



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 4, 2018

Lyuba Goltser
Weil, Gotshal & Manges LLP
lyuba.goltser@weil.com

Re: The Kroger Co.
Incoming letter dated February 23, 2018

Dear Ms. Goltser:

This letter is in response to your correspondence dated February 23, 2018, concerning the shareholder proposal (the "Proposal") submitted to The Kroger Co. (the "Company") by William Steiner for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden

April 4, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Kroger Co.
Incoming letter dated February 23, 2018

The Proposal requests that the board adopt a policy, and amend the governing documents as necessary, to require the chair of the board of directors to be an independent member of the board whenever possible.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(11). We note that the Proposal is substantially duplicative of a previously submitted proposal that will be included in the Company's 2018 proxy materials. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(11).

Sincerely,

Kasey L. Robinson
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

Weil, Gotshal & Manges LLP

767 Fifth Avenue
New York, NY 10153-0119
+1 212 310 8000 tel
+1 212 310 8007 fax

February 23, 2018

Lyuba Goltser
lyuba.goltser@weil.com

VIA E-MAIL (shareholderproposals@sec.gov)
U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: The Kroger Co. – 2018 Annual Meeting Omission of Shareholder Proposal of William Steiner Pursuant to Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is submitted on behalf of our client, The Kroger Co. (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company has received the shareholder proposal (as amended, the “Proposal”) submitted by William Steiner (the “Proponent”) for inclusion in the Company’s form of proxy statement and other proxy materials (together, the “Proxy Materials”) for its 2018 annual meeting of shareholders. In reliance on Rule 14a-8 under the Exchange Act, the Company intends to omit the Proposal from the Proxy Materials pursuant to 14a-8(i)(11) because the Proposal substantially duplicates a shareholder proposal previously submitted to the Company that the Company intends to include in its Proxy Materials.

We respectfully request the concurrence of the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that no enforcement action will be recommended if the Company omits the Proposal from the Proxy Materials. Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file the Proxy Materials in definitive form with the Commission. The Company intends to file and make available to shareholders its Proxy Materials on or about May 15, 2018. The Company’s Annual Meeting of Shareholders is scheduled to be held on June 28, 2018. The Company intends to file definitive copies of the Proxy Materials with the Commission at the same time the Proxy Materials are first made available to shareholders.

Pursuant to Section C of Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company has submitted this letter and the related exhibits to the Staff via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this letter and

related exhibits is being simultaneously provided by email on this date to the Proponent informing it of the Company's intention to exclude the Proposal from the Proxy Materials.

The Company agrees to promptly forward to the Proponent any Staff response to the Company's no-action request that the Staff transmits to the Company by mail, email and/or facsimile. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, the Company hereby informs the Proponent that the undersigned on behalf of the Company is entitled to receive from the Proponent a concurrent copy of any additional correspondence submitted to the Commission or the Staff relating to the Proposal.

I. The Proposal

The Company originally received the Proposal from the Proponent via email on January 9, 2018. The Company subsequently received an amended Proposal via email on January 10, 2018, which included supplemental and amended supporting language.

The Proposal, as amended, states:

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next CEO transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps will be taken to accomplish the above.

The cover letter and the Proposal and amended Proposal, along with the supporting statements, are attached to this letter as Exhibit A.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Previously Submitted Proposal That The Company Expects To Include In Its Proxy Materials.

Rule 14a-8(i)(11) sets forth that a shareholder proposal may be excluded "[i]f the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission has stated that the purpose of Rule 14a-8(i)(11) is "to eliminate the possibility

of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” *See* Exchange Act Release No. 12999 (November 22, 1976). The Staff has also indicated that if a company receives two or more substantially duplicative proposals, it must include the first one it received in the company’s proxy statement, unless that proposal may otherwise be excluded. *See Great Lakes Chemical Corp.* (March 2, 1998); *Pacific Gas & Electric Co.* (January 6, 1994).

On January 8, 2018, before the date on which the Company received the Proposal (January 9, 2018), the Company received a proposal from Mr. Keith Schnip that likewise requested that the Board of Directors adopt a policy and amend its bylaws to require that the Chair of the Board be independent (the “Prior Proposal” and together with the Proposal, the “Proposals”). The Prior Proposal states:

RESOLVED: Shareowners of the Kroger Co. (“Kroger”) ask the Board of Directors to adopt a policy, and amend the bylaws as necessary, to require the Chair of the Board to be an independent member of the Board. This policy shall apply prospectively so as not to violate any contractual obligation. The policy should provide that (i) if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination; and (ii) compliance with this policy is waived if no independent director is available and willing to serve as Chair.

The cover letter and the Prior Proposal, along with the supporting statement, are attached to this letter as Exhibit B.

a. Each Of The Proposals Are Substantially Duplicative And Present The Same Principal Thrust Requiring That the Chair be Independent

The standard for determining whether proposals are substantially duplicative is whether the proposals present the same “principal thrust” or “principal focus.” *See Pacific Gas & Electric Co.* (February 1, 1993). In addition, the Staff has provided that proposals may be excluded under Rule 14a-8(i)(11) in similar contexts where two or more proposals have focused on the requirement that the board’s chairman be an independent director. *See, e.g., Pfizer Inc.* (January 11, 2018); *General Electric Company* (January 3, 2018); *The Goldman Sachs Group Inc.* (February 2, 2016); *Nabors Industries Ltd.* (February 28, 2013); *Xcel Energy Inc.* (February 28, 2012); *Mylan Inc.* (February 1, 2012); *JPMorgan Chase & Co.* (March 7, 2011); *The Goldman Sachs Group, Inc.* (March 9, 2010); *JPMorgan Chase & Co. (SEIU Master Trust)* (March 5, 2010); *General Electric Company* (December 30, 2009); *Wells Fargo & Co.* (January 7, 2009); *Wells Fargo & Co.* (January 17, 2008); *Sara Lee Corp.* (August 18, 2006).

Each Proposal sets forth the following core actions: (i) require that the Chair of the Board of Directors of the Company be an independent member of the Board, (ii) adopt a policy and amend the governing documents as necessary to reflect such independence requirement, (iii) allows the policy to be phased in, (iv) in the event the Board determines the Chair no longer

qualifies as independent, select a new Chair who satisfies the requirements within a certain time period, and (v) provide a waiver to the policy if no independent director is willing and able to serve as the Chair. Each of these core actions support the principal thrust that the purpose of each Proposal is to cause the Company to require an independent Chair.

b. The Differences Between Each Proposal Are Immaterial, Do Not Affect The Core Thrust Of Each Proposal, And Are Consistent With Precedent

The Prior Proposal differs from the Proposal in that it provides: (i) the Company should specifically amend its bylaws (as opposed to “governing documents” under the Proposal), (ii) require the Chair of the Board to be independent (as opposed to the Proposal which allows Chair independence “wherever possible” and provides a transition to phase in the policy for the next CEO transition), and (iii) the Board shall select a new Chair within 60 days if a Chair no longer qualifies as independent (as opposed to the Proposal, which allows for a replacement within “a reasonable time”).

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(11) of substantially duplicative proposals even if the proposals requesting an independent chairman have differences in their terms or scope. *See The Boeing Company* (February 1, 2010) (proposal requesting an independent chairman according to NYSE standards “whenever possible” substantially duplicated a prior proposal that did not apply NYSE standards “whenever possible” and included an explicit waiver in the event no independent chair candidates were available); *American Express Co.* (January 11, 2012) (proposal requesting an independent chairman according to NYSE standards “whenever possible” with an added requirement that the company determine a process for replacing a chairman who ceased to satisfy the independence standard substantially duplicated a prior proposal that omitted the “whenever possible” qualifier, stated applicable independence standards should derive from the company’s stock exchange on which it was listed, directed the board to “promptly” select a replacement chairman who no longer qualified as independent, and included an explicit waiver in the event no independent chair candidates were available). *See also Lockheed Martin Corp.* (January 12, 2012); *Honeywell International Inc.* (January 19, 2010). Further, the Staff recently concurred with the exclusion under Rule 14a-8(i)(11) when one proposal granted the board discretion to delay implementing an independent chairman policy until such time as it appointed its next chief executive officer, while another proposal did not set a specific a grace period for implementation and remained silent on exact timing. *See General Electric Company* (January 3, 2018).

In addition, the Staff has held that proposals are not substantially different when a proposal specifies amending “governing documents” generally as opposed to specifying a precise governing document. *See Qwest Communications International Inc.* (March 8, 2006) (concurring with the exclusion of a proposal requesting that the company amend a specific provision in its bylaws as substantially duplicative of a proposal requesting that the company make a similar change to its “governing documents”).

Any differences in terms of the Proposals are immaterial, are consistent with the exclusion precedents set forth above, and do not alter the core thrust of each Proposal to appoint an independent Chair of the Board.

III. Conclusion

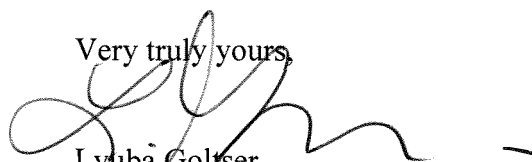
Accordingly, and consistent with past precedent, because the Proposal substantially duplicates the Prior Proposal, which was previously submitted to the Company and will be included in its Proxy Materials, the Proposal may be excluded pursuant to Rule 14a-8(i)(11).

For the foregoing reasons, please confirm that the Staff will not recommend any enforcement action to the Commission if the Proposal is omitted from the Proxy Materials.

Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should any additional information be desired in support of the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's Rule 14a-8 response.

If we can provide additional correspondence to address any questions that the Staff may have with respect to this no-action request, please do not hesitate to call me at 212-310-8000 or contact me via email at lyuba.goltser@weil.com.

Very truly yours,



Lyuba Goltser
Partner

Attachments

cc:

Christine Wheatley
The Kroger Co.

William Steiner
Komlossy Law PA
4700 Sheridan Street, Suite J
Hollywood, FL 33021

John Chevedden

Exhibit A

From: ***
To: [Wheatley, Christine S](#)
Cc: [Richardson, Laura M](#)
Subject: Rule 14a-8 Proposal (KR)``
Date: Tuesday, January 9, 2018 9:00:39 PM
Attachments: [CCE09012018_2.pdf](#)

Dear Ms. Wheatley,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden

William Steiner
c/o Komlossy Law, PA
4700 Sheridan St. Suite J
Hollywood, FL 33021

Ms. Christine S. Wheatley
Corporate Secretary
The Kroger Co. (KR)
1014 Vine Street
Cincinnati, Ohio 45202-1100

Dear Ms. Wheatley,

I purchased stock and hold stock in our company because I believed our company has greater potential. I submit my attached Rule 14a-8 proposal in support of the long-term performance of our company. I believe our company has unrealized potential that can be unlocked through low cost measures by making our corporate governance more competitive.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding all actions pertaining to this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting.

Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
(^{***}) at:

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to^{***}

Sincerely,



William Steiner

NOV 12, 2017
Date

[KR – Rule 14a-8 Proposal, January 9, 2018]1-10
[This line and any line above it – *Not* for publication.]

Proposal [4] – Independent Board Chairman

Shareholders request our Board of Directors to adopt as policy, and amend our governing documents as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, to be an independent member of the Board. The Board would have the discretion to phase in this policy for the next CEO transition, implemented so it does not violate any existing agreement.

If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

Caterpillar is an example of a company recently changing course and naming an independent board chairman. Caterpillar had strongly opposed a shareholder proposal by John Chevedden for an independent board chairman as recently as its 2016 annual meeting. Wells Fargo also changed course and named an independent board chairman in 2016.

It was reported that 53% of the Standard & Poors 1,500 firms separate these 2 positions (2015 report): Chairman and CEO. This proposal topic won 50%-plus support at 5 major U.S. companies in 2013 including 73%-support at Netflix.

Having a board chairman who is independent of management is a practice that will promote greater management accountability to shareholders and lead to a more objective evaluation of management.

An independent chairman is more important at Kroger since our Lead Director, Robert Beyer, had more than 19-years long-tenure. Long-tenure can impair the independence of a director – no matter how well qualified. Independence is a priceless attribute in a Lead Director. Mr. Beyer also received the 2nd highest negative votes in 2017 – 2nd only to our Chairman William McMullen, who had 14-years long tenure. Plus our stock price was down significantly in an up market.

Bobby Shackouls and Clyde Moore each had more than 18-years long tenure. This was worse because directors with more than 18-years tenure controlled 75% of our Nomination Committee. Apparently the 3 directors with 18-years tenure each do not seem too interested in nominating their replacements.

Please vote to enhance the oversight of our CEO:
Independent Board Chairman – Proposal [4]
[The line above – *Is* for publication.]

Notes:

William Steiner, c/o Komlossy Law, PA, 4700 Sheridan St. Suite J, Hollywood, FL 33021 sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

If the company thinks that any part of the above proposal, other than the first line in brackets, can be omitted from proxy publication based on its own discretion, please obtain a written agreement from the proponent.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [***].

From: ***
To: [Wheatley, Christine S](#)
Cc: [Richardson, Laura M](#)
Subject: Rule 14a-8 Proposal (KR)``
Date: Wednesday, January 10, 2018 1:04:31 PM
Attachments: [CCE10012018_2.pdf](#)

Dear Ms. Wheatley,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden

William Steiner
c/o Komlossy Law, PA
4700 Sheridan St. Suite J
Hollywood, FL 33021

Ms. Christine S. Wheatley
Corporate Secretary
The Kroger Co. (KR)
1014 Vine Street
Cincinnati, Ohio 45202-1100

10 JAN 2018 REVISION

Dear Ms. Wheatley,

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Sincerely,



William Steiner

NOV 12, 2017
Date

[This line and any line above it – *Not* for publication.]

Proposal [4] – Independent Board Chairman

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If the Board determines that a Chairman who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chairman. This proposal requests that all the necessary steps be taken to accomplish the above.

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It was reported that 53% of the Standard & Poors 1,500 firms separate these 2 positions (2015 report): Chairman and CEO. This proposal topic won 50%-plus support at 5 major U.S. companies in 2013 including 73%-support at Netflix.

Having a board chairman who is independent of management is a practice that will promote greater management accountability to shareholders and lead to a more objective evaluation of management.

An independent chairman is more important at Kroger since our Lead Director, Robert Beyer, had more than 19-years long-tenure. Long-tenure can impair the independence of a director – no matter how well qualified. Independence is a priceless attribute in a Lead Director.

Mr. Beyer also received the 2nd highest negative votes in 2017 – 2nd only to our Chairman William McMullen, who had 14-years long-tenure. Plus our stock price was down significantly in an up market.

Furthermore Bobby Shackouls and Clyde Moore each had more than 18-years long tenure. This was worse because directors with more than 18-years tenure each controlled 75% of our Nomination Committee. Apparently the 3 directors, with a combined tenure of nearly 60-years, do not seem too interested in nominating their replacements.

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Independent Board Chairman – Proposal [4]

[The line above – *Is* for publication.]

Notes:

William Steiner, c/o Komlossy Law, PA, 4700 Sheridan St. Suite J, Hollywood, FL 33021 sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

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Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

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- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email [^{***}].

From: ***
To: [Richardson, Laura M](#)
Cc: [Wheatley, Christine S](#)
Subject: Rule 14a-8 Proposal (KR) blb
Date: Tuesday, January 16, 2018 11:52:57 AM
Attachments: [CCE16012018_4.pdf](#)

Dear Ms. Richardson,
Please see the attached broker letter.
Sincerely,
John Chevedden



Ameritrade

01/16/2018

William Steiner

Re: Your TD Ameritrade Account Ending in *** in TD Ameritrade Clearing Inc. DTC #0188

Dear William Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than 100 shares of each of the following stocks in the above referenced account since October 1, 2016.

1. The Kroger Co (KR)

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Andrew P. Haag
Resource Specialist
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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200 S. 106th Ave.
Omaha, NE 68154

www.tdameritrade.com

Exhibit B

Mr. Keith C. Schnip

January 5, 2018

Christine S. Wheatley
Secretary
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100

Re: Shareholder proposal for 2018 annual meeting

Dear Ms. Wheatley:

I submit the enclosed shareowner proposal for inclusion in the proxy statement that The Kroger Co. plans to circulate to shareowners in connection with the 2018 annual meeting. The proposal is being submitted under SEC Rule 14a-8 and relates to an independent board chair.

I am located at the address shown above. I have beneficially owned more than \$2,000 worth of Kroger common stock for longer than a year. A letter from UBS Financial Services, Inc., the record holder, confirming my ownership is being sent by separate cover. I intend to continue ownership of at least \$2,000 worth of Kroger common stock through the date of the 2018 annual meeting. My co-sponsors will be submitting materials under separate cover.

I would be pleased to discuss the issues presented by this proposal with you. If you require any additional information, please contact Ms. Lisa Lindsley who is advising me on this issue. Ms. Lindsley can be reached via email at lisa@sumofus.org or via phone at (201) 321-0301.

Very truly yours,

Keith C. Schnip

RESOLVED: Shareowners of The Kroger Co. (“Kroger”) ask the Board of Directors to adopt a policy, and amend the bylaws as necessary, to require the Chair of the Board to be an independent member of the Board. This policy shall apply prospectively so as not to violate any contractual obligation. The policy should provide that (i) if the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the policy within 60 days of that determination; and (ii) compliance with this policy is waived if no independent director is available and willing to serve as Chair.

SUPPORTING STATEMENT:

Except for brief “apprenticeship” periods at the outset of their CEO service, Kroger CEOs have also held the role of Board Chair for many decades. We believe the combination of these two roles in a single person weakens a corporation’s governance, which can harm shareholder value. As Intel’s former Chair Andrew Grove stated, “The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he’s an employee, he needs a boss, and that boss is the board. The chairman runs the board. How can the CEO be his own boss?”

In our view, shareholder value is enhanced by an independent Board Chair who can provide a balance of power between the CEO and the Board and support strong Board oversight.

Proxy advisor Glass Lewis opined in a 2016 report that “shareholders are better served when the board is led by an independent Chairman who we believe is better able to oversee the executives of the Company and set a pro-shareholder agenda without the management conflicts that exist when a CEO or other executive also serves as Chairman.” (www.glasslewis.com/wp-content/uploads/2016/03/2016-In-Depth-Report-INDEPENDENT-BOARD-CHAIRMAN.pdf)

An independent Board Chair has been found in academic studies to improve the performance of public companies, although evidence overall is inconclusive. While separating the roles of Chair and CEO is the norm in Europe, 48% of S&P 500 company boards have also implemented this best practice. (www.spencerstuart.com/~media/pdf%20files/research%20and%20insight%20pdfs/spencer-stuart-us-board-index-2016.pdf)

We believe that independent Board leadership would be particularly useful at Kroger in providing more robust oversight regarding sustainability issues. We agree with the recent observations by State Street Global Advisors’ CEO that “a long-term horizon requires a focus on sustainability” and that boards “are often better-equipped than the day-to-day management to see these issues over longer time horizons.” (www.ssga.com/investment-topics/environmental-social-governance/2017/long-term-value-begins-at-the-board-eu.pdf)

Kroger continues to risk its reputation by selling produce treated with neonicotinoids, a group of insecticides highly toxic to bees. Kroger has refused to join the Fair Food Program to ensure equitable treatment of farm workers. Kroger also faces reputational risk associated with its responses to the impacts of food production on deforestation. Independent Board leadership would, we think, more likely result in improved policies and practices to mitigate these business risks.

We urge shareholders to vote for this proposal.

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January 11, 2018

Laura Richardson
Corporate Counsel
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100
Via email: laura.richardson@kroger.com

Dear Ms. Richardson:

UBS Financial Services Inc., a DTC participant, acts as the custodian and record owner for shares beneficially owned by Mr. Keith Schnip. As of and including January 6, 2018, UBS Financial Services Inc., has continuously held 109 shares of The Kroger Co. common stock, worth at least \$2,000, for over one year on behalf of Mr. Keith Schnip.

Best Regards,

A handwritten signature in black ink, appearing to read "Steve Crawford", written over a horizontal line.

Steve Crawford
Vice President – Wealth Management