THE Kroger CO.

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December 13, 2011

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, DC 20006-2803

RE: PCAOB Rulemaking Docket Matter No. 37

Concept Release on Auditor Independence and Audit Firm Rotation

The Kroger Co. ("Kroger") is one of the largest retailers in the United States based on annual sales. We operate over 2,400 supermarkets and multi-department stores under two dozen banners including Kroger, City Market, Dillions, Jay C, Food 4 Less, Fred Meyer, Fry's, King Soopers, QFC, Ralphs, and Smith's. We also operate over 700 convenience stores, over 300 fine jewelry stores, and 40 manufacturing plants. We conduct business solely in the United States, and employ approximately 338,000 full and part-time employees.

We appreciate the Public Company Accounting Oversight Board's ("PCAOB" or "the Board") continued work to enhance auditor independence, objectivity and professional skepticism, especially at a time that the financial reporting system around the world has been forced to react to the financial crisis. We also value the opportunity to provide feedback on the PCAOB's Concept Release on Auditor Independence and Audit Firm Rotation ("PCAOB Release No. 2011-006" or "Concept Release").

Audit Firm Rotation

The Board is interested in whether mandatory auditor rotation would significantly enhance auditors' independence and objectivity, and has requested feedback (questions reproduced in italics). Kroger respectfully submits the following responses to the questions raised by the Board.

• *Should the Board focus on enhancing auditor independence, objectivity and professional skepticism? How significant are the problems in those areas relative to problems in other areas on which the Board might focus? Should the Board simply defer consideration of any proposals to enhance auditor independence, objectivity and professional skepticism?*

Kroger believes that the Board should continue its focus on improving overall audit quality. While auditor independence, objectivity and professional skepticism are inherent as part of the overall quality of an audit, current auditing standards, mandatory engagement partner rotation, the Board's inspection process, and other efforts aimed at improving audits have helped promote a current environment in which high quality audits are generally achieved.

Kroger does not believe that mandatory auditor rotation would improve auditor independence, objectivity and professional skepticism. Kroger is concerned that mandatory rotation could lead to a reduction in audit quality due to the new audit firm's reduced understanding of the company and its processes, systems, people, risks and controls. We believe that mandatory audit firm rotation would make it increasingly difficult to select an audit firm that would have the expertise in specialized areas of accounting, including those applicable to the retail industry. The required change in auditor rotation can lead to increased audit costs that may not be in the best interests of our shareholders.

- *Would audit firm rotation enhance auditor independence, objectivity and professional skepticism?*

Kroger does not believe that mandatory audit firm rotation would enhance auditor independence, objectivity and professional skepticism. Under rules and regulations enacted as part of the Sarbanes-Oxley Act, there are many requirements intended to promote auditor independence. The audit committee is responsible for selecting the auditor and overseeing the auditor's activities, including the auditor's plan. Additionally, the auditor's ability to provide certain non-audit services has been reduced and the lead audit partner that serves on our engagement is now subject to a mandatory five-year rotation requirement. We believe that these existing rules effectively address any concerns for the independence of the auditor and suitably promote objectivity and professional skepticism in the performance of an audit. In addition, Kroger is not aware of any evidence to suggest that the tenure of an audit firm is directly correlated with an audit that is deemed deficient and, as such, remains unconvinced that mandatory firm rotation would enhance auditor independence, objectivity and professional skepticism.

- *What are the advantages and disadvantages of mandatory audit firm rotation? If there are potential disadvantages or unintended consequences, are there ways a rotation requirement could be structured to avoid or minimize them?*

The disadvantages of mandatory audit firm rotation far offset any apparent advantages. There would be a significant constraint placed on a company's internal resources (including financial reporting and internal audit personnel, senior management, and the Audit Committee). The expectation is that these resources would expend additional effort coordinating the audit, reviewing historically significant events, and educating new auditors about significant accounting policies and transactions. The additional time that would be spent transitioning to a different audit firm because it is mandatorily required to do so would be unnecessarily disruptive and serve as a distraction and an impediment to the goal of producing error free financial statements. The affect of the learning curve of the new audit firm, in addition to the strains on internal resources, could jeopardize the timing of both earnings releases and SEC filings.

Kroger has significant concerns about increased audit costs as a result of a rotation requirement. A change in audit firms would undoubtedly result in additional audit time (for both the audit firm and Kroger) and fees in order to bring a new audit firm up to speed. We believe a rotation requirement would increase the audit costs in the successor firm's early years due to the investment in time needed for the successor to learn a company's background, operating practices, risks, systems and procedures and its application of accounting policies.

• *According to the 2003 GAO Report, large firms estimated that a rotation requirement would increase initial year audit costs by more than 20 percent. What effect would a rotation requirement have on audit costs? Are there other costs the Board should consider, such as the potential time and disruption impact on company financial reporting staff as a result of a change in auditors? Are there implementation steps that could be taken to mitigate costs? The Board is particularly interested in any relevant empirical data commenters can provide in this area.*

Please see answer to previous question. Also, we are concerned that if there is an effort to mitigate costs, audit quality could be compromised.

• *Because there appears to be little or no relevant empirical data directly on mandatory rotation available, should the Board conduct a pilot program so that mandatory rotation of registered public accounting firms could be further studied before the Board determines whether to consider developing a more permanent requirement? How could such a program be structured?*

Kroger has concern on how such a program could be conducted to allow the Board to further study mandatory rotation of accounting firms. Among those concerns are whether there would be a sufficient number of participants to effectively formulate a conclusion as to the effect of mandatory rotation on audit effectiveness. We are unclear on how an objective set of criteria would be established to determine whether an audit failure was the result of mandatory rotation or issues related to the execution of the audit. We believe this is an unproductive goal and the Board's time is better spent on other tasks. The new partner resulting from a 5 year rotation often comes from an office different from the office servicing the audit. This results in a truly new face to the Company, Audit Committee and incumbent staff on the audit. We believe this results in a truly fresh look every five years.

• *Are there alternatives to mandatory rotation that the Board should consider that would meaningfully enhance auditor independence, objectivity and professional skepticism? For example, should broader alternatives be considered that relate to a company's requirement to obtain an audit, such as joint audits or a requirement for the audit committee to solicit bids on the audit after a certain number of years with the same auditor? Could audit committee oversight of the engagement be otherwise enhanced in a way that meaningfully improves auditor independence?*

We are not aware of any alternatives to consider to meaningfully enhance auditor independence. We believe the process we go through every five years with a new audit partner, the independence process we go through for our current auditor's non-audit services, and our other corporate governance procedures are sufficient. We believe that joint audits would only further increase the audit fees. We believe the solicitation of bids should be left to the audit committee's judgment.

• *Should the Board continue to seek to address its concerns about independence, objectivity and professional skepticism through its current inspection program? Is there some enhanced or improved form of inspection that could better address the Board's concerns? If mandatory rotation were in place, could an enhanced inspection, perhaps focused particularly on professional skepticism, serve as a substitute in cases in which it would be unusually costly, disruptive or otherwise impracticable to rotate auditors?*

Kroger believes that the independent audit committee, with responsibility for oversight of the audit firm, remains the most qualified to appoint and retain the audit firm. The audit committee has the responsibility to select the audit firm and is in the best position to monitor the objectiveness and independence of the auditor. A requirement for mandatory audit firm rotation would undermine the audit committee's oversight control, as the retention of an audit firm performing its responsibilities effectively would be precluded based on tenure.

The Board, as regulator of auditors of public companies, has the ability to determine through its audit inspections if audit firms have the appropriate structure, processes and procedures in place to facilitate the performance of an audit in an objective and independent manner. Presumably, these inspections focus on the auditor's documentation for conclusions reached and whether all opposing evidence was considered when formulating those conclusions. Additionally, the inspections should cover a review of the audit firm's procedures to ensure engagement team members are independent of the audit client. As such, the Board should continue to address concerns about independence, objectivity and professional skepticism through its current inspection program.

• *A 2003 report by the Conference Board Commission on Public Trust and Private Enterprise recommended that audit committees consider rotation when, among other factors, "the audit firm has been employed by the company for a substantial period of time — e.g., over 10 years." To what extent have audit committees considered implementing a policy of audit firm rotation? If audit committees have not considered implementing such a policy, why not? What have been the experiences of any audit committees that have implemented a policy of rotation?*

The Audit Committee of Kroger has not implemented a policy on audit firm rotation due to the limited number of qualified audit firms available to perform the audit at the level expected by the Audit Committee and management, the substantial investment of time and commitment of management, auditors, and the Audit Committee needed to effectively implement a rotation requirement and increased costs associated with the introduction of a new audit firm. Furthermore, there is no evidence that such a policy would improve the quality of the audit or enhance auditor independence, objectivity and professional skepticism.

Thank you for the privilege to comment on the Concept Release. If you would like to discuss this further or would like additional information, please feel free to call Mr. Schlotman at (513) 762-4851.

Very truly yours,

David B. Dillon
Chairman and CEO

Ronald L. Sargent

Ronald L. Sargent
Chair, Audit Committee

J. Michael Scholtman.
Chief Financial Officer