control over financial reporting or an attestation report of its independent registered public accounting firm on the newly public company's internal control over financial reporting in its first Annual Report on Form 10-K. This Annual Report on Form 10-K is our first annual report under the Exchange Act since the completion of our initial public offering. Accordingly, we have not included either management's assessment of the effectiveness of, or our independent auditor's attestation report on, our internal control over financial reporting in this Form 10-K.

*Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934 as of the end of the period covered by this Annual Report on Form 10-K. The evaluation included certain internal control areas in which we have made and are continuing to make changes to improve and enhance controls. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

*Changes in Internal Control over Financial Reporting*

There were no changes in our internal control over financial reporting during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

*Shadow Equity Bonus Plan*

In March 2011, in order to clarify the intent our board of directors at the time the shadow equity bonus awards were granted, our board of directors amended the form of shadow equity bonus award agreements. First, the amended form of award agreement provides that the calculation of EBITDA will exclude closed store expenses from prior years and certain charges related to offerings, including the initial public offering, of the Company's equity by the Company's pre-initial public offering stockholders, which is consistent with our historical accounting treatment, and may be further adjusted by our board of directors or compensation committee in its discretion. Our board of directors believes that the named executive officers have little ability to affect charges related to offerings of the Company's equity and, accordingly, should not be penalized for them. Second, the amended form of award agreement provides that a sale of the company, which is a vesting event under the form of award agreement, includes a transaction as a result of which the Berry family holds less than 50% of the equity interests in the Company.

**Table of Contents**

**PART III**

**Item 10. Directors and Executive Officers of the Registrant.**

The Company will file with the Securities and Exchange Commission a definitive proxy statement, which we refer to as the Proxy Statement, no later than 120 days after the close of its fiscal year ended December 31, 2010. The information required by this Item and not given in this Item will appear under the headings Directors and Executive Officers, Corporate Governance, The Board of Directors and Its Committees, Audit Committee Report and Security Ownership of Certain Beneficial Owners and Management in our Proxy Statement, which sections are incorporated in this item by reference.

**Item 11. Executive Compensation.**

The information required by this Item will appear under the heading Executive and Director Compensation in our Proxy Statement, which section is incorporated in this item by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management.**

The information required by this Item will appear under the heading Security Ownership of Certain Beneficial Owner and Management in our Proxy Statement, which section is incorporated in this item by reference.

**Item 13. Certain Relationships and Related Transactions.**

The information required by this Item will appear under the headings Transactions with Related Persons and Corporate Governance in our Proxy Statement, which sections are incorporated in this item by reference.

**Item 14. Principal Accounting Fees and Services.**

The information required by this Item will appear under the heading Audit Committee Report in our Proxy Statement, which section is incorporated in this item by reference.

**Table of Contents**

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules.**

- (a) The following documents are filed as part of this report:
- (1) Financial Statements: See Item 8. Financial Statements and Supplementary Data.
  - (2) Financial Statement Schedules: No schedules are required.
  - (3) Exhibits are incorporated herein by reference or are filed with this report as indicated below.
- (b) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
3.1	Certificate of Incorporation of The Fresh Market, Inc.
3.2	Bylaws of The Fresh Market, Inc.
4.1**	Specimen Common Stock Certificate.
4.2	Registration Rights Agreement.
10.1+**	Supply and Service Agreement, dated as of January 26, 2007, by and between The Fresh Market, Inc. and Burriss Logistics.
10.2**	Credit Agreement, dated as of February 27, 2007, among The Fresh Market, Inc., as borrower, Bank of America, N.A., as administrative agent, swing line lender and letter of credit issuer, BB&T Corporation, as syndication agent, BMO Capital Markets, as documentation agent, and the other lenders party thereto.
10.3**	First Amendment to Credit Agreement, dated as of October 23, 2007, among The Fresh Market, Inc., as borrower, Bank of America, N.A., as administrative agent, swing line lender and letter of credit issuer, and the required lenders.
10.4**	Second Amendment to Credit Agreement, dated as of June 22, 2010, among The Fresh Market, Inc., as borrower, Bank of America, N.A., as administrative agent, swing line lender and letter of credit issuer, and the required lenders.
10.5	Tax Indemnification Agreement.
10.6**	Form of Amended and Restated Shadow Equity Bonus Agreement.
10.7	Form of Second Amended and Restated Shadow Equity Bonus Agreement.
10.8**	Terms of Employment of Lisa Klinger.
10.9**	The Fresh Market Deferred Compensation Plan Amended and Restated Effective March 1, 2010.
10.10	The Fresh Market, Inc. 2010 Omnibus Incentive Compensation Plan.
10.11	The Fresh Market, Inc. Employee Stock Purchase Plan.
10.12**	The Fresh Market, Inc. Severance Plan.





**Table of Contents**

10.13**	Form of Employment Agreement.
10.14**	Form of Option Award Agreement.
10.15**	Form of Restricted Stock Award Agreement.
10.16**	Form of Restricted Stock Unit Award Agreement for Employees.
10.17**	Form of Restricted Stock Award Agreement for Directors.
10.18**	Form of Deferred Stock Unit Award Agreement for Directors.
10.19**	Offer Letter, dated as of August 26, 2010, between The Fresh Market, Inc. and Scott Duggan.
10.20**	Form of Director Indemnification Agreement.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Grant Thornton LLP.
31.1	Certification Statement of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 is filed herewith.
31.2	Certification Statement of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 is filed herewith.
32.1	Certification Statement of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 is filed herewith.
32.2	Certification Statement of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 is filed herewith.

\*\* Incorporated by reference to the registrant's Registration Statement on Form S-1 (Registration No. 333-166473) filed with the Securities and Exchange Commission (SEC).

+ Confidential treatment has been requested for certain portions which are omitted in the copy of the exhibit electronically filed with the SEC. The omitted information has been filed separately with the SEC pursuant to our application for confidential treatment.

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**THE FRESH MARKET, INC.**

By: /s/ Lisa Klinger  
 Lisa K. Klinger  
 Executive Vice President and Chief Financial  
 Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on March 22, 2011.

Name	Title
/s/ Craig Carlock Craig Carlock	President and Chief Executive Officer (Principal Executive Officer)
/s/ Lisa Klinger Lisa K. Klinger	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Ray Berry Ray Berry	Chairman of the Board
/s/ Brett Berry Brett Berry	Vice Chairman of the Board
/s/ Michael Barry Michael Barry	Vice Chairman of the Board
/s/ David Rea David Rea	Director
/s/ Jeffrey Naylor Jeffrey Naylor	Director

**Table of Contents**

The Fresh Market, Inc.

Financial Statements

Years Ended December 31, 2008, 2009, 2010 and the One Month Ended January 30, 2011

**Index to Financial Statements**

Report of Independent Registered Public Accounting Firm

F-2

Report of Independent Registered Public Accounting Firm

F-3

Balance Sheets as of December 31, 2009, 2010 and January 30, 2011

F-4