



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

April 6, 2011

Christine S. Wheatley
The Kroger Co.
Law Department
1014 Vine Street
Cincinnati, OH 45202-1100

Re: The Kroger Co.
Incoming letter dated February 23, 2011

Dear Ms. Wheatley:

This is in response to your letter dated February 23, 2011 and a letter from Bruce M. Gack dated March 31, 2011 concerning the shareholder proposal submitted to Kroger by The Sisters of St. Francis of Philadelphia, the Sisters of Charity of Cincinnati, and the Sisters of the Holy Names of Jesus & Mary U.S. Ontario Province. We also have received a letter on the proponents' behalf dated March 8, 2011. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponents.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Paul M. Neuhauser
1253 North Basin Lane
Siesta Key
Sarasota, FL 34242

April 6, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Kroger Co.
Incoming letter dated February 23, 2011

The proposal urges the board to adopt, implement, and enforce a revised company-wide code of conduct, inclusive of suppliers and sub-contractors, based on the International Labor Organization's conventions, including the four principles set forth in the proposal, and prepare a report concerning the implementation and enforcement of the policy.

We are unable to concur in your view that Kroger may exclude the proposal under rule 14a-8(i)(7). In our view, the proposal does not seek to micro-manage the company to such a degree that exclusion of the proposal would be appropriate. Accordingly, we do not believe that Kroger may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that Kroger may exclude the proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that Kroger's practices and policies do not compare favorably with the guidelines of the proposal and that Kroger has not, therefore, substantially implemented the proposal. Accordingly, we do not believe that Kroger may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Reid S. Hooper
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 proposals 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 administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of 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 adversary procedure.

It is important to note that the staff's and Commission'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 management omit the proposal from the company's proxy material.



THE KROGER CO. • LAW DEPARTMENT • 1014 VINE STREET • CINCINNATI, OHIO 45202-1100

BRUCE M. GACK
VICE PRESIDENT AND
ASSISTANT GENERAL COUNSEL

TEL: 513-762-1482
FAX: 513-698-1850

March 31, 2011

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: Shareholder Proposal of The Sisters of St. Francis of Philadelphia (the "Proponent"), and the Sisters of Charity of Cincinnati and Sisters of the Holy Names of Jesus and Mary (together, the "Co-Proponents")

Response to Letter Dated March 8, 2011

Ladies and Gentlemen:

This letter briefly responds to the letter dated March 8, 2011 (the "Reply Letter"), from Paul M. Neuhauser on behalf of the Co-Proponents.

Agricultural Workers Are Covered by Kroger's Code of Conduct

In the Reply Letter, the Co-Proponents mischaracterize the application of the U.S. labor laws as not applying to agricultural workers, and then conclude that those workers are therefore not covered by Kroger's Code of Conduct.

In fact, while agricultural workers are exempt from some provisions of the Fair Labor Standards Act (29 U.S.C. §201 *et seq.*), they do benefit from the overwhelming majority of the provisions of the law, including minimum wage laws for all workers at farms other than those employing fewer than approximately seven workers, and child labor protections. Too, many workers are not classified as "agricultural," and many large business operations that would appear to be farms are not "farms" under labor laws. As such, those workers all would be covered by the Fair Labor Standards Act and the National Labor Relations Act (29 U.S.C. §151 *et seq.*). See, *e.g.*, *Holly Farms Corp. v.*

National Labor Relations Board, 116 S. Ct. 1396 (1996), in which the U.S. Supreme Court held that a large chicken farming operation did not constitute a “farm” under the National Labor Relations Act, and that workers could join unions. Kroger’s purchases of agricultural products come almost exclusively from large business operations employing more than seven workers.

In addition, special laws adopted as part of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. §1801 *et seq.*) regulate the hiring and employment activities of agricultural employers, farm labor contractors, and associations using migrant and seasonal agricultural workers. These laws prescribe wage protections, housing and transportation standards, farm labor contractor registration requirements, and disclosure requirements.

Further, in addition to the general requirements of compliance with the law, Kroger’s Code of Conduct specifically deals with slave labor, safe conditions, harassment, fair treatment of workers, wages, bribery and conflict of interest, compliance with the Foreign Corrupt Practices Act, and maintenance of records and audit rights. Each of these specific provisions of Kroger’s Code of Conduct applies to all workers, including agricultural workers.

Agricultural workers, indeed, are covered by Kroger’s Code of Conduct.

The Proposal Has Been Substantially Implemented

The Co-Proponents claim in the Response Letter that “Kroger has implemented, at most, only 25% of the request.” It is clear that Kroger’s Code of Conduct expressly prohibits slave labor and discrimination, two of the topics stated in the Co-Proponents’ proposal. For those farm workers covered by the National Labor Relations Act, the right to form and join unions is protected and thus a part of Kroger’s Code of Conduct. The only provision of Co-Proponents’ proposal not expressly covered by Kroger’s Code of Conduct is entitlement to overtime pay when working over 8 hours per day.

Kroger’s Code of Conduct applies to its own practices as well as those of its suppliers and contractors. Of Kroger’s 338,000 employees, the overwhelming majority are covered by several hundred collective bargaining agreements. Those agreements dictate the terms and conditions of overtime pay. Kroger’s attempt to modify its Code of Conduct to provide for conflicting overtime provisions would violate the terms of its contracts.

As such, to the extent it is lawfully and contractually permitted to do so, Kroger’s Code of Conduct expressly deals with each of the specific items identified in the proposal.

Kroger's Code Need Not Deal With Each Proposal Item

As set forth in our request for a no-action letter, dated February 23, 2011, a proposal has been substantially implemented when a company's particular policies, practices and procedures "compare favorably with the guidelines of the proposal." See, Exchange Act Release No. 34-20091 (Aug. 16, 1983). The manner by which policies are implemented need not be identical to that set forth in the proposal.

Specifying Required Components of Code is Micromanagement

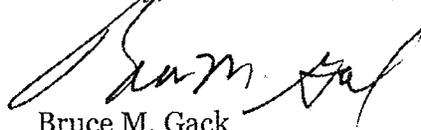
Assuming, *arguendo*, that Kroger's Code does not expressly cover all four components of the proposal, then any request by the Co-Proponents to do so should be excludable under rule 14a-8(i)(7) as dealing with the matters relating to conduct of a registrant's "ordinary business operations."

It is undoubtedly within the day-to-day management of a company to seek input, debate, review, revise, and even internally negotiate the language of a company policy to address human rights issues. Accordingly, we believe that the Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to ordinary business operations.

Conclusion

We respectfully urge that the Staff determine that the Proposal may be omitted from the Proxy Materials because it has been substantially implemented and because it relates to the Company's ordinary business operations. If you disagree with the conclusions contained in this request, I would appreciate the opportunity to confer with you prior to the issuance of the Staff's response. Please call me at (513) 762-1482 if you require additional information or wish to discuss this matter further.

Sincerely,



Bruce M. Gack

cc. Tom McCaney
Paul M. Neuhauser

PAUL M. NEUHAUSER
Attorney at Law (Admitted New York and Iowa)

1253 North Basin Lane
Siesta Key
Sarasota, FL 34242

Tel and Fax: (941) 349-6164

Email: ***FISMA & OMB Memorandum M-07-16***

March 8, 2011

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: Gregory Belliston, Esq.
Special Counsel
Division of Corporation Finance

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to The Kroger Company

Dear Sir/Madam:

I have been asked by the Sisters of St. Francis of Philadelphia, the Sisters of the Holy Names of Jesus and Mary (U.S. Ontario Province) and the Sisters of Charity of Cincinnati (hereinafter referred to jointly as the "Proponents"), each of whom is a beneficial owner of shares of common stock of The Kroger Company (hereinafter referred to either as "Kroger" or the "Company"), and who have jointly submitted a shareholder proposal to Kroger, to respond to the letter dated February 23, 2011, sent to the Securities & Exchange Commission by the Company, in which Kroger contends that the Proponents' shareholder proposal may be excluded from the Company's year 2011 proxy statement by virtue of Rules 14a-8(i)(10) and 14a-8(i)(7).

I have reviewed the Proponents' shareholder proposal, as well as the aforesaid letter sent by the Company, and based upon the foregoing, as well as

upon a review of Rule 14a-8, it is my opinion that the Proponents' shareholder proposal must be included in Kroger's year 2011 proxy statement and that it is not excludable by virtue of either of the cited rules.

The Proponents' shareholder proposal requests the Company to revise its Code of Conduct to include additional topics.

RULE 14a-8(i)(10)

The Proponents' shareholder proposal requests the Company to amend its Code of Conduct in four respects (all based on ILO standards):

- 1) "Employment shall be freely chosen. There shall be no use of forced labor, including bonded or voluntary prison labor."
- 2) "Workers are entitled to overtime pay when working more than 8 hours per day"
- 3) "All workers have the right to form and join trade unions and to bargain collectively"
- 4) "Worker representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation function"

Although the Company states that it has substantially implemented the proposal, it fails to identify any portion of its existing Code of Conduct that addresses items 2, 3 or 4. Furthermore, although Kroger notes (just prior to bullet points at bottom of page 3) that it complies with "all applicable labor laws, regulations and orders, including the Fair Labor Standards Act", nevertheless, as the fifth paragraph of the Whereas Clause notes, "U.S. agricultural workers are excluded from many labor laws that apply to other U.S. workers (for example, National Labor Relations Act of 1935, 29 U.S.C. § 151 et seq.; portions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, 213.)". Thus, although the rights of agricultural workers are part of the rights of workers spelled out in the ILO conventions, such workers are not covered by the Company's Code of Conduct. This is especially egregious since Kroger is a grocery company, most of whose products are of agricultural origin. In addition, in describing its Code, Kroger does not even make a comparable statement with respect to its suppliers and contractors who operate outside the United States and are not subject to the Fair Labor Standards Act or other labor protective laws of the United States. Yet it is clear

that Kroger has suppliers outside the United States since its most recent 10-K (for the year ended January, 2010), states (page 29):

Although we presently operate only in the United States, civil unrest in foreign countries in which our suppliers do business may affect the prices we are charged for imported goods.

Consequently, the Company has provided no evidence that it has complied with items 2, 3 or 4 of the proposal. Therefore Kroger has implemented, at most, only 25% of the request set forth in the Proponents' shareholder proposal. Implementation of only twenty-five percent of a proposal cannot possibly represent the "substantial implementation" of a proposal. *McDonald's Corporation* (March 22, 2007) (proposal contained the identical four items that are in the Proponents' proposal); *E. I. du Pont de Nemours and Company* (February 11, 2004) (similar items); *Abercrombie & Fitch Co.* (April 12, 2010) (similar items); *V.F. Corporation* (February 13, 2004) (similar items); *Costco Wholesale Corporation* (October 26, 2004) (similar items). *3M Company* (March 2, 2005); *General Electric Corporation* (January 31, 2007). See also, e.g., *Abbott Laboratories* (February 28, 2008); *3M Company* (March 7, 2006); *Cisco Systems, Inc.* (August 31, 2005);

On the other hand, the no-action letters cited by the Company are inapposite.

The *Talbots* no-action letter, cited on page 3 of the Company's letter, provides no support whatsoever for Kroger's position that it has substantially implemented the proposal when it has, in fact, only implemented only 25% of the proposal, since in *Talbots*, in connection with a very similar shareholder proposal with five items, that registrant established that it had implemented each and every one of the five items requested. The *Gap* no-action letter provides even less support (if possible) for the Company's position since in that instance the proposal dealt only with child labor, a topic already covered by the registrant's existing code of conduct. Finally, the *Kmart* no-action letter is even wider off the mark since in that situation there was no dispute as to the degree of coverage in the registrant's code of conduct. Rather the dispute concerned whether the information, which did, in fact, encompass all that the proponent had requested, was available in a form that made a "report" unnecessary.

For the foregoing reasons, Kroger has not carried its burden of proving that it has substantially implemented the Proponents' shareholder proposal.

RULE 14a-8(i)(7)

The Company concedes that the Proponents' shareholder proposal raises an important policy issue. Therefore the proposal is not excludable by virtue of Rule 14a-8(i)(7). *McDonald's Corporation* (March 22, 2007) (identical proposal); *V.F. Corporation* (February 13, 2002) (similar proposal). However, Kroger argues that the Proponents are attempting to "micro-manage" by requiring Kroger "to track the language of ILO conventions". This is not so. The Proponents are not requesting that any specific language be used in the Company's Code of Conduct. Rather, the Proponents are requesting that all four of the listed *concepts* be included in that Code. (Note, the proposal says "based on" the four standards.) Numerous no-action letters have opined that such a request does not constitute micromanaging. *Abercrombie & Fitch Co.* (April 12, 2010) (very similar proposal); *V.F. Corporation* (February 13, 2004) (very similar proposal); *E.I. du Pont de Nemours and Company* (February 11, 2004) (similar proposal); *The TJX Companies, Inc.* (April 5, 2002) (similar proposal); *E.I. du Pont de Nemours and Company* (March 11, 2002)(similar proposal) *Costco Wholesale Corporation* (October 26, 2004) (similar proposal).

For the foregoing reasons, the Proponents' shareholder proposal is not excludable by virtue of Rule 14a-8(i)(7).

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request. We would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: Christine S, Wheatley
Thomas McCaney
David Schilling
Laura Berry

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2011 FEB 24 PM 4:40

OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE



THE KROGER CO. • LAW DEPARTMENT • 1014 VINE STREET • CINCINNATI, OHIO 45202-1100

CHRISTINE S. WHEATLEY

TELEFAX NUMBER
513-762-4935

WRITER'S DIRECT DIAL NUMBER
513-762-1482

February 23, 2011

VIA E-MAIL (shareholderproposals@sec.gov)
and UPS OVERNIGHT

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

RE: Shareholder Proposal of The Sisters of St. Francis of Philadelphia (the "Proponent"),
and the Sisters of Charity of Cincinnati and Sisters of the Holy Names of Jesus and Mary
(together, the "Co-Proponents")

Ladies and Gentlemen:

Enclosed for filing, pursuant to Rule 14a-8(j) under the Exchange Act, are the following:

- A. Six copies of this letter;
- B. Six copies of a letter dated January 10, 2011 from The Sisters of St. Francis of Philadelphia, along with a shareholder proposal and supporting statement (the "Proposal") (Exhibit A), six copies of a letter dated January 11, 2011 from the Sisters of Charity of Cincinnati, along with an identical Proposal (Exhibit B); and six copies of a letter dated January 12, 2011 from Sisters of the Holy Names of Jesus and Mary, along with an identical Proposal (Exhibit C);
- C. One additional copy of this letter along with a self-addressed return envelope for purposes of returning a file-stamped receipt copy of this letter to the undersigned.

Kroger intends to make available to shareholders our definitive proxy statement and form of proxy (the "Proxy Materials") in conjunction with our 2011 Annual Meeting on or about May 13, 2011. That meeting currently is scheduled to be held on June 23, 2011. Kroger 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.

We believe that the Proposal may properly be omitted from the Proxy Materials pursuant to Rule 14a-8(i)(10) and Rule 14a-8(i)(7), and Kroger intends to exclude the Proposal from the Proxy Materials. By a copy of this letter to the Proponent, we are notifying the Proponent (which has been authorized by the Co-Proponents to receive all communications related to the Proposal on behalf of the Co-Proponents) of our intentions. Please confirm that no enforcement action will be recommended if the Proposal is excluded.

The Proposal

The resolution portion of the Proposal requests that Kroger's Board of Directors adopt, implement and enforce a revised company-wide Code of Conduct, inclusive of suppliers and sub-contractors, based on the International Labor Organization's ("ILO") Declaration on Fundamental Principles and Rights at Work and to prepare a report at reasonable cost to shareholders and the public concerning the implementation and enforcement of this policy.

Discussion

I. The Proposal Has Been Substantially Implemented, and It May Be Excluded Under Rule 14a-8(i)(10).

Rule 14a-8(i)(10) permits the omission of a shareholder proposal from the proxy soliciting materials if "the company already has substantially implemented the proposal."

The Proposal may be excluded under Rule 14a-8(i)(10), because Kroger already has substantially implemented the Proposal.

The Proposal requests that the Company adopt, implement and enforce a revised company-wide Code of Conduct, inclusive of suppliers and sub-contractors, and to prepare a report regarding its adoption and implementation. Kroger has already adopted a company-wide Code of Conduct applicable to both Kroger's vendors and their contractors, and the adoption, implementation and enforcement of the Code of Conduct is already publicly-available information on Kroger's website at www.thekrogerco.com.

Rule 14a-8(i)(10) permits the exclusion of shareholder proposals if a company has already substantially implemented the proposal. The standard the Staff has applied in determining if a proposal is substantially implemented is whether a company's particular policies, practices and procedures "compare favorably with the guidelines of the proposal." See, Exchange Act Release No. 34-20091 (Aug. 16, 1983)(the "1983 Release") and *Texaco, Inc.* (avail. March 28, 1991). The Staff has consistently taken the position

that when a company already has policies and procedures in place relating to the subject matter of the proposal, or has implemented the essential objectives of the proposal, the shareholder proposal has been “substantially implemented” within the scope of Rule 14a-8(i)(10). A company’s actions must satisfactorily address the proposal’s essential objective, even when the manner by which it is implemented does not correspond precisely to the actions sought by the shareholder proponent.

In *The Talbots, Inc.*, (April 5, 2002), a shareholder proposal requested adoption and implementation of a code of corporate conduct based on human rights standards of the ILO, along with monitoring. The proposal was found to have been substantially implemented because the company had already established and implemented standards for business practice and a labor law compliance program and code of conduct for suppliers, to address concerns regarding global workplace conditions and labor practices in factories that produce merchandise for Talbots, and had already established a monitoring program. Although the precise language of the shareholder proposal was not included in the Talbots’ standards for business practice and code of conduct, these documents addressed the human rights areas and standards raised by the proponent; accordingly the proposal had been substantially implemented.

See also *The Gap, Inc.* (March 16, 2001) (proposal asking company’s board to provide a report to shareholders on child labor practices of the company’s suppliers was excludable because the company had established and implemented a code of vendor conduct, monitored compliance with the code, published information on its website about the code and its monitoring programs, and discussed child labor issues with shareholders); *Kmart Corp.* (February 23, 2000) (proposal requesting that the board report on the company’s vendor standards and compliance program for its vendors, subcontractors and agents in countries where it sourced products was excludable because the company had substantially implemented the proposal because it had adopted a vendor code of conduct, established a monitoring program, circulated a shareholder report, and discussed these matters with shareholders).

Kroger adopted its Code of Conduct many years ago. The Code of Conduct is included in Kroger’s Standard Vendor Agreement, and applies not only to the Kroger’s direct suppliers, but to contractors of those suppliers. While Kroger’s Code of Conduct for vendors covers the issues addressed by the Proposal, it is substantially more comprehensive. Kroger’s existing Code of Conduct requires compliance with all applicable labor laws, regulations, and orders, including the Fair Labor Standards Act. In addition, the Code of Conduct:

- Prohibits child, indentured, involuntary, or prison labor;
- Prohibits exposing workers to unreasonably hazardous, unsafe, or unhealthy conditions;
- Prohibits unlawful discrimination;
- Requires the workplace to be free from harassment;

- Requires workers to be treated fairly, with dignity and respect;
- Requires that wages meet or exceed legal and industry standards;
- Requires that U.S. workers be eligible for employment in the U.S.;
- Prohibits bribes and conduct that appears improper or may result in a conflict of interest; and
- Requires compliance with the U.S. Foreign Corrupt Practices Act.

The Proponents request that Kroger adopt a revised Code of Conduct, applicable to all suppliers and their contractors, that provides for the following based on ILO conventions:

- Employment is to be freely chosen, without the use of forced labor;
- Workers are entitled to overtime pay when working more than eight hours per day;
- Workers have a right to form and join unions and to collectively bargain; and
- Worker representatives are to be free from discrimination and have access to the workplace.

Kroger has developed its own Code of Conduct that not only deals with the basic tenets of the shareholder proposal, but also requires those that do business with Kroger to respect their workers' basic human rights in other respects not covered by the Proposal.

Furthermore, the Code of Conduct requires Kroger suppliers and their contractors to maintain written records evidencing compliance with the provisions of the Code of Conduct and to make those records available to Kroger. The enforcement of the Code of Conduct is explicitly contained in the Code of Conduct itself. If Kroger determines that a vendor or its contractors have failed to follow the Code of Conduct, Kroger is entitled to return all unsold product to the vendor for a refund at vendor's cost and to cancel any unfilled purchase orders at no cost to Kroger.

Kroger has previously adopted and implemented a comprehensive Code of Conduct that covers the human rights principles covered in the Proposal. The enforcement of the Code of Conduct is contained in the Code itself. The Code of Conduct is available to shareholders and the public on Kroger's website at www.thekrogerco.com, and therefore a report describing the implementation and enforcement of the Code of Conduct is unnecessary.

Rule 14a-8(i)(10) permits the exclusion of shareholder proposals if a company has already substantially implemented the proposal. Differences between a company's actions and a shareholder proposal are permitted as long as the company's actions address the proponent's underlying concern. The Kroger Code of Conduct, and the publicly available

information regarding its adoption and implementation, both satisfy the essential objectives of the Proposal, compare favorably to the Proposal, and thus the Proposal substantially has been implemented.

II. The Proposal is improper pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

Rule 14a-8(i)(7) permits exclusion of shareholder proposals dealing with the matters relating to conduct of a registrant's "ordinary business operations."

The Division has acknowledged that the general underlying policy of the ordinary business operations exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for stockholders to decide how to solve such problems at an annual meeting." See Exchange Act Release No. 34-40018 (May 21, 1998). As stated in that Release, "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they should not, as a practical matter, be subject to direct shareholder oversight."

Kroger acknowledges that the Proposal addresses a significant policy issue of human rights. Kroger agrees with the Proponent about the importance of ensuring that basic human rights are recognized by those seeking to do business with us. That is exactly why Kroger has adopted a comprehensive Code of Conduct. However, requiring Kroger to amend its existing Code of Conduct to track the language of ILO conventions, in place of Kroger's carefully considered wording, amounts to micromanaging. It is undoubtedly within the day-to-day management of a company to seek input, debate, review, revise, and even internally negotiate the language of a company policy to address human rights issues. Accordingly, we believe that the Proposal is excludable pursuant to Rule 14a-8(i)(7) as relating to ordinary business operations.

Conclusion

We respectfully urge that the Staff determine that the Proposal may be omitted from the Proxy Materials because it has been substantially implemented and because it relates to the Company's ordinary business operations. If you disagree with the conclusions contained in this request, I would appreciate the opportunity to confer with you prior to the issuance of the Staff's response. Please call me at (513) 762-1482 if you require additional information or wish to discuss this submission further.

Sincerely,



Christine S. Wheatley

encl.

cc. Tom McCaney

Exhibit A



THE SISTERS OF ST. FRANCIS OF PHILADELPHIA

January 10, 2011

Paul W. Heldman
Corporate Secretary
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202

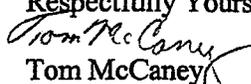
Dear Mr. Heldman:

Peace and all good! The Sisters of St. Francis of Philadelphia have been shareholders in The Kroger Company for many years. As responsible shareholders, we seek to achieve social as well as financial returns on our portfolio.

We are deeply concerned about the poverty, abuses, and even modern-day slavery rings faced by farmworkers who pick our nation's food. We recognize that Kroger has an existing vendor code of conduct but given recent and ongoing slavery prosecutions in the agricultural industry and the exclusion of farmworkers from many labor laws, we feel it is important that Kroger adopt a code of conduct based on International Labor Organization standards. Fortunately, Kroger has the opportunity to be part of the solution with regards to tomato pickers by participating in the Coalition of Immokalee Workers' Fair Food Code of Conduct. As a leader in the supermarket industry and a large purchaser of produce, we hope that Kroger will take a leadership role in eliminating modern-day slavery and other abuses from our food system.

The Sisters of St. Francis of Philadelphia are therefore submitting the enclosed shareholder resolution, "Human Rights Standards". I submit it for inclusion in the 2011 proxy statement for consideration and action by the next stockholders meeting in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. A representative of the filers will attend the annual stockholders meeting to move the resolution as required by SEC rules. We hope that the company will meet with the proponents of this resolution. Please note that the contact person for this resolution will be: Tom McCaney, Associate Director, Corporate Social Responsibility. Contact information: tmccaney@osfphila.org or 610-558-7764.

As verification that we are beneficial owners of common stock in Kroger, I enclose a letter from Northern Trust Company, our portfolio custodian/Record holder, attesting to the fact. It is our intention to keep these shares in our portfolio beyond the date of the 2011 annual meeting.

Respectfully Yours,

Tom McCaney
Associate Director, Corporate Social Responsibility

Enclosures
cc: Julie Wokaty, ICCR

Kroger Company – Human Rights Standards

Whereas, we believe Kroger purchases significant amounts of produce, such as tomatoes, and

Whereas, the United States Department of Justice has successfully prosecuted several cases of modern-day slavery in the U.S. agricultural industry since 1996, involving over 1,000 workers, (see, for example, US v. Ramos; US v. Lee; US v. Flores; US v. Cuello; U.S. v. Navarrete) and there are additional modern-day slavery cases involving agricultural workers in the U.S. currently under federal prosecution (see, for example, US v. Bontemps, US v. Global Horizons), and

Whereas, there is increasing public awareness and media coverage of modern-day slavery, sweatshop conditions and abuses that many agricultural workers face, and

Whereas, we believe violations of human rights in Kroger's supply chain can lead to negative publicity, public protests, and a loss of consumer confidence that can have a negative impact on shareholder value, and

Whereas, Kroger's current vendor Code of Conduct is based heavily on compliance with the law, and U.S. agricultural workers are excluded from many labor laws that apply to other U.S. workers (for example, National Labor Relations Act of 1935, 29 U.S.C. § 151 et seq.; portions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, 213), and

Whereas, other multi-national corporations, including other large produce purchasers, have implemented enforceable and meaningful codes of conduct for their supply chains based on international human rights standards, such as the International Labor Organization's ("ILO") standards, and

Whereas, in our opinion as shareholders, enforceable human rights codes of conduct based on the ILO's Declaration on Fundamental Principles and Rights at Work and other conventions and are essential if consumer and investor confidence in our company's commitment to human rights is to be maintained,

Therefore, be it resolved that the shareholders urge the Board of Directors to adopt, implement, and enforce a revised company-wide Code of Conduct, inclusive of suppliers and sub-contractors, based on the International Labor Organization's ("ILO") Declaration on Fundamental Principles and Rights at Work and the following other relevant ILO conventions:

- * Employment shall be freely chosen. There shall be no use of forced labor, including bonded or voluntary prison labor (ILO Conventions 29 and 105);

- * Workers are entitled to overtime pay when working more than 8 hours per day (ILO Convention 1);

- * All workers have the right to form and join trade unions and to bargain collectively. (ILO Conventions 11, 87, 98, 110);

- * Worker representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions (ILO Convention 135).

The Board should also prepare a report at reasonable cost to shareholders and the public concerning the implementation and enforcement of this policy.

Exhibit B



Sisters of Charity
of Cincinnati

January 11, 2011

Paul W. Heldman, Secretary
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202-1100

Dear Mr. Heldman:

As shareholders in The Kroger Company, we urge Kroger's to adopt a Code of Conduct as presented in the enclosed shareholder resolution. We believe a Code of this nature will bring our company to a place where human rights are recognized and used as a guide for business practices.

With this letter, the Sisters of Charity of Cincinnati, give notice that pursuant to the 2011 proxy statement of The Kroger Company and Rule 14a-8 under the Securities Exchange Act of 1934, the Sisters of Charity of Cincinnati intend to co-file the attached proposal with The Kroger Company at the 2011 annual meeting of shareholders. The Sisters of Charity of Cincinnati are the beneficial owner of 200 shares of The Kroger Company and have held these shares for over one year. In addition, the Sisters of Charity of Cincinnati intend to hold these shares through the date on which the Annual Meeting is held. A copy of proof of ownership is enclosed.

Tom McCaney, Associate Director, Corporate Social Responsibility for the Sisters of St. Francis of Philadelphia, will be our representative regarding this resolution and he can be reached via e-mail tmccaney@osfphila.org or by phone at (610)558-7764. We recognize Kroger's as a responsible community citizen, and look forward to being able to dialogue with you about this important issue.

Sincerely,

Timothy Moller
Chief Financial Officer

Ruth Kuhn, SC
Chair - Corporate Responsibility Committee

Enclosures Proposal
Proof of Ownership

Copy to: Tom McCaney
Julie Wokaty (ICCR)

Kroger Company – Human Rights Standards

Whereas, we believe Kroger purchases significant amounts of produce, such as tomatoes, and

Whereas, the United States Department of Justice has successfully prosecuted several cases of modern-day slavery in the U.S. agricultural industry since 1996, involving over 1,000 workers, (see, for example, US v. Ramos; US v. Lee; US v. Flores; US v. Cuello; U.S. v. Navarrete) and there are additional modern-day slavery cases involving agricultural workers in the U.S. currently under federal prosecution (see, for example, US v. Bontemps, US v. Global Horizons), and

Whereas, there is increasing public awareness and media coverage of modern-day slavery, sweatshop conditions and abuses that many agricultural workers face, and

Whereas, we believe violations of human rights in Kroger's supply chain can lead to negative publicity, public protests, and a loss of consumer confidence that can have a negative impact on shareholder value, and

Whereas, Kroger's current vendor Code of Conduct is based heavily on compliance with the law, and U.S. agricultural workers are excluded from many labor laws that apply to other U.S. workers (for example, National Labor Relations Act of 1935, 29 U.S.C. § 151 et seq.; portions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, 213), and

Whereas, other multi-national corporations, including other large produce purchasers, have implemented enforceable and meaningful codes of conduct for their supply chains based on international human rights standards, such as the International Labor Organization's ("ILO") standards, and

Whereas, in our opinion as shareholders, enforceable human rights codes of conduct based on the ILO's Declaration on Fundamental Principles and Rights at Work and other conventions and are essential if consumer and investor confidence in our company's commitment to human rights is to be maintained,

Therefore, be it resolved that the shareholders urge the Board of Directors to adopt, implement, and enforce a revised company-wide Code of Conduct, inclusive of suppliers and sub-contractors, based on the International Labor Organization's ("ILO") Declaration on Fundamental Principles and Rights at Work and the following other relevant ILO conventions:

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- * Worker representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions (ILO Convention 135).

The Board should also prepare a report at reasonable cost to shareholders and the public concerning the implementation and enforcement of this policy.

Exhibit C



Sisters of the Holy Names of Jesus and Mary
Finance Office • U.S.-Ontario Administrative Centre

January 12, 2011

David B. Dillon, CEO & Chair
The Kroger Company
1014 Vine St.
Cincinnati, OH
45202-1100

Dear Mr. Dillon,

The Sisters of the Holy Names of Jesus & Mary U.S. Ontario Province call on the Kroger Company, as the largest grocery chain in the U.S., to be a leader in the industry by adopting and implementing a code of conduct for your supply chain that is based on international human rights standards. Your action will be an important step in addressing the issues of forced labor and human trafficking in the agricultural industry.

✓ We are co-filing the enclosed resolution with the Sisters of St. Francis of Philadelphia for action at the annual meeting in 2011. We submit it for inclusion in the proxy statement under Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. A representative of the shareholders will attend the annual meeting to move the resolution as required by SEC rules.

The Sisters of the Holy Names of Jesus & Mary U.S. Ontario Province is the beneficial owner of at least \$2000 worth of Kroger common stock. A letter verifying ownership in the Company continuously for at least twelve months as of January 12, 2011 is enclosed. We will continue to hold the required number of shares in the Kroger Company through the annual meeting in 2011.

We designate Thomas McCaney as the lead filer to act on our behalf for all purposes in connection with this proposal. Please copy Vicki Cummings vcummings@snjimusun.org on all communications.

Sincerely,

Sister Mary Ellen Holohan, signè

Sister Mary Ellen Holohan, SNJM
Treasurer of the Sisters of the Holy Names of Jesus & Mary U.S. Ontario Province

Encl.: Verification of ownership
Resolution

Kroger Company – Human Rights Standards

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The Board should also prepare a report at reasonable cost to shareholders and the public concerning the implementation and enforcement of this policy.