



DIVISION OF  
CORPORATION FINANCE

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

April 7, 2025

Lyuba Goltser  
Weil, Gotshal & Manges LLP

Re: The Kroger Co. (the "Company")  
Incoming letter dated April 7, 2025

Dear Lyuba Goltser:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Christine Steele (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its February 21, 2025 request for a no-action letter from the Division.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: Tim Schwarzenberger  
Inspire Investing, LLC

# 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 21, 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 Inspire Investing  
              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 Inspire Investing, on behalf of Christine Steele (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 email on December 18, 2024.

The Proposal states:

### **RESOLVED**

Shareholders request the Board of Directors of Kroger (“Kroger”) assess and issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to dispensing mifepristone and detailing any strategies beyond litigation and legal compliance the Company may deploy to mitigate these risks.

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 email on December 18, 2024, attached as Exhibit A hereto. The Company acknowledged receipt of the Proposal on the same day, and informed the Proponent that it had not received proof of ownership pursuant to Rule 14a-8. On December 19, 2024, the Proponent shared proof of ownership. On February 10, 2025, Company’s management informed the Proponent via email that Kroger and its family of pharmacies do not dispense mifepristone, the drug that is at the heart of the Proposal. The Company requested that the Proponent withdraw the Proposal. See Exhibit B. After the Company confirmed in follow up

email correspondence to the Proponent that it did not dispense mifepristone, the Proponent, rather than agree to withdraw its Proposal, continued to ask further hypothetical questions of the Company outside the scope of the Proposal. *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.*

As communicated to the Proponent, the Company does not dispense mifepristone. Mifepristone accounts for 0% of the Company’s total assets, total sales and net earnings for the fiscal year ended February 3, 2024. The Proposal acknowledges the insignificant nature of mifepristone to Kroger’s business, stating that Kroger should avoid selling a product that is “ancillary to its main line of business.” *See Exhibit A.* The Proponent misstates the nature of mifepristone to Kroger’s business. It is not “insignificant;” it is in fact, nonexistent. Kroger does not sell mifepristone, and thus the sales of this drug are zero, clearly not exceeding the thresholds set forth in Rule 14a-8(i)(5) for the year ended February 3, 2024; therefore, 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* Release No. 34-19135 (Oct. 14, 1982) (“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.* Here, although the Proposal mentions the abstract “enormous legal, political, and financial risk that distributing the drug presents,” it does not reflect any relevance of the Proposal to Kroger. *See* the Supporting Statement.

Kroger does not distribute the drug at issue. Here, the circumstances of the Company reflect that the Proposal is not just insignificant to the Company, it is literally irrelevant, because it relates to a product the Company does not sell. If the proposal related to the Company selling motorcycles, the response would be the same. As such, any purported risks associated with the sale of mifepristone, or sale of motorcycles, are purely theoretical in nature. As a result, the request to issue a report “evaluating how it oversees risks related to dispensing mifepristone and detailing any strategies beyond litigation and legal compliance the Company may deploy to mitigate these risks” is moot. The Company’s board of directors does not currently oversee risks related to dispensing mifepristone and the Company need not detail the strategies to mitigate the risks relating with the distribution of mifepristone, since Kroger does not dispense the drug.

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. *See also Procter & Gamble Co.* (Aug. 11, 2003) (permitting exclusion of a proposal relating to stem cell research, in which the company did not engage).

Given that the Proposal relates to a matter that currently accounts for zero percent of the Company’s business, falling significantly below the 5% threshold prescribed by Rule 14a-8(i)(5), and is entirely irrelevant 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 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)).

### *(b) The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because it Relates to Kroger's Product Offerings*

When evaluating a proposal that relates to a company engaging in an assessment of risk, the Staff has focused on the subject matter to which the risk pertains, or that gives rise to the risk, to determine whether the proposal relates to the company's ordinary business. See Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"). Here, the Proposal requests a report on the risks related to dispensing the drug mifepristone. As a grocery and pharmacy retailer, the decision of which pharmaceutical and grocery products to sell is core to the Company's ordinary business operations.

The Staff has consistently acknowledged that shareholder proposals that relate to the products and services offered by a company are excludable under Rule 14a-8(i)(7). For example, in *Pfizer Inc.* (Mar. 1, 2016), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing steps taken by the company to prevent the sale of its medicines for use in executions, noting that the proposal "relates to the sale or distribution of [the company's] products." Similarly, in *Wells Fargo & Co.* (Jan. 28, 2013, recon. denied Mar. 4, 2013), the Staff granted no-action relief under Rule 14a-8(i)(7) where the proposal requested a report discussing the adequacy of the company's policies in addressing the social and financial impacts of the

company's direct deposit advance lending service, explaining that "the proposal relates to the products and services offered for sale by the [company]" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)." *See also Wal-Mart Stores, Inc.* (Mar. 24, 2006, recon. denied Apr. 13, 2006), (concurring in the exclusion of a proposal requesting a report evaluating the company's policies and procedures for minimizing customers' exposure to toxic substances in the products that it stocks, because "[t]he handling of inventory involves complex business decisions and falls within the Company's ordinary business operations"); and *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board approve the release of a certain film on Blu-ray, noting that the proposal "relates to the products and services offered for sale by the company"). As in the precedents described above, the Proposal relates to Kroger's sale or distribution of particular products, as well as the use of such products by customers. The decision whether to sell mifepristone, or any other product, be it a drug dispensed at Kroger's pharmacies or a specific brand's merchandise on the Company's supermarket shelves, is fundamental to Kroger's day-to-day operations and cannot, as a practical matter, be subject to direct shareholder oversight.

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)." For example, in *American Express* (Mar. 13, 2023), the Staff concurred with the exclusion of a proposal requesting a report concerning American Express' oversight of management's decision-making regarding the potential use of a merchant category code (MCC) for standalone gun and ammunition stores; in *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production"). *See also PetSmart, Inc.* (Apr. 14, 2006) (concurring in the exclusion of a proposal requesting that the board of directors issue a report detailing whether the company will end all bird sales). 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.

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

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 it seeks to dictate, under the guise of a request for a report, what products the Company decides to sell to its customers, thus substituting the Proponent's views for the judgment of management. 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 The Allstate Corporation* (Feb. 19, 2002) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requiring the company to cease operations in a particular state); *First Energy Corp.* (March 8, 2013) (concurring with Rule 14a-8(i)(7) exclusion of a proposal calling for diversification of the company's energy sources to include increased energy efficiency and renewable energy resources because "proposals that concern a company's choice of technologies for use in its operations are generally excludable"); and *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 Proponent requests a report on the oversight of the risks and mitigation strategies relating to the sale of mifepristone. In doing so, the Proponent seeks to insert shareholders directly into Kroger's decision-making regarding the sale or distribution of particular products, specifically which drugs the Company determines to dispense in its pharmacies. Even the Proponent, in the Supporting Statement, recognizes that the decision of whether to sell a particular product "should be made by Kroger leadership based on how it will serve their customers." 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 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.” Similarly, the determination of which products to offer at Kroger supermarkets, including which drugs to sell in Kroger pharmacies, requires the consideration by numerous experienced managers of a wide range of factors in making frequent, complex decisions informed by pharmaceutical, regulatory, legal and consumer data expertise and experience. Shareholders by and large cannot be expected to have pharmaceutical or merchandising expertise or experience, and thus decisions regarding which products to offer at our pharmacies are not an appropriate subject for stockholder oversight.

By requesting a report on the oversight of “risks related to dispensing mifepristone” and any strategies “beyond litigation and legal compliance the Company may deploy to mitigate these risks,” the Proposal attempts to intrude into and impose the specific approaches based on Proponent’s own views on Kroger’s product offerings and to dictate which products the Company should (or should not) sell.

When analyzing a proposal to determine the underlying concern or central purpose of any proposal, the Staff looks not only to the resolved clause but to the proposal in its entirety. SLB 14M (citing Staff Legal Bulletin No. 14K Section B.4.). Thus, “if a supporting statement modifies or re-focuses the intent of the resolved clause...we take that into account in determining whether the proposal seeks to micromanage the company.” *Id.* Here, although the Proposal requests a report, the Proponent’s intention to insert shareholders in the Company’s day-to-day decision making regarding pharmaceutical offering decisions is evident in the Supporting Statement, in which Proponent states, “we believe that it is in Kroger’s best interest to *support growing families and avoid selling a product [emphasis added]* that is ancillary to its main line of business and filled with substantial risk.” Additionally, in SLB 14M, the Staff noted that, when a company asserts the micromanagement prong as a reason to exclude a proposal, it is expected to include in its analysis “how the proposal may unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” In this case, the Proposal would unduly limit management’s ability to exercise its business judgment in deciding what product mix to offer customers. As part of this core judgment, management, with the oversight of the board, routinely engages in risk analysis with respect to its product offerings. 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 dictate which products the Company should offer. 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, if the policy issue does not have a sufficient nexus to the particular company.

The Staff has consistently permitted the exclusion of shareholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. 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 *Walmart Inc.* (Apr. 7, 2021) (concurring in the exclusion of a proposal requesting that Walmart issue a report detailing any known and potential risks and costs to the company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to mitigate these risks) and *Apple Inc.* (Dec. 20, 2019, recon. denied Jan. 17, 2020) (concurring with the exclusion of a proposal requesting a report detailing the risks associated with omitting “viewpoint” and “ideology” from its EEO policy on the basis that the proposal did not transcend the company’s ordinary business operations). See also *Rite Aid Corp.* (March 5, 1997) (concurring in exclusion of a proposal regarding the health effects of cigarette smoking that was submitted to a multiproduct retailer).

Here, even if the distribution of mifepristone could be deemed a significant policy issue at large, it has zero significance in relation to the Company, and has no nexus to the Company’s operations, as the Company does not dispense mifepristone. Kroger is not engaged in the distribution or sale of the subject matter of the Proposal. As such, although the distribution of mifepristone may be relevant to companies who actually dispense it, the particular facts and

circumstances applicable to Kroger in this case – i.e., the fact that the Company does not sell the drug at issue – demonstrates that the Proposal does not raise a policy issue that transcends Kroger’s ordinary business operations. *See* SLB 14M.

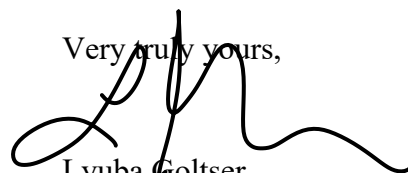
Accordingly, we request that the Staff concur with our view that the Proposal should be excluded from Kroger’s 2025 Proxy Materials pursuant to Rule 14a-8(i)(7) as relating to its ordinary business operations.

## 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.

Tim Schwarzenberger  
Inspire Investing

# **Exhibit A**

2025 Proposal

**Via Email**

December 18, 2024

Corporate Secretary  
The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

**Re: Proposal regarding Report on Risks of Dispensing Mifepristone**

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the The Kroger Co. (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations. The resolution at issue relates to the subject described below.

Proponent: Christine Steele  
Company: The Kroger Co.  
Subject: Report on Risks of Dispensing Mifepristone

Inspire Investing, LLC submits the Proposal on behalf of, and with the permission of, Christine Steele (“Shareholder”), who has continuously held Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and who intends to hold these shares through the date of the Company’s 2025 annual meeting of shareholders. A letter from Christine Steele authorizing Inspire Investing, LLC to submit this proposal on the proponent’s behalf is enclosed.

A Proof of Ownership letter attesting to the Shareholder’s ownership as of the date of this proposal’s submission is forthcoming. Copies of correspondence or a request for a “no-action” letter should be sent to me and Tim Schwarzenberger at Inspire Investing, 3597 E. Monarch Sky Lane, Suite 330, Meridian, Idaho 83646 and emailed to

[REDACTED]

Sincerely,

*Robert Netzly*

Robert Netzly  
Chief Executive Officer

*Tim Schwarzenberger*

Tim Schwarzenberger, CFA  
Director of Shareholder Engagement

Enclosure: Shareholder Proposal

**Via Email**

December 18, 2024

Corporate Secretary  
The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

**Re: Authorization to File Shareholder Proposal**

Dear Corporate Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned (the “Proponent”) authorizes Inspire Investing, LLC to file a shareholder proposal on the Proponent’s behalf with The Kroger Co. (the “Company”) for inclusion in the Company’s 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: Christine Steele  
Company: The Kroger Co.  
Subject: Report on Risks of Dispensing Mifepristone

The Proponent gives Inspire Investing, LLC the authority to address, on the Proponent’s behalf, any and all aspects of the shareholder proposal, including drafting and editing the proposal, representing the Proponent in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the Proponent. The Proponent understands that the Proponent’s name may appear on the company’s proxy statement as the filer of the aforementioned proposal, and that the media may mention the Proponent’s name in relation to the proposal.

The Proponent supports this proposal and authorizes Inspire Investing, LLC to write a more detailed statement of support of the proposal on the Proponent’s behalf.


Christine Steele (the “Proponent”) has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and intends to hold these shares through the date of the Company’s 2025 annual meeting of shareholders.

Pursuant to interpretations of Rule 14a-8 by the U.S. Securities and Exchange Commission staff, I initially propose the following times for a telephone conference to discuss this proposal:

January 9, 2025 @ 11:00 pm Eastern Time  
January 14, 2025 @ 11:00 pm Eastern Time

If these times prove inconvenient, please suggest some other times to speak. Feel free to contact me at [REDACTED] copying Inspire Investing, LLC [REDACTED] so that we can determine the mode and method of that discussion.

Sincerely,

Signed by:  
  
6A83EC4BE75045C...

Christine Steele

12/11/2024 | 13:28:51 PST

## Report on Risks of Dispensing Mifepristone

### Supporting Statement:

The Kroger Co. is one of the largest retailers in the United States and provides groceries, household goods, and pharmaceutical services to millions of growing American families.

Unfortunately, Kroger has faced increasing political pressure to dispense the abortion drug mifepristone. The New York City Comptroller recently urged Kroger and several other retailers to “immediately take the necessary steps” to begin dispensing mifepristone and warned that failing to do so “raises significant investor concerns,” including “the company’s responsiveness to a growing market opportunity.”<sup>1</sup>

Although dressed up as a fiduciary argument, the Comptroller’s radical position ignored all of the business decisions that go into whether to sell a particular product—decisions that should be made by Kroger leadership based on how it will serve their customers.

That is why 17 state financial officers from 15 states wrote to Kroger advising it to ignore the Comptroller. As the officers stated, “[t]he Comptroller’s efforts are part of a disturbing trend of public servants leveraging the pension funds of government employees for political gain” and are an attempt to launder political views through the commercial marketplace with little regard for the companies or their shareholders.”<sup>2</sup>

Investment advisors and other financial professionals with over \$100 billion in assets under management and significant holdings in Kroger also wrote to the company urging it to “avoid politicizing its services and to continue doing what it has always done best, provide excellent grocery and retail goods to families.”<sup>3</sup>

They advised Kroger of the enormous legal, political, and financial risk that distributing the drug presents. This includes potential felony charges for violating the Comstock Act, other criminal charges under state laws protecting life, uncertainty from both ongoing and new litigation<sup>4</sup> challenging the FDA’s approval of the drug, and significant political and reputational risk from engaging on a divisive and contentious social issue.

The FDA’s own label for the drug admits that roughly 4% of the women who take the drug go to the emergency room for treatment, among other serious health risks.<sup>5</sup> Dispensing mifepristone is much more complicated than dispensing ibuprofen—a comparison made by the Comptroller—or

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<sup>1</sup> <https://comptroller.nyc.gov/newsroom/nyc-comptroller-presses-pharmacy-giants-to-provide-abortion-medication-or-risk-losing-investor-confidence/>

<sup>2</sup> <https://nypost.com/2024/09/09/us-news/state-finance-bigs-rip-brad-lander-for-pushing-retailers-to-sell-abortion-pill/>

<sup>3</sup> <https://news.bloomberglaw.com/esg/christian-investors-push-costco-kroger-to-shun-mifepristone>

<sup>4</sup> <https://www.cjonline.com/story/news/politics/state/2024/10/21/kansas-missouri-idaho-sue-to-roll-back-abortion-pill-laws/75781244007/>

<sup>5</sup> [https://www.supremecourt.gov/DocketPDF/23/23-235/301142/20240222125412317\\_23-235%20%2023-236%20Brief%20for%20the%20Respondents.pdf](https://www.supremecourt.gov/DocketPDF/23/23-235/301142/20240222125412317_23-235%20%2023-236%20Brief%20for%20the%20Respondents.pdf)



similar routine commercial goods. Instead, it is fraught with legal, political, and reputational risks to Kroger.

As shareholders, we believe that it is in Kroger's best interest to support growing families and avoid selling a product that is ancillary to its main line of business and filled with substantial risk.

**Resolved:** Shareholders request the Board of Directors of Kroger assess and issue a report within the next year, at reasonable cost and excluding confidential information, evaluating how it oversees risks related to dispensing mifepristone and detailing any strategies beyond litigation and legal compliance the Company may deploy to mitigate these risks.



December 19, 2024

Account #: [REDACTED]  
Reference #: 12/19/2024  
Questions: Please call Schwab Alliance™ at  
1-800-515-2157

Christine Steele  
[REDACTED]

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

Dear Christine Steele,

As requested, we're writing to confirm that the above account holds and has continuously held in trust at least (85 shares) worth of KR KROGER CO for at least three years preceding and including the date of December 18, 2024.

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.

Sincerely,

*Lisa Merzbach-Bolling*

Lisa Merzbach-Bolling  
Specialist, AS Service  
[REDACTED]

9800 Schwab Way

LONE TREE, CO 80124

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.

Schwab Advisor Services serves independent investment advisors and includes the custody, trading, and support services of Schwab.

## **Exhibit B**

Correspondence with the Proponent

From: Tim Schwarzenberger, CFA [REDACTED]  
Sent: Monday, February 10, 2025 4:59 PM  
To: Wheatley, Christine S [REDACTED]; Heiser, Stacey M [REDACTED]  
Cc: Inspire Engagement [REDACTED]  
Subject: Re: Shareholder Proposal - Report on Risks of Dispensing Mifepristone - request to withdraw

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

Dear Kroger Team:

Moving Ms Steele to BCC.

Thanks for confirming that the company is not selling mifepristone. We commend you for taking this stance on an issue that is fraught with financial, legal, and moral risk. I am sure you saw the news in October that the case against the FDA has now been re-opened with three AGs filing a lawsuit against the FDA. [GOP states renew legal push to limit abortion pill after Supreme Court setback - Washington Examiner](https://www.washingtonexaminer.com/gop-states-renew-legal-push-to-limit-abortion-pill-after-supreme-court-setback) Last month, the judge ruled that the case can continue. <https://apnews.com/article/abortion-pill-mifepristone-telehealth-weeks-judge-03706a1e95fc7725684be582a00a6700> This is exactly what we warned about in our letter to Kroger last summer.

We filed the resolution based on the attached letter you sent us in August which seemed to indicate that Kroger was moving forward with the certification process. When we expressed disappointment to the letter, there was no attempt made to clarify the company's position, which is why we felt the need to file the resolution.

We will gladly withdraw the resolution if we can receive more clarity. Would you please confirm if the statement below is correct? By the way, we met with Walmart a few weeks ago, and they confirmed that they are not selling mifepristone and have no plans to become certified.

- Kroger has no current plans to implement or seek certifications to dispense mifepristone.


Can you also confirm if the company offers payment for employee travel costs to obtain an abortion in states where it is still legal? The article below states that the company decided to provide abortion travel coverage up to \$4,000 after Roe v Wade was overturned.

<https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/abortion-assistance-kroger-to-offer-up-to-4-000-of-out-of-state-travel-costs-for-employees-seeking-abortion>

Inspire Investing is the largest provider of faith-based ETFs, managing over \$3.0 billion in assets and representing thousands of faith-based investors, institutions, and fund companies. Our investment solutions utilize the innovative Inspire Impact Score methodology, one of the most comprehensive and followed measures available to track company alignment (or misalignment) with faith-based values. We currently list Kroger as having a negative Impact Score, which is based on the company offering payment to pay for abortion.

<https://inspireinsight.com/KR/US>

Thank you,

**Tim Schwarzenberger, CFA**   
Portfolio Manager, Director of Corporate Engagement



Direct: [REDACTED]



**Administrative Office**  
3597 E Monarch Sky Ln Suite 330 Meridian, ID 83646

Advisory Services are offered through Inspire Investing, LLC, a Registered Investment Adviser with the SEC.

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**From:** Dailey, Keith G [REDACTED]  
**Sent:** Monday, February 10, 2025 8:44 AM  
**To:** [REDACTED]; Inspire Engagement [REDACTED]  
**Cc:** Wheatley, Christine S [REDACTED]; Heiser, Stacey M [REDACTED]  
**Subject:** Re: Shareholder Proposal - Report on Risks of Dispensing Mifepristone - request to withdraw

**SENT VIA EMAIL ONLY**

Ms. Christine Steele

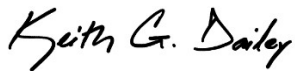
Ms. Steele,

We are in receipt of your shareholder proposal requesting a report on the risks of dispensing mifepristone.

The Kroger Co. and our family of pharmacies do not dispense mifepristone. Therefore, we respectfully request your withdrawal of the proposal.

Please advise by February 14, 2025 so that we may continue to meet subsequent filing deadlines.

Sincerely,



Keith Dailey

Cc: Christine Wheatley, General Counsel and Secretary, The Kroger Co.  
Stacey Heiser, Senior Corporate Counsel, The Kroger Co.

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**From:** Inspire Engagement [REDACTED]  
**Sent:** Thursday, December 19, 2024 3:49 PM  
**To:** Heiser, Stacey M [REDACTED]; Inspire Engagement [REDACTED]  
**Cc:** Wheatley, Christine S [REDACTED]  
**Subject:** RE: Shareholder Proposal - Report on Risks of Dispensing Mifepristone

Thank you, Stacey.

Please see attached for proof of ownership.

---

**From:** Heiser, Stacey M [REDACTED]  
**Sent:** Wednesday, December 18, 2024 1:00 PM  
**To:** Inspire Engagement [REDACTED]  
**Cc:** Wheatley, Christine S [REDACTED]  
**Subject:** RE: Shareholder Proposal - Report on Risks of Dispensing Mifepristone

We are in receipt of your shareholder proposal but are not in receipt of proof of ownership. Please provide proof of ownership within fourteen (14) days.

We will be in touch in the new year to set up a time to discuss your proposal.

Thank you.

Sincerely,

Stacey Heiser  
Senior Counsel  
The Kroger Co.

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**From:** Inspire Engagement [REDACTED]  
**Sent:** Wednesday, December 18, 2024 11:01 AM  
**To:** Heiser, Stacey M [REDACTED]; Wheatley, Christine S [REDACTED]

Cc: Inspire Engagement [REDACTED]  
Subject: Shareholder Proposal - Report on Risks of Dispensing Mifepristone

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

Dear Corporate Secretary,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, the undersigned (the “Proponent”) authorizes Inspire Investing, LLC to file a shareholder proposal on the Proponent’s behalf with The Kroger Co. (the “Company”) for inclusion in the Company’s 2025 proxy statement. The proposal at issue relates to the subject described below.

Proponent: Christine Steele  
Company: The Kroger Co.  
Subject: Report on Risks of Dispensing Mifepristone

Please confirm receipt of this proposal.

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The Kroger Co.  
Kroger Health  
[www.krogerhealth.com](http://www.krogerhealth.com)

555 Race St.  
[REDACTED]  
Cincinnati, Ohio 45202

August 15, 2024

Tim Schwarzenberger  
Director of Corporate Engagement  
Inspire Investing  
3597 E Monarch Sky Ln  
Suite 330  
Meridian, ID 83646

Dear Mr. Schwarzenberger:

Thank you for your letter requesting the status of The Kroger Co.'s position on offering mifepristone in our family of pharmacies. Following the Food and Drug Administration's updated risk evaluation and mitigation strategy (REMS) for pharmacy dispensing of mifepristone, we began a review of the federal certification process. This includes the logistics involved in bringing the medication to our stores, training our pharmacy teams, and delivering medication to patients in compliance with a complicated and ever changing and litigated framework of federal and state law.

At this time, we are evaluating becoming REMS certified to dispense this product, including the logistics and as-yet unresolved legal landscape associated with that process, and commit to providing the highest level of care to our patients.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen Lindholz".

Colleen Lindholz  
President, Kroger Health

# 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 7, 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 Inspire Investing  
              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 21, 2025 (the “No Action Request”) regarding the shareholder proposal (the “Proposal”) submitted by Inspire Investing, on behalf of Christine Steele (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”).

On April 4, 2025, the Proponent notified the Company of its decision to formally withdraw the Proposal (the “Withdrawal Notice”). The Withdrawal Notice is attached as Exhibit A hereto. Based on the Withdrawal 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

Enclosures

Cc:

Christine Wheatley

Stacey Heiser

The Kroger Co.

Tim Schwarzenberger

Inspire Investing

## **Exhibit A**

**Via Email**

April 4, 2025

Corporate Secretary  
The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

Re: Withdrawal of Shareholder Proposal for 2025 Annual Meeting

To whom it may concern,

Inspire Investing, LLC hereby withdraws the 14a-8 shareholder proposal submitted for inclusion in Kroger's 2025 proxy materials. The proposal at issue relates to the subject described below.

Proponent: Christine Steele  
Company: The Kroger Co.  
Subject: Report on Risks of Dispensing Mifepristone

Sincerely,

*Robert Netzly*

Robert Netzly  
Chief Executive Officer

*Tim Schwarzenberger*

Tim Schwarzenberger, CFA  
Director of Shareholder Engagement