



DIVISION OF
CORPORATION FINANCE

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

March 10, 2026

Ferrell M. Keel
Jones Day

Re: The Kroger Co. (the "Company")
Incoming Letter dated February 19, 2026

Dear Ferrell M. Keel:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by LongView LakeCap500 Index Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Company represents that it has a reasonable basis to exclude the Proposal. Based solely on that representation, we will not object if the Company excludes the Proposal from its proxy materials.

Copies of all of the correspondence on which this response is based will be made available on our website.

Sincerely,

Division of Corporation Finance
Office of Chief Counsel

cc: Richard Weiss
As You Sow

JONES DAY

2727 NORTH HARWOOD STREET • DALLAS, TEXAS 75201.1515

TELEPHONE: +1.214.220.3939 • JONESDAY.COM

February 19, 2026

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
shareholderproposals@sec.gov

Re: The Kroger Co.
Omission of Shareholder Proposal – As You Sow
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is submitted by The Kroger Co., an Ohio corporation (the “**Company**” or “**Kroger**”), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), to the U.S. Securities and Exchange Commission (the “**Commission**”) to inform you that the Company intends to omit from its proxy statement and form of proxy in connection with its 2026 Annual Meeting of Shareholders (the “**2026 Proxy Materials**”) a shareholder proposal (the “**Proposal**”) submitted by As You Sow (the “**Representative**”) on behalf of LongView LakeCap 500 Index Fund. The Proposal is attached hereto as Exhibit A.

The Company represents that it has a reasonable basis to exclude the Proposal based on the provisions of Rule 14a-8, prior published guidance and/or judicial decisions. We request that the Staff of the Division of Corporation Finance (the “**Staff**”) respond with a letter indicating that, based on this representation, the Staff will not object if the Company omits the Proposal from the 2026 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter to the Representative as notice of the Company’s intent to omit the Proposal from the 2026 Proxy Materials.

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THE PROPOSAL

The Proposal states in part:

RESOLVED: Shareholders request that the Board of Directors issue a report analyzing whether Kroger's internal policies regarding non-interference, workers' freedom of association, and collective bargaining rights are consistent with the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights at reasonable cost and omitting privileged information.

BASIS FOR EXCLUSION

The Proposal may be properly omitted from the 2026 Proxy Materials pursuant to Rule 14a-8(i)(7) given the Proposal deals with matters related to the Company's ordinary business operations because (A) it relates to the Company's management of its workforce and (B) it does not focus upon a significant policy issue.

A. Rule 14a-8(i)(7) Background.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials "[i]f the proposal deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *See* Exchange Act Release No. 40018 (May 21, 1998) (the "**1998 Release**"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." An exception to this principle may be made where a proposal focuses on significant social policy issues that transcend the day-to-day business matters of the company. *See* 1998 Release. The Staff most recently discussed its interpretation of how it will consider whether a proposal "transcends the day-to-day business matters" of a company in Staff Legal Bulletin No. 14M (Feb. 12, 2025) ("**SLB 14M**"), noting that a "company-specific" approach will be taken by the Staff when evaluating the significance of a policy issue raised by a proposal.

The 1998 Release identified two central considerations that underlie the ordinary business exclusion. The first is the subject matter of the proposal, since "[c]ertain tasks are so

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fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* The second consideration related to “the degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

Framing a shareholder proposal in the form of a request for a report, including requesting a report of certain risks, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983) (the “**1983 Release**”); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).”).

A proposal’s request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Legal Bulletin No. 14E (Oct. 27, 2009) (“**SLB 14E**”), that in evaluating shareholder proposals that request a risk assessment the Staff:

[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

B. The Proposal May Be Excluded Because it Relates to the Company’s Management of Its Workforce.

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce. Notably, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff concurred that a proposal related to employee hiring and firing could be excluded as ordinary business and explained that examples of excludable ordinary business categories included “management of the workplace, employee supervision, *labor-management relations*, employee hiring and firing, *conditions of the employment* and employee training and motivation” (emphasis added). The

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Commission subsequently recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.”

The Staff historically has concurred in the exclusions of proposals that, like the Proposal, seek to address a company’s labor-management relations because they relate to the ordinary business matters of workforce management and employee relations. For example, in *Amazon.com, Inc.* (avail. April 4, 2025), the Staff permitted exclusion of a proposal requesting that the company commission an independent, third-party assessment of its adherence to its stated commitment to workers’ freedom of association and collective bargaining rights per the Core Conventions of the International Labor Organization (ILO) and the ILO Declaration on Fundamental Principles and Rights at Work, noting that proposal related to the company’s ordinary business operations. *See also Wells Fargo & Company* (avail. Feb 21, 2025) (same) and *Nextstar Media Group, Inc.* (avail. Feb. 7, 2025) (same).

Here, the Proposal directly addresses the management of the Company’s employees by requesting an assessment of the Company’s internal policies on worker’s freedom of association and collective bargaining rights. Specifically, the Proposal asks for a report showing that the Company’s internal policies are “consistent with the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights.” Similar to the precedents cited above, the Proposal relates to the Company’s engagement with its employees in the context of collective bargaining and unionization within its workforce, which has a direct bearing on how the Company manages its employee relationships, including its policies and practices related to the hiring, termination, retention, and promotion of employees, as well as how the Company sets and modifies the terms and conditions of employment. Accordingly, because the Proposal relates specifically to how the Company manages its workforce and its policies concerning employee relations, it is excludable under Rule 14a-8(i)(7).

That the Proposal asks for a report on these ordinary business matters does not change the conclusion that the Proposal can be excluded pursuant to Rule 14a-8(i)(7). As previously discussed, the Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* 1983 Release.

C. The Proposal Does Not Raise a Significant Policy Issue.

As noted above, SLB 14M makes clear that a proposal can overcome the ordinary business exclusion if the proposal “raises a policy issue that transcends the individual company’s ordinary business operations.” SLB 14M also reaffirms the Commission’s past statement that the determination as to whether a proposal deals with a matter relating to a company’s ordinary

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business operations is “made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed.”

Here, the Proposal does not focus on a significant social policy issue that transcends the ordinary business of the Company. Even though the Proposal raises workers’ rights as a policy issue, the Proposal’s overarching concern is with the Company’s ordinary business decisions with respect to management of the workforce. In fact, the Proposal’s supporting statement specifically states that its purpose is to provide investors with confidence that the Company is “appropriately managing its relationship to labor.” The Staff has previously permitted exclusion of analogous proposals that facially pertained to workers’ rights, while primarily focusing on the company’s ordinary business matters. *See, e.g., Tesla, Inc.* (avail. May 2, 2025) (permitting exclusion of a proposal asking the company adopt and disclose a noninterference policy upholding the rights to freedom of association and collective bargaining in its operations because the proposal relates to the company’s ordinary business operations); *Amazon.com, Inc.*; *Wells Fargo & Company*; and *Nextstar Media Group, Inc.* Accordingly, and consistent with the Staff’s longstanding practice, the Proposal may be excluded under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

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CONCLUSION

Based on the foregoing analysis, the Company intends to exclude the Proposal from its 2026 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded pursuant to Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (214) 969-4851 or email me at fkeel@jonesday.com. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Keel", written in a cursive style.

Ferrell M. Keel

Attachment

cc: Michael J. Solecki, Jones Day

EXHIBIT A

WHEREAS: Freedom of association and collective bargaining are fundamental human rights under internationally recognized human rights frameworks. The United States has seen a “revival of union power” leading to significant changes in employee contracts in multiple industries.¹ A Gallup poll found that almost 70 percent of Americans approve of unions, this support has held steady for the last five years and is the highest approval rating of 60 years.^{2,3}

Should The Kroger Co. (Kroger) brand be linked to poor union practices, it risks losing customers. Moreover, the presence of unions has been positively correlated with low turnover, improved diversity, investment in training, and reduced legal and regulatory violations.⁴ Conversely, companies that actively oppose unionization experience declines in productivity relative to those that are less opposed; “the overall negative effects are driven by manager’s or owner’s dislike of working with unions rather than economic costs of unions.”⁵

Kroger’s Human Rights Policy states “We commit to the corporate responsibility to respect human rights as defined by the United Nations Guiding Principles on Business and Human Rights (UNGPs). We also commit to respect internationally recognized human rights as defined by . . . [t]he ILO Declaration on Fundamental Principles and Rights at Work.” Kroger also commits to “embed this Human Rights Policy in our company’s culture, operations and supply chain, conduct human rights due diligence, and provide access to remedy as appropriate.”⁶

The last clear update to this policy was in 2022, and the last progress update to its “Commitment to Respect Human Rights” was for fiscal 2021.⁷

Despite its stated commitments, in the Richmond and Tidewater areas in Virginia, it has been alleged that Kroger is refusing to recognize unions at 11 stores, despite a majority of associates at these stores having agreed to unionization. The local labor union, UFCW Local 400, believes that the company has engaged in an effort to keep the union out of new stores, in violation of the collective bargaining agreement they have in place. Concerns have also been raised that Kroger has closed union stores and replaced them with non-union stores.

¹ <https://hbr.org/2023/10/are-we-seeing-a-revival-of-union-power>

² <https://www.afge.org/article/new-gallup-poll-70-of-americans-approve-of-labor-unions/>

³ <https://news.gallup.com/poll/694472/labor-union-approval-relatively-steady.aspx>

⁴ <https://www.workerscapital.org/our-resources/shared-prosperity-the-investor-case-for-freedom-of-association-and-collective-bargaining/>

⁵ <https://www.census.gov/content/dam/Census/newsroom/press-kits/2023/assa/unionization-employer-opposition-preview.pdf>, p.3

⁶ https://www.thekrogerco.com/wp-content/uploads/2022/02/Kroger-Human-Rights-Policy-Feb-2022.pdf?utm_source=chatgpt.com

⁷ https://www.thekrogerco.com/wp-content/uploads/2022/02/Kroger-Human-Rights-Progress-Update-Policy-Feb-2022.pdf?utm_source=chatgpt.com

Given this inconsistency, a review is requested of the company's implementation of its stated policies. This would provide investors with greater confidence that Kroger is appropriately managing its relationship to labor.

RESOLVED: Shareholders request that the Board of Directors issue a report analyzing whether Kroger's internal policies regarding non-interference, workers' freedom of association, and collective bargaining rights are consistent with the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights at reasonable cost and omitting privileged information.



Kroger Shareholder Proposal

From Richard Weiss [REDACTED]
 Date Mon 2/23/2026 10:37 AM
 To ShareholderProposals <shareholderproposals@sec.gov>
 Cc fkeel@jonesday.com <fkeel@jonesday.com>; [REDACTED]
 Shareholder Engagement <shareholderengagement@asyousow.org>; Danielle Fugere
 [REDACTED] Meredith Benton <[REDACTED]>

Good Morning,

As You Sow represents Amalgamated Bank, the proponent of a shareholder proposal submitted to The Kroger Co. *As You Sow* is in receipt of a notice of intent to exclude to the SEC dated February 19, 2026. *As You Sow* intends to respond on behalf of the proponent by March 13, 2026, and respectfully requests the Staff delay issuing a response until after that time.

The Company and its counsel are CCed here. Thank you.

Richard Weiss
Senior Counsel
As You Sow

www.asyousow.org



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