



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 Christine Steele 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: Tim Schwarzenberger
Inspire Investing, LLC

JONES DAY

2727 NORTH HARWOOD STREET • DALLAS, TEXAS 75201.1515

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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 – Inspire Investing, LLC
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 Inspire Investing, LLC (the “**Representative**”) on behalf of Christine Steele. 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.

THE PROPOSAL

The Proposal states in part:

Resolved: Shareholders request the Board of Directors of Kroger assess and issue a report within the next year, at reasonable cost and excluding

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confidential information, evaluating how it oversees risks, both legal and non-legal, related to religious accommodations for dispensing or providing counseling on certain drugs¹, and detailing any strategies beyond litigation and legal compliance the Company may deploy to mitigate these risks.

BASIS FOR EXCLUSION

The Proposal may be properly omitted from the 2026 Proxy Materials pursuant to Rule 14a-8(i)(7) because 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 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

¹ The Proposal's supporting statement specifically mentions "abortion-inducing drugs like mifepristone and misoprostol, emergency contraception, some other forms of birth control, physician-assisted suicide medications in some states, and gender-transition-related drugs such as puberty blockers and cross-sex hormones."

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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, including its relationship with employees. For example, 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). In *The Walt Disney Co.* (avail. Nov. 24,

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2014, recon. denied Jan. 5, 2015), the Staff permitted exclusion of a proposal requesting that the company adopt “anti-discrimination principles that protect employees’ human right[s]” relating to political and civic expression. The company argued that the adoption of such principles would involve “decisions with respect to, and modifications of the way the company manages its workforce and employee relations” that were “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” *See also Deere & Co.* (avail. Nov. 14, 2014, recon. denied Jan. 5, 2015) (permitting exclusion of a proposal requesting that the company adopt an employee code of conduct that included an anti-discrimination policy “that protects employees’ human right to engage in the political process, civic activities and public policy of his or her country without retaliation.”).

Most analogous to the Proposal, in *Johnson & Johnson* (avail. Feb. 23, 2017), the Staff concurred in the exclusion of a proposal requesting a report on the risks and costs caused by pressure campaigns supporting discrimination against “religious individuals,” as well as “detail[ed] strategies” that could be used to defend the company’s employees and their families against discrimination resulting from such campaigns.

Here, the Proposal directly addresses the management of the Company’s employees by requesting a report relating to how the Company plans to deal with risks attenuated to religious accommodations for employees who dispense or provide counseling on certain drugs. Specifically, the Proposal requests that the report “detail[] strategies” that the Company may deploy to mitigate such risks. Like *Johnson & Johnson*, in seeking information on the Company’s strategies that it “may deploy” to address religious accommodations for employees, the Proposal imposes upon the way the Company manages its workforce and employee relations. The strategies the Company may deploy with respect to addressing religious accommodations for employees who dispense or provide counsel on certain drugs such as “abortion-inducing drugs like mifepristone . . . and gender-transition-related drugs such as puberty blockers and cross-sex hormones” involve workforce management considerations that are, like the proposal in *The Walt Disney Co.*, “multi-faceted, complex and based on a range of factors beyond the knowledge and expertise of the shareholders.” For example, the Proposal’s supporting statement cites human capital disruptions, policies and training for managers, employee morale, brand management and operational stability—each of which are core activities central to the Company’s management of its workforce and relationship with its employees.

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. Nor, as discussed previously, does the Proposal’s request for a report about risks to the Company change the analysis, because in its

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evaluation, “rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, [the Staff has indicated it] will focus on the subject matter to which the risk pertains or that gives rise to the risk.” SLB 14E. The “subject matter to which the risk pertains” here is the Company’s management of its workforce.

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 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 “religious accommodations” as a policy issue, the Proposal’s overarching concern is with the Company’s ordinary business decisions with respect to management of the workforce. The Staff has previously permitted exclusion of analogous proposals that facially pertained to religious matters, while primarily focusing on the company’s ordinary business matters. See, e.g., *Amazon.com, Inc.* (avail. Mar. 23, 2018) (permitting exclusion of a proposal concerning the company’s placement of “promotional or other marketing material . . . that expresses hatred or intolerance for people” on several bases, including religious affiliation, because the proposal relates to the company’s ordinary business operations).

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,



Ferrell M. Keel

Attachment

cc: Michael J. Solecki, Jones Day

EXHIBIT A

Report on Risks Related to Religious Accommodations

Supporting Statement:

Kroger is one of the largest retail pharmaceutical providers in the United States, serving millions of American families each year through its pharmacies.

Pharmacists and pharmacy staff are increasingly asked to dispense or counsel on products and services that raise serious moral or religious concerns for many Americans. These include abortion-inducing drugs like mifepristone and misoprostol, emergency contraception, some other forms of birth control, physician-assisted suicide medications in some states, and gender-transition-related drugs such as puberty blockers and cross-sex hormones.

Employees with sincerely held religious beliefs may object to dispensing or facilitating access to these products. Under Title VII of the Civil Rights Act, employers must reasonably accommodate such beliefs unless doing so would cause the employer undue hardship, a standard that the Supreme Court recently strengthened in *Groff v. DeJoy* in 2023. This change is welcomed by many. The Viewpoint Diversity Score's Freedom at Work Survey recently found that 60% of employees feared reprisal for expressing their religious or political views at work, and over half feared the same for private social media posts.¹

Many other laws and regulations underscore the particular importance of this issue for healthcare workers. Federal conscience protections like the Church Amendments and Coats-Snow Amendments, numerous state conscience clause laws, and other state and federal constitutional provisions and statutes protecting religious exercise all protect healthcare professionals, which in many cases include pharmacists and other pharmacy staff.

Failing to accommodate such beliefs can result in discrimination claims, EEOC enforcement actions, and costly litigation. A pharmacy perceived as hostile to religious conscience rights can also face significant reputation damage from customers, political backlash from red states, and heightened scrutiny from a federal administration that has already taken numerous steps to platform religious liberty as a central issue. Recently, the U.S. Office of Personnel Management issued guidance that all federal employees be allowed "personal religious expression ... to the greatest extent possible" under law.² Companies that appear to disregard or inadequately accommodate employee conscience rights jeopardize their eligibility for federal contracts or grants.

It can also create human capital and other operational disruptions. Companies that do not proactively implement clear, well-communicated policies and adequate

¹ <https://www.viewpointdiversityscore.org/polling>

² <https://www.chcoc.gov/content/protecting-religious-expression-federal-workplace>

training for managers are more likely to harm employee morale, artificially limit their talent pool, and apply their policies inconsistently.

The divisive nature of issues like abortion, contraception, medically-assisted suicide, and transgender drug regimens and strongly held views around them make accommodating sincerely held religious beliefs not only a matter of legal compliance, but one of brand management and operational stability.

Resolved: Shareholders request the Board of Directors of Kroger assess and issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks, both legal and non-legal, related to religious accommodations for dispensing or providing counseling on certain drugs, and detailing any strategies beyond litigation and legal compliance the Company may deploy to mitigate these risks.