



DIVISION OF  
CORPORATION FINANCE

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

April 17, 2025

Lyuba Goltser  
Weil, Gotshal & Manges LLP

Re: The Kroger Co. (the "Company")  
Incoming letter dated April 16, 2025

Dear Lyuba Goltser:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Michael E. Monteiro 2016 Rev Trust and co-filer (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its February 24, 2025 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Danielle Fugere  
As You Sow

# Weil, Gotshal & Manges LLP

767 Fifth Avenue  
New York, NY 10153-0119  
+1 212 310 8000 tel  
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**Lyuba Goltser**  
lyuba.goltser@weil.com

February 24, 2025

SUBMITTED ONLINE ([www.sec.gov/forms/shareholder-proposal](http://www.sec.gov/forms/shareholder-proposal))

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re:           The Kroger Co.  
              2025 Annual Meeting Omission of Shareholder Proposal of As You Sow on  
              Behalf of co-filers Michael Monteiro and The Woodcock Foundation  
              Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

This letter is submitted on behalf of The Kroger Co. (the “Company” or “Kroger”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company has received the shareholder proposal (the “Proposal”) submitted by As you Sow, on behalf of Michael Monteiro and The Woodcock Foundation (together, the “Proponent”) for inclusion in the Company’s form of proxy, proxy statement and other proxy materials (together, the “2025 Proxy Materials”) for its 2025 annual meeting of shareholders (the “2025 Annual Meeting”). In reliance on Rule 14a-8 under the Exchange Act, the Company intends to omit the Proposal from the 2025 Proxy Materials for the reasons discussed below. 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 2025 Proxy Materials.

Pursuant to Rule 14a-8(j), we have:

- Electronically submitted this letter with the Staff no later than eighty (80) calendar days before the Company intends to file the 2025 Proxy Materials in definitive form with the Commission; and
- Concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the

proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be sent at the same time to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## **THE PROPOSAL**

The Company received the Proposal, accompanied by a cover letter from the Proponent, via FedEx and email on January 15, 2025.

The Proposal states:

### **RESOLVED**

Shareholders request that Kroger assess and report on the effectiveness of its due diligence policies to ensure vendor compliance with local and state laws and Kroger's Standards, such as illegal deforestation from avocado supply chains.

The Proposal, along with a statement in support of the Proposal (the "2025 Supporting Statement"), are attached to this letter as Exhibit A.

## **BASES FOR EXCLUSION**

We hereby respectfully request that the Staff concur in Kroger's view that it may exclude the Proposal from the 2025 Proxy Materials pursuant to:

- Rule 14a-8(i)(5), because the Proposal relates to operations which account for less than 5 percent of the Company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the Company's business.
- Rule 14a-8(i)(7), because the Proposal deals with matters relating to the Company's ordinary business operations.

## **BACKGROUND**

The Company received the Proposal via FedEx and email on January 15, 2025, attached as Exhibit A hereto. The Company confirmed receipt of the Proposal on the same day, and informed the Proponent that it was not in receipt of proof of ownership for either co-filer. The Proponent subsequently responded with proof of ownership for The Woodcock Foundation on January 15, and for Michael Monteiro on January 16, 2025. See Exhibit B.

## ANALYSIS

### **1. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(5) Because it is Not Economically or Otherwise Significant to the Company's Business**

Rule 14a-8(i)(5) permits the exclusion of a shareholder proposal “[i]f the proposal relates to operations which account for less than 5 percent of the company’s total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company’s business.” Historically, the analysis of whether a proposal is “otherwise significantly related” under Rule 14a-8(i)(5) has been informed by an analysis of “social or ethical issues” raised by the proposal, and often connected to an analysis under the “ordinary business” exception under Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has at times been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). In Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”), the Staff clarified that it will apply separate analytical frameworks and will not look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5) “to ensure that each basis for exclusion serves its intended purpose.” Additionally, the Staff explained that, in analyzing proposals under Rule 14a-8(i)(5), the focus will be on a proposal’s significance to the company’s business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, the analysis is dependent upon “the particular circumstances of the company to which the proposal is submitted.” *Id.*

Kroger is a leading, national grocery retailer. As part of its operations, which in addition to grocery stores, include retail pharmacies and fuel centers, Kroger sells thousands of consumer products in wide-ranging categories across its stores and seamless ecosystem. Avocados are but one of the vast array of products that Kroger makes available to its customers for purchase. Annual sales of avocados accounted for significantly less than 5% of the Company’s total assets, total sales and net earnings for the fiscal year ended February 3, 2024. Given that avocado sales clearly do not exceed the thresholds set forth in Rule 14a-8(i)(5) for the year ended February 3, 2024, the Proposal is unequivocally excludable from the 2025 Proxy Materials.

The Staff has previously excluded several proposals similar to the one received by Kroger that concerned portions of a company’s business that did not meet the 5% thresholds in Rule 14a-8(i)(5), and where the proposal’s significance to the company was not apparent on its face. Where a proposal’s significance to a Company’s business is not apparent on its face, the Commission has stated that a proposal may be excludable unless the proponent demonstrates that it is “otherwise significantly related to the company’s business.” SLB 14M; see also Release No. 34-39093 (Sep. 18, 1997) (“The proponent carries the burden of demonstrating that the proposal is ‘otherwise significantly related.’”), citing 1982 Release No. 34-19135 (Oct. 14, 1982) (the “1982 Release”) (“Where the significant relationship is not immediately apparent on the face of the proponent’s submission, the proponent . . . could demonstrate the significant relationship supplementally.”) The mere possibility of reputational or economic harm alone will not demonstrate that a proposal

is “otherwise significantly related to the company’s business.” SLB 14M. In evaluating whether a proposal is “otherwise significantly related to the company’s business,” the Staff will consider the proposal in light of the “total mix” of information about the issuer. *Id.* In *Dunkin’ Brands Inc.* (Feb. 22, 2018), the Staff concurred in the exclusion of a proposal requesting the board issue a report assessing the environmental impacts of continuing to use K-Cup Pods brand packaging because (1) it related to operations that account for less than 5% of Dunkin Brands’ total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, (2) “the [p]roposal’s significance to [Dunkin’ Brands’] business was not apparent on its face,” and (3) the “[p]roponent did not demonstrate that it is otherwise significantly related to [Dunkin’ Brands’] business.” Similarly, in *CVS Health Corporation* (Jan. 12, 2021), the Staff concurred in the exclusion of a proposal requesting that the board commission a report on the external public health costs created by CVS’ retail food business, when the company viewed the food it offers its customers as a complementary offering that did not form a significant part of the Company’s retail focus.

Here, the Proponent’s request is predicated on the hypothetical and unproven suggestion that the Company “may” source its avocados from illegally deforested lands. *See* the Supporting Statement. The Proponent has not demonstrated that the Proposal “may have a significant impact on other segments of the issuer’s business or subject the issuer to significant contingent liabilities.” SLB 14M, citing the 1982 Release. In fact, the Proposal simply states that Kroger “may source avocados from illegally deforested land,” a hypothetical statement that does not sufficiently demonstrate the significance of this Proposal to the Company’s business. Although the Proposal references supposed environmental qualms associated with avocado-related deforestation at large, it fails to adequately link such alleged practices to the Company. As such, the issue at the heart of the Proposal – avocado-related illegal deforestation – is in no way significantly related to Kroger’s business.

Given that the Proposal relates to sales of a product that currently fall significantly below the 5% threshold prescribed by Rule 14a-8(i)(5), and is otherwise not significantly related to the Company, we respectfully request that the Staff concur with our decision to exclude the Proposal from our 2025 Proxy Materials.

## **2. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company’s Ordinary Business Operations**

### *(a) Overview of Rule 14a-8(i)(7)*

Rule 14a-8(i)(7) permits the omission of a shareholder proposal dealing with matters relating to a company’s “ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, 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.” Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

In the 1998 Release, the Commission identified the two central considerations underlying the general policy for the ordinary business exclusion. The first consideration relates to the subject matter of the proposal. The Commission stated that, “[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 relates to the “degree to which the proposal seeks to ‘micro-manage’ 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.*; see also Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”). The term “ordinary business” is rooted in the fundamental “corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” 1998 Release (citing Release No. 12999 (Nov. 22, 1976)).

Furthermore, the Staff has previously permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals requesting the dissemination of a report when the subject matter involved is undoubtedly related to a company’s ordinary business. See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”). The Commission has stated that a shareholder proposal that seeks a report on the merits of engaging in an action, rather than requesting the underlying action, still warrants exclusion under Rule 14a-8(i)(7) if the subject matter of the report “involves a matter of ordinary business.” *Id.* See, e.g., *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).” In each of these precedents, the Staff recognized that a proposal framed in the form of a request for a report, when the subject matter is related to a company’s ordinary business, may be excluded.

*(b) The Proposal Relates to the Company’s Supplier Relationships*

The Proposal requests a report on the “effectiveness of [Kroger’s] due diligence policies to ensure vendor compliance with local and state laws,” and thus implicates the Company’s ordinary business operations as it relates to the Company’s relationships with its suppliers. In the 1998 Release, the Commission included supplier relationships as an example of an ordinary business matter excludable under Rule 14a-8(i)(7), stating:

Certain 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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. (emphasis added)

The Staff has previously concurred with the exclusion of proposals under Rule 14a-8(i)(7) because they concerned decisions relating to supplier or vendor relationships. In *Foot Locker, Inc.* (Mar. 3, 2017), the Staff concurred with the exclusion of a proposal seeking a report on steps taken by the company to monitor overseas apparel suppliers’ use of subcontractors as relating “broadly to the manner in which the company monitors the conduct of its suppliers and their

subcontractors.” Similarly, in *Kraft Foods Inc.* (Feb. 23, 2012), the shareholder proposal requested a report detailing the ways the company would assess water risk to its agricultural supply chain and mitigate the impact of such risk. In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff determined that the proposal concerned “decisions relating to supplier relationships. ... [which] are generally excludable under rule 14a-8(i)(7).” *See also Alaska Air Group, Inc.* (Mar. 8, 2010) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report discussing the maintenance and security standards used by the company’s aircraft contract repair stations and the company’s procedures for overseeing maintenance performed by the contract repair stations, as the proposal concerned “decisions relating to vendor relationships [which] are generally excludable under rule 14a-8(i)(7)”); *See also Dean Foods Co.* (Mar. 9, 2007, *recon. denied* Mar. 22, 2007) (concurring with the exclusion of a proposal requesting a report on, among other things, consumer and media criticism of the company’s production and sourcing practices as relating to “customer relations and decisions relating to supplier relationships”); *PepsiCo, Inc.* (Feb. 11, 2004) (concurring with the exclusion of a proposal concerning the company’s relationships with different bottlers as relating to “decisions relating to vendor relationships”); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal regarding the compliance of the company’s suppliers with certain animal rights statutes as relating to the company’s ordinary business operations); and *Walmart Inc.* (Mar. 8, 2018) (concurring with the exclusion of a proposal requesting a report outlining the requirements suppliers must follow regarding engineering ownership and liability).

Similarly to the precedents cited above, the Proposal here directly relates to the Company’s ordinary business decisions relating to the Company’s suppliers, which is a core function of the Company’s management. As a principle and business practice, the Company believes decisions about product sourcing and price are exclusively Kroger’s to make directly with its suppliers. The Company develops and maintains relationships with approximately 26,000 suppliers globally. Determining how best to manage these relationships, and deciding which factors to consider in maintaining these relationships, is one of management’s most fundamental day-to-day responsibilities. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, because the Proposal directly relates to how the Company engages with and manages its suppliers, the Proposal squarely implicates decisions regarding the Company’s vendor relationships; therefore, as in the precedents cited above, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it relates to the Company’s ordinary business operations.

*(c) The Proposal Seeks to Micromanage the Company*

As explained above, the Commission stated in the 1998 Release that one of the considerations underlying the ordinary business exclusion is “the degree to which the proposal seeks to ‘micro-manage’ 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.” In addition to introducing shareholders into a fundamental aspect of management’s ability to run the Company’s business on a day-to-day basis, the Proposal seeks to impermissibly 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.” 1998 Release. As the Commission has explained, a proposal may probe too deeply into matters of a complex nature if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” 1998 Release. This framework also applies to proposals that call for a study or report. *See* SLB 14M.

The Proposal in this case micromanages the Company because, under the guise of a request for a report, it seeks to intervene into Kroger’s management of its supplier relationships. The Proposal is comparable to several proposals that the Staff has permitted to be excluded under Rule 14a-8(i)(7) for seeking to micromanage the companies “by probing too deeply into matters of a complex nature.” In *Amazon.com, Inc.* (Apr. 3, 2019), the Staff concurred with the exclusion of a proposal urging the board to conduct human rights impact assessments for at least three food products the Company sells that present a high risk of adverse human rights impacts, on the grounds that the proposal would micromanage the company by “seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors.” In *The Wendy’s Company* (Mar. 2, 2017), the Staff concurred with the exclusion of a proposal urging the board to issue a report on and take all necessary steps to join the Fair Food Program for the purpose of protecting and enhancing consumer and investor confidence as relates to the purchase of produce. In the Staff’s view, the proposal sought 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.” *See also AT&T Inc.* (Feb 13, 2012) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report disclosing company actions taken to address inefficient electricity consumption by its products).

Here, the Proposal requests a report on the Company’s vendor due diligence policies. In doing so, the Proponent seeks to insert shareholders directly into Kroger’s management of its relationships with its vendors. Kroger devotes significant time, energy and resources in making decisions relating to the products it puts on its shelves and offers to its customers. As mentioned above, the Company develops, maintains and manages relationships with approximately 26,000 suppliers globally in order to effectively serve its customers. Kroger’s centralized Merchandising team selects the desired product assortment by category and works closely with Sourcing leaders to determine and review potential suppliers, sourcing regions and contract terms. The Company’s management approach to responsible sourcing is led by a cross-functional Responsible Sourcing Steering Committee comprising leaders in Ethics & Compliance, Merchandising, Sourcing and Corporate Affairs. Kroger’s executive leadership team and the Board of Directors’ Public Responsibilities Committee provide additional oversight. Thus, the management of Kroger’s sourcing, supply chain and vendors relationships requires the consideration by numerous experienced managers of a wide range of factors in making frequent, complex decisions. As argued by the company in *The Wendy’s Company* regarding the requested content in the proposal: the proposal “would displace the Company’s tested and effective judgments on business and



operations with effectively a mandate that disregards the complexity and interconnection of all components of our supply chain.”

In this case, the Proposal would unduly limit management’s ability to exercise its business judgment in engaging with and managing its suppliers. As part of this core judgment, management, with the oversight of the board, routinely engages in risk analysis with respect to its supplier relationships. If shareholders were able to request reports of the scope and detail outlined in this Proposal, shareholders would curtail management’s discretion and expertise, impose excessive time and resource constraints on management, and would otherwise disrupt the flexibility necessary to operate the Company’s business. As discussed above, shareholders cannot be expected to have the experience necessary to opine on how Kroger manages its vendor relationships. As such, the Proposal seeks to intervene in matters that are squarely within the sole purview of management and which are not suited for shareholder oversight.

*(d) The Proposal Does Not Raise a “Significant Policy Issue”*

The well-established precedents set forth above demonstrate that the Proposal addresses ordinary business matters, and therefore is excludable under Rule 14a-8(i)(7). The Commission has stated, however, that proposals relating to such matters but focusing on a significant policy issue generally are not excludable under the first consideration “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. In SLB 14M, the Staff rescinded Staff Legal Bulletin No. 14L and clarified the Commission’s views on the scope and application of the significant policy analysis in Rule 14a-8(i)(7). The Staff explained that whether or not a proposal relates 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.” The decision to apply the significant policy exception “depends on the particular policy issue raised by the proposal and its significance in relation to the company.” The Staff further stated that it will “take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally ‘significant.’” See SLB 14M. Accordingly, a policy issue that is significant to one company may not be significant to another.

The Staff elaborated on the “significant policy” exception in Staff Legal Bulletin No. 14E (October 27, 2009), in which the Staff noted that, “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14-a8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” The Staff went on to state that, “[c]onversely, in those cases in which a proposal’s underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7).” In this case, the Proposal does not focus on a significant policy such that a sufficient nexus exists between the Proposal and the Company. Despite the Proponent’s invocation of reputational and regulatory risks

to Kroger stemming from avocado-related illegal deforestation, the focus of the Proposal is the Company's supplier relationships, a matter clearly falling within Kroger's day-to-day business operations. The Staff has consistently permitted the exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though the proposal also raised potential significant policy issues in the body of the proposal. For example, in *Amazon.com, Inc.* (Feb. 3, 2015), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "disclose to shareholders reputational and financial risks it may face as a result of negative public opinion pertaining to the treatment of animals used to produce products it sells" where the proponent argued that Amazon's sale of foie gras implicated a significant policy issue (animal cruelty). In granting no-action relief, the Staff determined that "the proposal relates to the products and services offered for sale by the company." See also *The TJX Companies, Inc.* (Apr. 9, 2021) (a proposal seeking information about the company's monitoring of supplier compliance with the company's policy that prohibited prison labor was excludable under Rule 14a-8(i)(7) because the proposal "[did] not transcend the [c]ompany's ordinary business operations"); See also *Viacom, Inc.* (Dec. 18, 2015) (concurring with the exclusion of a proposal requesting that the company issue a report assessing the company's policy responses to public concerns regarding linkages of food and beverage advertising to impacts on children's health, despite the public health implications raised by the proposal); *PetSmart, Inc.* (Mar. 24, 2011), also discussed above (concurring with the exclusion of a proposal requesting that the board require its suppliers to certify they had not violated "the Animal Welfare Act, the Lacey Act, or any state equivalents," the principal purpose of which related to preventing animal cruelty, despite the fact that the proposal implicated animal welfare concerns).

In this case, the Proposal is focused on the manner in which the Company manages its suppliers' relationships, and the policies related thereto. A mere reference to a possible significant policy issue – in this case, illegal deforestation – does not automatically transform a proposal focused on ordinary business matters into one that transcends ordinary business. Accordingly, we request that the Staff concur with our view that the Proposal should be excluded from Kroger's 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

## CONCLUSION

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 2025 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 212-310-8048 or contact me via email at [lyuba.goltser@weil.com](mailto:lyuba.goltser@weil.com).

Very truly yours,

  
Lyuba Goltser  
Partner

Enclosures

cc:

Christine Wheatley  
Stacey Heiser  
The Kroger Co.

Rachel Lowy  
Elizabeth Levy  
As You Sow

## **Exhibit A**

### 2025 Proposal



**VIA FEDEX & EMAIL**

January 14, 2025

Christine S. Wheatley  
Senior Vice President, Secretary and General Counsel  
The Kroger Company  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
[REDACTED]

Dear Ms. Wheatley,

*As You Sow*® is filing a shareholder proposal on behalf of Michael E. Monteiro 2016 Rev Trust ("Proponent"), a shareholder of The Kroger Company for inclusion in Kroger's 2025 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

To schedule a dialogue, please contact Liz Levy, Biodiversity Coordinator at [REDACTED] and Cole Genge, Director of Programs at [REDACTED]. Please send all correspondence with a copy to [REDACTED].

Sincerely,

Danielle Fugere  
President & Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: Rob Quast, Vice President of Investor Relations, [REDACTED]

**WHEREAS:** Public reporting suggests that Kroger may source avocados from illegally deforested land,<sup>1</sup> harming ecosystem function and local communities and posing reputational and regulatory risks to Kroger.

Mexico accounts for nearly 90 percent of avocado shipments to the United States.<sup>2</sup> It is estimated that, for the past decade, more than ten football fields *a day* of Mexican forests have been cleared for avocado orchards.<sup>3</sup>

Over the past two decades, virtually all avocado-related deforestation in the states of Michoacán and Jalisco – the largest sources of avocados for the U.S. market – has violated Mexican federal law, which prohibits conversion of forested areas to agricultural production without government authorization. The additional crime of intentionally setting forest fires frequently facilitates deforestation in this region.<sup>4</sup>

This burning and deforestation releases greenhouse gases, reduces carbon storage, increases floods and landslides, and undercuts biodiversity and the replenishment of aquifers.<sup>5</sup> Some of this deforestation is occurring within the Monarch Butterfly Biosphere Reserve, further imperiling an endangered species.<sup>6</sup>

Avocado production is also water intensive. Mexico’s main avocado-growing regions are currently in a severe drought,<sup>7</sup> and much of the water used for avocado plantations is obtained illegally.<sup>8</sup> The combination of illegally diverting streams, digging wells for irrigation, and replacing native forests with plantations is depleting water supplies for communities and making forests and farms more vulnerable to fires and disease.

The environmental damage from avocado-related deforestation has prompted lawsuits against major avocado importers over misleading sustainability claims.<sup>9</sup> Additionally, Mexican avocado imports into the U.S. have been suspended three times since 2020 due to security concerns related to criminal activity in avocado production.<sup>10</sup> Ensuring avocados are not associated with illegal activities can help reduce supply disruptions.

Kroger expects its vendors to “comply with all applicable environmental laws.”<sup>11</sup> However, Mexican government records indicate that orchards containing illegally deforested land are supplying avocados

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<sup>1</sup> <https://cri.org/reports/unholy-guacamole/>

<sup>2</sup> <https://pubmed.ncbi.nlm.nih.gov/33126191/>

<sup>3</sup> [https://biologicaldiversity.org/species/invertebrates/monarch\\_butterfly/pdfs/Mexican-Avocado-Imports-Marketing-Linked-to-Deforestation-Need-to-End-4-18-2024.pdf](https://biologicaldiversity.org/species/invertebrates/monarch_butterfly/pdfs/Mexican-Avocado-Imports-Marketing-Linked-to-Deforestation-Need-to-End-4-18-2024.pdf)

<sup>4</sup> <https://cri.org/reports/unholy-guacamole/>

<sup>5</sup> <https://cri.org/reports/unholy-guacamole/>

<sup>6</sup> <https://www.mdpi.com/2673-7159/1/4/23>

<sup>7</sup> <https://smn.conagua.gob.mx/es/climatologia/monitor-de-sequia/monitor-de-sequia-en-mexico>

<sup>8</sup> <https://cri.org/reports/unholy-guacamole/>

<sup>9</sup> <https://www.reuters.com/investigations/avocado-goldrush-links-us-companies-with-mexicos-deforestation-disaster-2024-08-06/>

<sup>10</sup> <https://www.latimes.com/california/story/2024-06-18/usda-halts-avocado-inspections-in-mexico-citing-security-concerns>

<sup>11</sup> <https://www.thekrogerco.com/wp-content/uploads/2017/09/code-of-conduct.pdf>

to Kroger,<sup>12</sup> calling into question the sufficiency of Kroger's due diligence protocols for its avocado vendors.

Importantly, a government-sanctioned tool to help retailers and suppliers identify orchards on illegally deforested land is available and recognized by a major avocado exporting company.<sup>13</sup> Adequate due diligence of its supply chain standards will help Kroger address the likelihood of supply chain disruption and lawsuits, prevent greenwashing accusations, and avoid reputational risk, while protecting human rights and critical habitat.

**RESOLVED:** Shareholders request that Kroger assess and report on the effectiveness of its due diligence policies to ensure vendor compliance with local and state laws and Kroger's Standards, such as illegal deforestation from avocado supply chains.

**SUPPORTING STATEMENT:** Proponents recommend, at management discretion, that the report identify actions Kroger can take to identify, avoid, and/or reduce the future sale of avocados from illegally deforested lands.

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<sup>12</sup> <https://cri.org/reports/unholy-guacamole/>

<sup>13</sup> [www.forestavo.com](http://www.forestavo.com); <https://www.lavozdemichoacan.com.mx/michoacan/mission-produce-se-suma-al-guardian-forestal-no-adquirira-aguacate-de-279-huertas-ilegales-bedolla/>

October 11, 2024

Andrew Behar  
CEO  
As You Sow  
2020 Milvia Street, Suite 500  
Berkeley, CA 94704

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2025 proxy statement. The resolution at issue relates to the below described subject.

Stockholder: Michael E. Monteiro 2016 Rev Trust

Company: The Kroger Co

Subject: Establish a due diligence protocol to monitor illegal deforestation in its avocado supply chains

The Stockholder has continuously owned Company stock, with voting rights, for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company's proxy statement. The Stockholder intends to hold the required amount of such stock through the date of the Company's annual meeting in 2025.

The Stockholder gives *As You Sow* authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder, presenting the proposal at the Company's annual general meeting, and all other forms of representation necessary in moving the proposal. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution. The Stockholder supports this proposal.



The Stockholder is available for a meeting with The Kroger Co regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame: 1/27/2025 - 2/10/2025 Monday - Friday and between the hours of 9:00am and 5:30pm Eastern Time]  
Date: 1/27/2025 Time: 10am Date: 1/29/2025 Time: 10am

If the Company would like to meet at one of these dates and times, let the Stockholder and *As You Sow* at, [REDACTED], know within 2 days of the dates offered in this letter.

If this Authorization is used for a Co-filing role instead of for a Proponent role, then the Stockholder agrees to designate the Proponent to engage on the Stockholder's behalf on the dates and times that the Proponent has provided.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED]

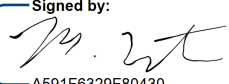
Any correspondence regarding meeting dates must **also be sent to my representative:**

**Elizabeth Levy, Biodiversity Coordinator at** [REDACTED]

**and to** [REDACTED].

The Stockholder also authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

Signed by:  
  
A591F6329E80430

Michael Monteiro

Trustee



**VIA FEDEX & EMAIL**

January 14, 2025

Christine S. Wheatley  
Senior Vice President, Secretary and General Counsel  
The Kroger Company  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
[REDACTED]

Dear Ms. Wheatley,

*As You Sow*® is co-filing a shareholder proposal on behalf of the following The Kroger Company shareholder for action at the next annual meeting of Kroger:

- The Woodcock Foundation

Shareholder is a co-filer of the enclosed proposal with Michael E. Monteiro 2016 Rev Trust, who is the Proponent of the proposal. *As You Sow* has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2025 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Co-filer will either: (a) be available on the dates and times offered by the Proponent for an initial meeting, or (b) authorize *As You Sow* to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

*As You Sow* is authorized to act on The Woodcock Foundation's behalf with regard to withdrawal of the proposal. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

A letter authorizing *As You Sow* to act on co-filer's behalf is enclosed.

We are hopeful that the issue raised in this proposal can be resolved. To schedule a dialogue, please contact Liz Levy, Biodiversity Coordinator at [REDACTED] and Cole Genge, Director of Programs at [REDACTED]. Please send all correspondence with a copy to [REDACTED].

Sincerely,

Danielle Fugere  
President & Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: Rob Quast, Vice President of Investor Relations, [REDACTED]

November 25, 2024

Andrew Behar  
CEO  
As You Sow  
2020 Milvia Street, Suite 500  
Berkeley, CA 94704

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned ("Stockholder") authorizes *As You Sow* to file or co-file a shareholder resolution on Stockholder's behalf with the named Company for inclusion in the Company's 2025 proxy statement. The resolution at issue relates to the below described subject.

Stockholder: The Woodcock Foundation (S)

Company: The Kroger Co

Subject: Establish a due diligence protocol to monitor illegal deforestation in its avocado supply chains

The Stockholder has continuously owned Company stock, with voting rights, for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company's proxy statement. The Stockholder intends to hold the required amount of such stock through the date of the Company's annual meeting in 2025.

The Stockholder gives *As You Sow* authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder, presenting the proposal at the Company's annual general meeting, and all other forms of representation necessary in moving the proposal. The Stockholder understands that the Stockholder's name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available to meet with the Company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. The Stockholder authorizes representative, *As You Sow*, to provide the dates and times.

If the Company would like to meet at one of these dates and times, let the Stockholder and *As You Sow* at, [REDACTED], know within 2 days of the dates offered in this letter

If this Authorization is used for a Co-filing role instead of for a Proponent role, then the Stockholder agrees to designate the Proponent to engage on the Stockholder's behalf on the dates and times that *As You Sow* has provided.

The Stockholder can be contacted at the following email address to schedule a dialogue:

[REDACTED] [REDACTED]

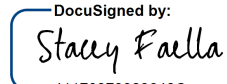
Any correspondence regarding meeting dates must **also be sent to:**

**Elizabeth Levy, Biodiversity Coordinator at** [REDACTED]

**and to** [REDACTED].

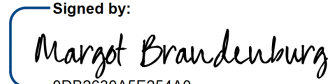
The Stockholder also authorizes *As You Sow* to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
  
41170379323648C...

Stacey Faella

Executive Director

Signed by:  
  
0DB2630A5E254A0...

Margot Brandenburg

Trustee


# Morgan Stanley

January 16, 2025

Michael E. Monteiro 2016 Rev Trust:

Morgan Stanley PWM Operations, a DTC participant, acts as the custodian for Michael E. Monteiro 2016 Rev Trust. As of the date of this letter, Michael E. Monteiro 2016 Rev Trust held, and has held continuously for at least 37 months, 79 shares of The Kroger Co common stock, with a value of over \$2,000.

Best Regards,

A handwritten signature in dark ink, appearing to read "Charles Brady", is written over a horizontal line.

Charles Brady

Vice President

Risk Officer

cc: Polina Boudki



January 15, 2025

Woodcock Foundation

PII

Account ending in [REDACTED]

Reference #: [REDACTED]

Questions: Please call your advisor directly  
or contact Schwab Alliance™ at  
1-800-515-2157

As requested, we're confirming a stock holding in your account.

To Whom It May Concern,

As requested, we're writing to confirm that the above account holds in trust 1048 shares of KR KROGER CO common stock. These shares have been held in the account continuously for at least one year since February 17, 2023.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Schwab Advisor Services serves independent investment advisors and includes the custody, trading, and support services of Schwab. Independent investment advisors are not owned by, affiliated with, or supervised by Schwab. Charles Schwab & Co., Inc. ("Schwab") Member SIPC, is a separate but affiliated company and subsidiary of The Charles Schwab Corporation.

## **Exhibit B**

Correspondence with the Proponent

---

**From:** Heiser, Stacey M  
**Sent:** Monday, January 20, 2025 10:38 AM  
**To:** Shareholder Engagement <[REDACTED]>  
**Cc:** Elizabeth Levy <[REDACTED]>; [REDACTED]; Gail Follansbee <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** RE: Kroger (KR) - Shareholder Proposal Filing Documents

Confirming receipt of both.  
Thank you.  
Stacey

---

**From:** Shareholder Engagement <[REDACTED]>  
**Sent:** Thursday, January 16, 2025 5:35 PM  
**To:** Heiser, Stacey M <[REDACTED]>  
**Cc:** Elizabeth Levy <[REDACTED]>; [REDACTED]; Gail Follansbee <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** Re: Kroger (KR) - Shareholder Proposal Filing Documents

Hello Stacey,

Please find attached the following proof of ownership:  
Lead Filer                      Michael E. Monteiro 2016 Rev Trust                      79 shares

It would be greatly appreciated if you could confirm receipt of the two proof of ownerships.

Thank you and best regards,  
Rachel

**Rachel Lowy** (she/her/hers)

**Shareholder Relations Sr. Coordinator**

***As You Sow***<sup>®</sup>

[REDACTED] | El Cerrito, CA 94530

[REDACTED] —

[REDACTED] | [www.asyousow.org](http://www.asyousow.org)





AS YOU SOW

~Empowering Shareholders to Change Corporations for Good~

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**From:** Shareholder Engagement <[REDACTED]>  
**Sent:** Wednesday, January 15, 2025 4:20 PM  
**To:** Heiser, Stacey M <[REDACTED]>  
**Cc:** Elizabeth Levy <[REDACTED]>; [REDACTED] <[REDACTED]>; Gail Follansbee <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** Re: Kroger (KR) - Shareholder Proposal Filing Documents

Hello Stacey,

Please find attached the following proof of ownership:  
Co-Filer     The Woodcock Foundation     1048 shares

Michael Monteiro's proof of ownership has been requested from the custodian and will be forwarded to you no later than January 29, 2025.

Thank you and warm regards,  
Rachel

**Rachel Lowy** (she/her/hers)

**Shareholder Relations Sr. Coordinator**

**As You Sow®**

[REDACTED] | El Cerrito, CA 94530

[REDACTED]

[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



AS YOU SOW

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---

**From:** Heiser, Stacey M <[REDACTED]>  
**Sent:** Wednesday, January 15, 2025 11:16 AM  
**To:** Shareholder Engagement <[REDACTED]>  
**Cc:** Elizabeth Levy <[REDACTED]>; [REDACTED] <[REDACTED]>; Gail Follansbee <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** FW: Kroger (KR) - Shareholder Proposal Filing Documents

We are in receipt of the shareholder proposal filed by Michael Monteiro and the Woodcock Foundation but are not in receipt of proof of ownership for either filer. Please provide proof of ownership within fourteen (14) days. We will contact you at a later date to schedule a teleconference to discuss the proposal.

Thank you,  
Stacey

Stacey Heiser  
Senior Counsel  
The Kroger Co.

---

From: Wheatley, Christine S <[REDACTED]>  
Sent: Wednesday, January 15, 2025 2:06 PM  
To: Heiser, Stacey M <[REDACTED]>  
Cc: Quast, Rob <[REDACTED]>  
Subject: FW: Kroger (KR) - Shareholder Proposal Filing Documents

---

From: Shareholder Engagement <[REDACTED]>  
Sent: Wednesday, January 15, 2025 1:14 PM  
To: Wheatley, Christine S <[REDACTED]>; Quast, Rob <[REDACTED]>  
Cc: Elizabeth Levy <[REDACTED]>; Cole Genge <[REDACTED]>; Gail Follansbee <[REDACTED]>;  
Rachel Lowy <[REDACTED]>  
Subject: Kroger (KR) - Shareholder Proposal Filing Documents

**[EXTERNAL EMAIL]:** Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Wheatley,

Attached please find the lead-filer and co-filer filing document packets submitting a shareholder proposal for inclusion in the company's 2025 proxy statement. A printed copy was sent to your offices via FedEx and our records show it was delivered today, January 15, 2025 at 10:30am.

It would be much appreciated if you could please confirm receipt of this email and the two PDF attachments.

Thank you and kind regards,  
Rachel

**Rachel Lowy** (she/her/hers)

**Shareholder Relations Sr. Coordinator**

**As You Sow®**

[REDACTED] El Cerrito, CA 94530



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# Weil, Gotshal & Manges LLP

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

Lyuba Goltser  
lyuba.goltser@weil.com

April 16, 2025

SUBMITTED ONLINE ([www.sec.gov/forms/shareholder-proposal](http://www.sec.gov/forms/shareholder-proposal))

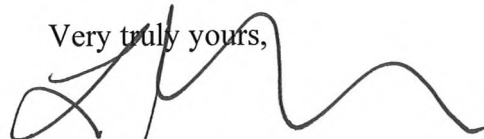
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re:           The Kroger Co.  
2025 Annual Meeting Omission of Shareholder Proposal of As You Sow on  
Behalf of co-filers Michael Monteiro and The Woodcock Foundation  
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen:

This letter is submitted on behalf of The Kroger Co. (the “Company” or “Kroger”) regarding the no action request dated February 24, 2025 (the “No Action Request”) regarding the shareholder proposal (the “Proposal”) submitted by As You Sow, on behalf of co-filers Michael Monteiro and The Woodcock Foundation (together, the “Proponent”) for inclusion in the Company’s form of proxy, proxy statement and other proxy materials for its 2025 annual meeting of shareholders. On April 14, 2025, the Proponent notified the Company of its decision to formally withdraw the Proposal. Based on this notice, Kroger is hereby withdrawing the No Action Request. A copy of this letter is being provided to the Proponent.

Very truly yours,



Lyuba Goltser  
Partner

Cc:  
Christine Wheatley; Stacey Heiser  
The Kroger Co.

Rachel Lowy; Elizabeth Levy  
As You Sow