

BURKLE RONALD W  
Form SC 13D/A  
January 22, 2010

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE 13D/A  
Under the Securities Exchange Act of 1934  
(Amendment No. 1)  
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.  
(Name of Issuer)  
COMMON STOCK, Par Value \$1 Per Share  
(Title of Class of Securities)  
**390064 10 3**  
(CUSIP Number)  
Robert P. Bermingham  
The Yucaipa Companies LLC  
9130 W. Sunset Boulevard  
Los Angeles, California 90069  
(310) 789-7200  
Copies to:  
Thomas C. Sadler, Esq.  
Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, California 90071  
(213) 485-1234  
(Name, Address and Telephone Number of Person Authorized to  
Receive Notices and Communications)  
**January 21, 2010****

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 ( Act ) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)

Ronald W. Burkle

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2**  
(a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4**  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6**  
United States

SOLE VOTING POWER

**7**

NUMBER OF 0 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY **8**

2,592,610 shares<sup>1</sup>

EACH REPORTING PERSON	<b>9</b>	SOLE DISPOSITIVE POWER  0 shares
WITH	<b>10</b>	SHARED DISPOSITIVE POWER  2,592,610 shares <sup>1</sup>

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,592,610 <sup>1</sup>

**12** CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

b

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

4.6%

**14** TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

IN

<sup>1</sup> Beneficial ownership of 115,000 shares of A-Y Preferred Stock (as defined below and described in Item 6) which is convertible into Common Stock beginning on August 5, 2010, and which entitles YAAF II (as defined below) and YAAF II Parallel (as defined below) to vote with holders of Common Stock (as described in Item 6), is not being reported hereunder because it is not convertible within 60 days of this statement. For a description of the voting rights associated with the A-Y Preferred Stock, see Item 6 below.

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

- 1** I.R.S. Identification Nos. of above persons (entities only)  
Yucaipa Corporate Initiatives Fund I, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

- 2** (a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

- 4** WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

- 5**

CITIZENSHIP OR PLACE OF ORGANIZATION

- 6** Delaware

SOLE VOTING POWER

**7**

NUMBER OF 0 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY **8**

892,372 shares

SOLE DISPOSITIVE POWER

EACH **9**

REPORTING

PERSON 0 shares

WITH SHARED DISPOSITIVE POWER

10

892,372 shares

11

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

892,372 shares

12

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

b

13

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.6%

14

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

OO

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)  
Yucaipa Corporate Initiatives Fund I, LP

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2** (a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4** WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6** Delaware

SOLE VOTING POWER

**7**

NUMBER OF 892,372 shares

SHARED VOTING POWER

SHARES  
BENEFICIALLY **8**  
OWNED BY

892,372 shares

SOLE DISPOSITIVE POWER

EACH **9**

REPORTING

PERSON 892,372 shares

WITH SHARED DISPOSITIVE POWER

10

892,372 shares

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

892,372 shares

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

b

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.6%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

PN

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

1 I.R.S. Identification Nos. of above persons (entities only)  
Yucaipa American Management, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2 (a)   
(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4 WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2(d) OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6 Delaware

SOLE VOTING POWER

7

NUMBER OF 0 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY 8

1,700,238 shares<sup>2</sup>

SOLE DISPOSITIVE POWER

EACH 9



REPORTING

PERSON 0 shares

WITH SHARED DISPOSITIVE POWER

10

1,700,238 shares<sup>2</sup>

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

1,700,238 shares<sup>2</sup>

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

12

b

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

3.0%

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

14

OO

<sup>2</sup> Beneficial ownership of 115,000 shares of A-Y Preferred Stock (as defined below and described in Item 6) which is convertible into Common Stock beginning on August 5, 2010, and which entitles YAAF II (as defined below) and YAAF II Parallel (as defined below) to vote with holders of Common Stock (as described in Item 6), is not being reported hereunder because it is not convertible within 60 days of this statement. For a description of the voting rights associated with the A-Y Preferred Stock, see Item 6 below.

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)  
Yucaipa American Funds, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2** (a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4** WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS  
2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6** Delaware

SOLE VOTING POWER

**7**

NUMBER OF 0 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY **8**

1,700,238 shares<sup>3</sup>

SOLE DISPOSITIVE POWER

EACH **9**

REPORTING

PERSON 0 shares

WITH SHARED DISPOSITIVE POWER

10

1,700,238 shares<sup>3</sup>

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

1,700,238 shares<sup>3</sup>

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

12

b

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

3.0%

TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

14

OO

<sup>3</sup> Beneficial ownership of 115,000 shares of A-Y Preferred Stock (as defined below and described in Item 6) which is convertible into Common Stock beginning on August 5, 2010, and which entitles YAAF II (as defined below) and YAAF II Parallel (as defined below) to vote with holders of Common Stock (as described in Item 6), is not being reported hereunder because it is not convertible within 60 days of this statement. For a description of the voting rights associated with the A-Y Preferred Stock, see Item 6 below.

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)

Yucaipa American Alliance Fund I, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2**  
(a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4**  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6**  
Delaware

SOLE VOTING POWER

**7**

NUMBER OF 0 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY **8** 1,700,238 shares

EACH REPORTING PERSON	<b>9</b>	SOLE DISPOSITIVE POWER  0 shares
WITH	<b>10</b>	SHARED DISPOSITIVE POWER  1,700,238 shares

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,700,238 shares

**12** CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

b

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

3.0%

**14** TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

OO

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)

Yucaipa American Alliance Fund I, LP

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2**  
(a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4**  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6**  
Delaware

SOLE VOTING POWER

**7**

NUMBER OF 850,125 shares

SHARED VOTING POWER

**8**

SHARES BENEFICIALLY OWNED BY 850,125 shares

EACH REPORTING PERSON	<b>9</b>	SOLE DISPOSITIVE POWER 850,125 shares
WITH	<b>10</b>	SHARED DISPOSITIVE POWER 850,125 shares

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
850,125 shares

**12** CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)  
p

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
1.5%

**14** TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)  
PN

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)

Yucaipa American Alliance (Parallel) Fund I, LP

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2**  
(a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4**  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6**  
Delaware

SOLE VOTING POWER

**7**

NUMBER OF 850,113 shares

SHARED VOTING POWER

SHARES BENEFICIALLY OWNED BY **8**

850,113 shares



EACH REPORTING PERSON	<b>9</b>	SOLE DISPOSITIVE POWER 850,113 shares
WITH	<b>10</b>	SHARED DISPOSITIVE POWER 850,113 shares

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
850,113 shares

**12** CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)  
p

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
1.5%

**14** TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)  
PN

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

**1** I.R.S. Identification Nos. of above persons (entities only)

Yucaipa American Alliance Fund II, LLC

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

**2**  
(a)   
(b)

SEC USE ONLY

**3**

SOURCE OF FUNDS (SEE INSTRUCTIONS)

**4**  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

**5**

CITIZENSHIP OR PLACE OF ORGANIZATION

**6**  
Delaware

SOLE VOTING POWER

**7**

NUMBER OF 0

SHARED VOTING POWER

**8**

SHARES BENEFICIALLY OWNED BY 0<sup>4</sup>

EACH REPORTING PERSON	<b>9</b>	SOLE DISPOSITIVE POWER
		0
WITH	<b>10</b>	SHARED DISPOSITIVE POWER
		0 <sup>4</sup>

**11** AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

0<sup>4</sup>

**12** CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS)

**13** PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

0

**14** TYPE OF REPORTING PERSON (SEE INSTRUCTIONS)

OO

<sup>4</sup> Beneficial ownership of 115,000 shares of A-Y Preferred Stock (as defined below and described in Item 6) which is convertible into Common Stock beginning on August 5, 2010, and which entitles YAAF II (as defined below) and YAAF II Parallel (as defined below) to vote with holders of Common Stock (as described in Item 6), is not being reported hereunder because it is not convertible within 60 days of this statement. For a description of the voting rights associated with the A-Y Preferred Stock, see Item 6 below.

CUSIP No. 390064103

NAMES OF REPORTING PERSONS

1 I.R.S. Identification Nos. of above persons (entities only)

Yucaipa American Alliance Fund II, LP

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS)

2  
(a)   
(b)

SEC USE ONLY

3

SOURCE OF FUNDS (SEE INSTRUCTIONS)

4  
WC, OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d)  
OR 2(e)

5

CITIZENSHIP OR PLACE OF ORGANIZATION

6  
Delaware

SOLE VOTING POWER

7  
NUMBER OF 0<sup>5</sup>

SHARES S-18

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**UNITED STATES FEDERAL TAX CONSIDERATIONS**

The following summary describes the material United States federal income tax consequences and, in the case of a non-U.S. holder (as defined below), the material United States federal estate tax consequences, of purchasing, owning and disposing of the notes. This summary applies to you only if you are a beneficial owner of a note and you acquire the note in this offering for a price equal to the issue price of the notes of the applicable series. The issue price of the notes of a series is the first price at which a substantial amount of the notes of such series is sold other than to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers.

This summary deals only with notes held as capital assets (generally, investment property) and does not deal with special tax situations such as:

dealers in securities or currencies;

traders in securities;

United States holders (as defined below) whose functional currency is not the United States dollar;

persons holding notes as part of a conversion, constructive sale, wash sale or other integrated transaction or a hedge, straddle or synthetic security;

persons subject to the alternative minimum tax;

certain United States expatriates;

financial institutions;

insurance companies;

controlled foreign corporations, passive foreign investment companies and regulated investment companies and shareholders of such corporations;

entities that are tax-exempt for United States federal income tax purposes and retirement plans, individual retirement accounts and tax-deferred accounts;

pass-through entities, including partnerships and entities and arrangements classified as partnerships for United States federal tax purposes, and beneficial owners of pass-through entities; and

persons that acquire the notes of a series for a price other than the issue price of the notes of such series.

If you are a partnership (or an entity or arrangement classified as a partnership for United States federal tax purposes) holding notes, or a partner in such a partnership, the United States federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership, and you should consult your own tax advisor regarding the United States federal income and estate tax consequences of purchasing, owning and disposing of the notes.

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This summary does not discuss all of the aspects of United States federal income and estate taxation that may be relevant to you in light of your particular investment or other circumstances. In addition, this summary does not discuss any United States state or local income or foreign income or other tax consequences. This summary is based on United States federal income and estate tax law, including the provisions of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), Treasury regulations, administrative rulings and judicial authorities, all as in effect or in existence as of the date of this prospectus supplement. Subsequent developments

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in United States federal income and estate tax law, including changes in law or differing interpretations, which may be applied retroactively, could have a material effect on the United States federal income and estate tax consequences of purchasing, owning and disposing of notes as set forth in this summary. Before you purchase notes, you should consult your own tax advisor regarding the particular United States federal, state and local and foreign income and other tax consequences of acquiring, owning and disposing of the notes that may be applicable to you.

**United States Holders**

The following summary applies to you only if you are a United States holder (as defined below).

*Definition of a United States Holder*

A "United States holder" is a beneficial owner of a note or notes that is for United States federal income tax purposes:

an individual citizen or resident of the United States;

a corporation (or other entity classified as a corporation for these purposes) created or organized in or under the laws of the United States, any State thereof or the District of Columbia;

an estate, the income of which is subject to United States federal income taxation regardless of the source of that income; or

a trust, if (1) a United States court is able to exercise primary supervision over the trust's administration and one or more "United States persons" (within the meaning of the Internal Revenue Code) has the authority to control all of the trust's substantial decisions, or (2) the trust has a valid election in effect under applicable Treasury regulations to be treated as a "United States person."

*Interest*

Interest on your notes will be taxed as ordinary interest income. In addition:

if you use the cash method of accounting for United States federal income tax purposes, you will have to include the interest on your notes in your gross income at the time you receive the interest; and

if you use the accrual method of accounting for United States federal income tax purposes, you will have to include the interest on your notes in your gross income at the time the interest accrues.

*Sale or Other Disposition of Notes*

Your tax basis in your notes generally will be their cost. Upon the sale, redemption, exchange or other taxable disposition of the notes, you generally will recognize taxable gain or loss equal to the difference, if any, between:

the amount realized on the disposition (less any amount attributable to accrued interest, which will be taxable as ordinary interest income to the extent not previously included in gross income, in the manner described under "United States Tax Considerations United States Holders Interest"); and

your tax basis in the notes.

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Your gain or loss generally will be capital gain or loss. This capital gain or loss will be long-term capital gain or loss if at the time of the disposition you have held the notes for more than one year. Subject to limited exceptions, your capital losses cannot be used to offset your ordinary income. If you are a non-corporate United States holder, your long-term capital gain generally will be subject to a reduced rate of taxation.

*Backup Withholding*

In general, "backup withholding" may apply:

to any payments made to you of principal of and interest on your note, and

to payment of the proceeds of a sale or other disposition of your note,

if you are a non-corporate United States holder and you fail to provide a correct taxpayer identification number or otherwise comply with applicable requirements of the backup withholding rules.

Backup withholding is not an additional tax and may be credited against your United States federal income tax liability, provided that correct information is timely provided to the Internal Revenue Service.

*Medicare Tax*

For 2013 and subsequent years, an additional 3.8% Medicare tax will be imposed on the net investment income of certain individuals, estates and trusts. For these purposes, "net investment income" will generally include interest on and capital gains from the sale or other disposition of securities like the notes, subject to certain exceptions. If you are a United States holder that is an individual, estate or trust, you are urged to consult your tax advisor regarding the applicability of the Medicare tax to your income and gains in respect of the notes.

**Non-U.S. Holders**

The following summary applies to you if you are a beneficial owner of a note and you are neither a United States holder (as defined above) nor a partnership (or an entity or arrangement classified as a partnership for United States federal tax purposes) (a "non-U.S. holder"). An individual may, subject to exceptions, be deemed to be a resident alien, as opposed to a non-resident alien, by among other ways, being present in the United States:

on at least 31 days in the calendar year, and

for an aggregate of at least 183 days during a three-year period ending in the current calendar year, counting for such purposes all of the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year.

Resident aliens are subject to United States federal income tax as if they were United States citizens.

*United States Federal Withholding Tax*

Under current United States federal income tax laws, and subject to the discussion below, United States federal withholding tax will not apply to payments by us or our paying agent (in its



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capacity as such) of principal of and interest on your notes under the "portfolio interest" exception of the Internal Revenue Code, provided that in the case of interest:

you do not, directly or indirectly, actually or constructively, own ten percent or more of the total combined voting power of all classes of our stock entitled to vote within the meaning of section 871(h)(3) of the Internal Revenue Code and the Treasury regulations thereunder;

you are not a controlled foreign corporation for United States federal income tax purposes that is related, directly or indirectly, to us through sufficient stock ownership (as provided in the Internal Revenue Code);

you are not a bank receiving interest described in section 881(c)(3)(A) of the Internal Revenue Code;

such interest is not effectively connected with your conduct of a United States trade or business; and

you provide a signed written statement, on an Internal Revenue Service Form W-8BEN (or other applicable form) which can reliably be related to you, certifying under penalties of perjury that you are not a United States person within the meaning of the Internal Revenue Code and providing your name and address to:

(A)

us or our paying agent; or

(B)

a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds your notes on your behalf and that certifies to us or our paying agent under penalties of perjury that it, or the bank or financial institution between it and you, has received from you your signed, written statement and provides us or our paying agent with a copy of this statement.

The applicable Treasury regulations provide alternative methods for satisfying the certification requirement described in this section. In addition, under these Treasury regulations, special rules apply to pass-through entities and this certification requirement may also apply to beneficial owners of pass-through entities.

If you cannot satisfy the requirements of the "portfolio interest" exception described above, payments of interest made to you will be subject to 30% United States federal withholding tax unless you provide the applicable withholding agent with a properly executed (1) Internal Revenue Service Form W-8ECI (or other applicable form) stating that interest paid on your notes is not subject to withholding tax because it is effectively connected with your conduct of a trade or business in the United States, or (2) Internal Revenue Service Form W-8BEN (or other applicable form) claiming an exemption from or reduction in this withholding tax under an applicable income tax treaty.

*United States Federal Income Tax*

Except for the possible application of United States federal withholding tax (see "United States Federal Tax Considerations – Non-U.S. Holders – United States Federal Withholding Tax" above) and backup withholding tax (see "United States Federal Tax Considerations – Non-U.S. Holders-Backup Withholding and Information Reporting" below), you generally will not have to pay United States federal income tax on payments of principal of and interest on your notes, or on any gain realized from (or accrued interest treated as received in connection with) the sale, redemption, retirement at maturity or other disposition of your notes unless:

in the case of interest payments or disposition proceeds representing accrued interest, you cannot satisfy the requirements of the "portfolio interest" exception described above (and

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your United States federal income tax liability has not otherwise been fully satisfied through the United States federal withholding tax described above);

in the case of gain, you are an individual who is present in the United States for 183 days or more during the taxable year of the sale or other disposition of your notes and specific other conditions are met (in which case, except as otherwise provided by an applicable income tax treaty, the gain, which may be offset by certain United States source capital losses, generally will be subject to a flat 30% United States federal income tax, even though you are not considered a resident alien under the Internal Revenue Code); or

the interest or gain is effectively connected with your conduct of a United States trade or business and, if required by an applicable income tax treaty, is attributable to a United States "permanent establishment" maintained by you.

If you are engaged in a trade or business in the United States and interest or gain in respect of your notes is effectively connected with the conduct of your trade or business (and, if required by an applicable income tax treaty, is attributable to a United States "permanent establishment" maintained by you), the interest or gain generally will be subject to United States federal income tax on a net basis at the regular graduated rates and in the manner applicable to a United States holder (although the interest will be exempt from the withholding tax discussed in the preceding paragraphs if you provide to the applicable withholding agent a properly executed Internal Revenue Service Form W-8ECI (or other applicable form) on or before any payment date to claim the exemption). In addition, if you are a foreign corporation, you may be subject to a branch profits tax equal to 30% of your effectively connected earnings and profits for the taxable year, as adjusted for certain items, unless a lower rate applies to you under an applicable United States income tax treaty.

*United States Federal Estate Tax*

If you are an individual and are not a United States citizen or a resident of the United States (as specially defined for United States federal estate tax purposes) at the time of your death, your notes generally will not be subject to the United States federal estate tax, unless, at the time of your death:

you directly or indirectly, actually or constructively, own ten percent or more of the total combined voting power of all classes of our stock entitled to vote within the meaning of section 871(h)(3) of the Internal Revenue Code and the Treasury regulations thereunder; or

your interest on the notes is effectively connected with your conduct of a United States trade or business.

*Backup Withholding and Information Reporting*

Under current Treasury regulations, backup withholding and certain information reporting will not apply to payments made on the notes to you if you have provided to the applicable withholding agent the required certification that you are not a United States person as described in "United States Tax Considerations Non-U.S. Holders United States Federal Withholding Tax" above, and provided that the applicable withholding agent does not have actual knowledge or reason to know that you are a United States person. However, the applicable withholding agent may be required to report to the IRS and you payments of interest on the notes and the amount of tax, if any, withheld with respect to those payments. Copies of the information returns reporting such interest payments and any withholding may also be made available to the tax authorities in the country in which you reside under the provisions of a treaty or agreement.

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The gross proceeds from the disposition of your notes may be subject to information reporting and backup withholding. If you sell your notes outside the United States through a non-U.S. office of a non-U.S. broker and the sales proceeds are paid to you outside the United States, then the U.S. backup withholding and information reporting requirements generally will not apply to that payment. However, U.S. information reporting, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made outside the United States, if you sell your notes through a non-U.S. office of a broker that:

is a United States person (as defined in the Internal Revenue Code);

derives 50% or more of its gross income in specific periods from the conduct of a trade or business in the United States;

is a "controlled foreign corporation" for U.S. federal income tax purposes; or

is a foreign partnership, if at any time during its tax year:

one or more of its partners are U.S. persons who in the aggregate hold more than 50% of the income or capital interests in the partnership; or

the foreign partnership is engaged in a U.S. trade or business,

unless the broker has documentary evidence in its files that you are not a United States person and certain other conditions are met or you otherwise establish an exemption. If you receive payments of the proceeds of a sale of your notes to or through a U.S. office of a broker, the payment is subject to both U.S. backup withholding and information reporting unless you provide a Form W-8BEN certifying that you are not a United States person or you otherwise establish an exemption, provided that the broker does not have actual knowledge or reason to know that you are not a United States person or the conditions of any other exemption are not, in fact, satisfied.

You should consult your own tax advisor regarding application of backup withholding in your particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury regulations. Backup withholding is not an additional tax, and amounts withheld under the backup withholding rules from a payment to you will be allowed as a refund or credit against your United States federal income tax liability, provided the required information is timely furnished to the Internal Revenue Service.

**Foreign Account Tax Compliance Act**

Legislation known as the "Foreign Account Tax Compliance Act" or "FATCA," when applicable, and recent guidance issued by the Internal Revenue Service regarding the implementation of FATCA, generally will impose a U.S. federal withholding tax of 30% on interest on a debt obligation paid on or after July 1, 2014, and the gross proceeds from the disposition of a debt obligation paid on or after January 1, 2017, to non-U.S. financial institutions and other non-U.S. entities that fail to comply with certain certification and information reporting requirements. However, under such recent guidance from the Internal Revenue Service, the obligation to withhold under FATCA will not apply to a debt obligation issued before July 1, 2014 unless the debt obligation is significantly modified and deemed reissued for U.S. federal income tax purposes on or after July 1, 2014. Accordingly, withholding under FATCA will not apply to payments on the notes, or the gross proceeds from the disposition of the notes, unless the notes are so significantly modified and deemed reissued on or after July 1, 2014. Prospective purchasers of the notes should consult their own tax advisors regarding the effect, if any, of the FATCA rules for them based on their particular circumstances.

Table of Contents**UNDERWRITING**

Kroger and the underwriters for the offering named below, for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated, U.S. Bancorp Investments, Inc. and Wells Fargo Securities, LLC are acting as representatives, have entered into an underwriting agreement and a pricing agreement for offering the notes. Subject to conditions in these agreements, each underwriter has severally agreed to purchase the principal amount of notes indicated in the following table.

<b>Underwriters</b>	<b>Principal Amount of Floating Rate Notes due 2016</b>	<b>Principal Amount of % Notes due 2016</b>	<b>Principal Amount of % Notes due 2019</b>	<b>Principal Amount of % Notes due 2021</b>
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$	\$	\$	\$
U.S. Bancorp Investments, Inc.				
Wells Fargo Securities, LLC				
<b>Total</b>	\$	\$	\$	\$

The underwriters are committed to take and pay for all of the notes being offered, if any are taken.

Notes sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus supplement. Any notes sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price of up to % of the principal amount of the floating rate notes; up to % of the principal amount of the 2016 notes; up to % of the principal amount of the 2019 notes; and up to % of the principal amount of the 2021 notes. Any such securities dealers may resell any notes purchased from the underwriters to certain other brokers or dealers at a discount from the initial public offering price of up to % of the principal amount of the floating rate notes, % of the principal amount of the 2016 notes, % of the principal amount of the 2019 notes, and % of the principal amount of the 2021 notes. If all the notes are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms. The offering of the notes by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

Each series of notes is a new issue of securities with no established trading market. The underwriters have advised Kroger that the underwriters intend to make a market in the notes but are not obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes.

In connection with the offering, the underwriters may purchase and sell notes in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of notes than they are required to purchase in the offering. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the notes while the offering is in progress.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the underwriters have repurchased notes sold by or for the account of such underwriter in stabilizing or short covering transactions.

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These activities by the underwriters may stabilize, maintain or otherwise affect the market price of the notes. As a result, the price of the notes may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. These transactions may be effected in the over-the-counter market or otherwise.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date") it has not made and will not make an offer of the notes which are the subject of this prospectus supplement to the public in that Relevant Member State other than:

- (a) to any legal entity which is a qualified investor, as defined in the prospectus directive;
- (b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Underwriters; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of the notes referred to in (a) through (c) above shall require us or any Underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive, or supplement to a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer of notes to the public" in relation to any notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe the notes, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State, the expression Prospectus Directive means Directive 2003/71/EC (and the amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State and the expression 2010 PD Amending Directive means Directive 2010/73/EV.

Each person in a Relevant Member State who initially acquires any notes or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (A) it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive, and (B) in the case of any notes acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, the notes acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, or in circumstances in which the prior consent of the Underwriters has been given to the offer or resale. In the case of any notes being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the notes acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any notes to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of the Underwriters has been obtained to each such proposed offer or resale.

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The Company, the Underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement.

This prospectus supplement has been prepared on the basis that any offer of notes in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of notes. Accordingly any person making or intending to make an offer in that Relevant Member State of notes which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the Company nor the underwriters have authorized, nor do they authorize, the making of any offer of notes in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

Each underwriter has further represented and agreed that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 ("FSMA")) received by it in connection with the issue or sale of the notes in circumstances in which Section 21(1) of FSMA would not, if Kroger was not an authorized person, apply to Kroger; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the notes in, from or otherwise involving the United Kingdom.

The notes may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), and no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

This prospectus supplement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus supplement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the

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notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the notes are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the notes under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

Kroger estimates that its share of the total expenses of the offering, excluding the underwriting discount, will be approximately .

Kroger has agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act of 1933 as amended (the "Securities Act").

U.S. Bancorp Investments, Inc., one of the representatives of the underwriters in this offering, is an affiliate of U.S. Bank National Association, the trustee under the indenture governing the notes.

Kroger expects that delivery of the notes will be made against payment therefor on or about the settlement date specified on the front cover of this prospectus supplement, which will be the fifth business day following the date of this prospectus supplement. Under Rule 15c6-1 of the Securities and Exchange Commission under the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the notes on the date of this prospectus supplement or the next succeeding business day will be required, by virtue of the fact that the notes initially will settle in T+5, to specify an alternate settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the notes who wish to trade the notes on the date hereof should consult their own advisor.

#### **CONFLICTS OF INTEREST**

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. One or more of the underwriters or their affiliates have provided and may in the future provide various commercial or investment banking services and other services to Kroger and its affiliates. In addition, affiliates of some of the underwriters are lenders, and in some cases agents or managers for the lenders, under Kroger's credit facility, and affiliates of some of the underwriters may be lenders in connection with Kroger's current and future commercial paper borrowings.

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In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments, including serving as counterparts to certain derivative and hedging arrangements, and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. Certain of the underwriters or their affiliates that have a lending relationship with us routinely hedge their credit exposure to us consistent with their customary risk management policies. Typically, such underwriters and their affiliates would hedge such exposure by entering into transactions which consist of either the purchase of credit default swaps or the creation of short positions in our securities, including potentially the notes offered hereby. Any such credit default swaps or short positions could adversely affect future trading prices of the notes offered hereby. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

**VALIDITY OF THE NOTES**

The validity of the notes will be passed upon for Kroger by Paul W. Heldman, Esq., Executive Vice President, Secretary and General Counsel of Kroger, and for the underwriters by Fried, Frank, Harris, Shriver & Jacobson LLP, New York, New York. Mr. Heldman may rely as to matters of New York law upon the opinion of Fried, Frank, Harris, Shriver & Jacobson LLP, and Fried, Frank, Harris, Shriver & Jacobson LLP may rely as to matters of Ohio law upon the opinion of Mr. Heldman. As of November 30, 2013, Mr. Heldman owned approximately 182,262 Kroger common shares and had options to acquire an additional 272,200 shares. Fried, Frank, Harris, Shriver & Jacobson LLP from time to time performs legal services for Kroger.

**EXPERTS**

The financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this prospectus supplement by reference to the Annual Report on Form 10-K for the year ended February 2, 2013 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.



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**FORWARD-LOOKING STATEMENTS**

The prospectus and this prospectus supplement contain, or incorporate by reference, certain statements that may be deemed "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. All statements, other than statements of historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future are forward-looking statements. Such statements are based on certain assumptions and assessments made by our management in light of its experience and its perception of historical trends, current conditions, expected future developments and other factors it believes to be appropriate. The forward-looking statements included in the prospectus and this prospectus supplement are also subject to a number of material risks and uncertainties, including but not limited to the factors described under "Risk Factors" herein and economic, competitive, governmental and technological factors affecting our operations, markets, products, services and prices, and other factors discussed in our filings under the Securities Act and the Exchange Act. Prospective investors are cautioned that such forward-looking statements are not guarantees of future performance and that actual results, developments and business decisions may differ from those envisaged by such forward-looking statements.

**INCORPORATION BY REFERENCE**

The SEC allows us to "incorporate by reference" the information we file with them. This means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference (i) our Annual Report on Form 10-K for the year ended February 2, 2013, filed with the SEC on April 2, 2013; (ii) our Quarterly Reports on Form 10-Q for the quarters ended May 25, 2013, filed with the SEC on June 28, 2013; August 17, 2013, filed with the SEC on September 24, 2013; and November 9, 2013, filed with the SEC on December 13, 2013; (iii) our Current Reports on Form 8-K filed with the SEC on February 11, 2013, July 1, 2013, July 9, 2013 (Item 1.01 and the related exhibit only), July 11, 2013, July 25, 2013, August 2, 2013, October 17, 2013 and November 19, 2013; and (iv) any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until we sell all of the securities. This Incorporation by Reference section supersedes the second paragraph of the section entitled "Where You Can Find More Information" in the base prospectus.

PROSPECTUS

**The Kroger Co.**

**Debt Securities  
Preferred Shares  
Depositary Shares  
Common Shares  
Warrants**

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We will provide specific terms of these securities in supplements to this prospectus. You should read this prospectus and any supplement carefully before you invest.

We may offer any of the following securities from time to time:

debt securities;

preferred shares;

depositary shares relating to preferred shares;

common shares; and

warrants to purchase debt securities, common shares or preferred shares.

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is December 13, 2013

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**About This Prospectus**

This prospectus is part of a Registration Statement that we filed with the SEC utilizing a "shelf" registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement.

For further information about our business and the securities, you should refer to the registration statement and its exhibits. The exhibits to the registration statement and the documents we incorporate by reference contain the full text of certain contracts and other important documents summarized in this prospectus. Since these summaries may not contain all the information that you may find important in deciding whether to purchase securities we may offer, you should review the full text of those documents. The registration statement and additional information can be obtained from the SEC as indicated under the heading "Where You Can Find More Information."

**Risk Factors**

You should carefully consider the specific risks described in our Annual Report on Form 10-K for the fiscal year ended February 2, 2013, the risk factors described under the caption "Risk Factors" in any applicable prospectus supplement, and any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act before making an investment decision. See "Where You Can Find More Information."

**Forward Looking Statements**

Certain information included or incorporated by reference in this document may be deemed to be "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. In addition, we may make other written and oral communications from time to time that contain such statements. Forward-looking statements include statements as to industry trends and our future expectations and other matters that do not relate strictly to historical facts and are based on certain assumptions by our management. These statements are often identified by the use of words such as "may," "will," "expect," "believe," "anticipate," "intend," "could," "should," "estimate" or "continue," and similar expressions or variations. These statements are based on the beliefs and assumptions of our management based on information currently available to our management. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from future results expressed or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from the forward-looking statements include, among others, the risks described in our Annual Report on Form 10-K for the fiscal year ended February 2, 2013, the risks described under the caption "Risk Factors" in any applicable prospectus supplement and any risk set forth in our other filings with the SEC that are incorporated by reference into this prospectus or any applicable prospectus supplement. You should carefully consider these factors before investing in our securities. Such forward-looking statements speak only as of the date they are made, and except for our ongoing obligations under the U.S. federal securities laws, we undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

**Where You Can Find More Information**

Kroger files annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our SEC filings are also available to the public from the SEC's web site at [www.sec.gov](http://www.sec.gov). You can find additional information about Kroger at [ir.kroger.com](http://ir.kroger.com).

The SEC allows us to "incorporate by reference" the information we file with them. This means that we can disclose important information to you by referring you to these documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below, which we have already filed with the SEC, and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until we sell all of the securities.

<b>KROGER SEC FILINGS (FILE NO. 1-303)</b>	<b>PERIOD</b>
Annual Report on Form 10-K	Year ended February 2, 2013
Quarterly Report on Form 10-Q	Quarter ended May 25, 2013, Quarter ended August 17, 2013, and Quarter ended November 9, 2013
Current Reports on Form 8-K	February 11, 2013, March 7, 2013, June 20, 2013, July 1, 2013, July 9, 2013, July 11, 2013, July 25, 2013, August 2, 2013, September 12, 2013, October 17, 2013, October 30, 2013, November 19, 2013, and December 5, 2013

## Edgar Filing: BURKLE RONALD W - Form SC 13D/A

You may request a copy of these filings, other than any exhibits, unless we have specifically incorporated by reference an exhibit in this prospectus, at no cost, by writing or telephoning us at the following address:

The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100  
(513) 762-4000  
Attention: Paul Heldman

This prospectus is part of a Registration Statement we filed with the SEC. We have incorporated into this Registration Statement exhibits that include a form of proposed underwriting agreement and indenture. You should read the exhibits carefully for provisions that may be important to you.

You should rely on the information incorporated by reference or provided in this prospectus or any prospectus supplement. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or the documents incorporated by reference is accurate as of any date other than the date on the front of this prospectus or those documents.

### **Our Company**

The Kroger Co. was founded in 1883 and incorporated in Ohio in 1902. As of February 2, 2013, we were one of the largest grocery retailers in the United States based on annual sales. We also manufacture and process food that our supermarkets sell. Our principal executive offices are located at 1014 Vine Street, Cincinnati, Ohio 45202-1100, and our telephone number is (513) 762-4000.

As of February 2, 2013, directly or through subsidiaries we operated approximately 2,424 supermarkets and multidepartment stores, 786 convenience stores, 1,169 supermarket fuel centers, and 328 fine jewelry stores. Eighty-one of the convenience stores are franchised to third parties. We also operate directly or through subsidiaries 37 manufacturing facilities that permit us to offer quality, low-cost private label products.

**Consolidated Ratio of Earnings to Fixed Charges**

The table below presents our consolidated ratio of earnings to fixed charges for the periods shown:

Quarters Ended			Fiscal Years Ended			
November 9, 2013 (40 weeks)	November 3, 2012 (40 weeks)	February 2, 2013 (53 weeks)	January 28, 2012 (52 weeks)	January 29, 2011 (52 weeks)	January 30, 2010 (52 weeks)	January 31, 2009 (52 weeks)
3.8	3.6	3.8	2.1	3.1	1.7	3.2

"Earnings" includes:

earnings before tax expense;

plus fixed charges,

and excludes capitalized interest.

"Fixed charges" includes:

interest, including capitalized interest, on all indebtedness;

amortization of deferred financing costs; and

that portion of rental expense that we believe is representative of interest.

**Use of Proceeds**

We will use the net proceeds from the sale of the securities to repay amounts under our credit facility or short-term borrowings and thereafter to use short-term borrowings or borrowings under our credit facility to repurchase, repay or redeem our outstanding indebtedness. We also expect to use borrowing proceeds for other general corporate purposes.

**Plan of Distribution**

We may sell the securities in any one or more of the following ways:

directly to investors;

to investors through agents or dealers;

through underwriting syndicates led by one or more managing underwriters; and

through one or more underwriters acting alone.

If we use underwriters in the sale, the obligations of the underwriters to purchase the securities will be subject to conditions. The underwriters will be obligated to purchase all the securities offered, if any are purchased. The underwriters will acquire the securities for their own account. The underwriters may resell the securities in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers.

We may use agents in the sale of securities. Unless indicated in the prospectus supplement, the agent will be acting on a best efforts basis for the period of its appointment.

If we use a dealer in the sale of the securities, we will sell the securities to the dealer as principal. The dealer may then resell the securities to the public at varying prices it determines at the time of resale.

We also may sell the securities in connection with a remarketing upon their purchase, in accordance with a redemption or repayment, by a remarketing firm acting as principal for its own account or as our agent. Remarketing firms may be deemed to be underwriters in connection with the securities they remarket.

We may authorize underwriters, dealers or agents to solicit offers to purchase the securities under a delayed delivery contract providing for payment and delivery at a future date.

We will identify any underwriters or agents and describe their compensation, including any discounts or commissions, in a prospectus supplement. Underwriters, dealers and agents that participate in the distribution of the offered securities may be underwriters as defined in the Securities Act of 1933. Any discounts or commissions received by them from us and any profit on the resale of the securities by them may be treated as underwriting discounts and commissions.

We may have agreements with the underwriters, dealers and agents to indemnify them against some civil liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments that the underwriters, dealers or agents may be required to make. Underwriters, dealers or agents may engage in transactions with, or perform services for, us in the ordinary course of their business.

### Description of Debt Securities

This prospectus describes the terms and provisions of the debt securities. When we offer to sell a particular series of debt securities, we will describe the specific terms of the securities in a supplement to this prospectus. The prospectus supplement also will indicate whether the general terms and provisions described in this prospectus apply to the particular series of debt securities.

The debt securities will be issued under an indenture between Kroger and a trustee to be selected by us. The indenture allows us to have different trustees for each debt security offering.

We have summarized the material terms of the indenture below. The indenture is included as an exhibit to the Registration Statement for these securities that we have filed with the SEC. You should read the indenture for the provisions that are important to you.

### Principal Terms of the Debt Securities

The debt securities will rank equally in right of payment with all of our existing and future unsecured senior debt. The debt securities will rank senior to any future subordinated indebtedness.

A prospectus supplement relating to any series of debt securities being offered will include specific terms relating to that series of debt securities. These terms will include some or all of the following:

their type and title;

their total principal amount and currency;

the denominations in which they are authorized to be issued;

the percentage of their principal amount at which they will be issued;

the date on which they will mature;

if they bear interest, the interest rate or the method by which the interest rate will be determined;

the times at which any interest will be payable or the manner of determining the interest payment dates;

any optional or mandatory redemption periods and the redemption or purchase price;

any guarantees by our direct and indirect subsidiaries;

any sinking fund requirements;

any special United States federal income tax considerations;

whether they are to be issued in the form of one or more temporary or permanent global securities and, if so, the identity of the depository for the global securities;



any information with respect to book-entry procedures;

the manner in which the amount of any payments of principal and interest determined by reference to an index are determined; and

any other specific terms not inconsistent with the indenture.

### **Denominations, Registration, Transfer and Payment**

We will issue the debt securities in registered form without coupons or in the form of one or more global securities, as described below under "Global Securities." We will issue registered securities denominated in U.S. dollars only in denominations of \$2,000 and integral multiples of \$1,000. We will issue global securities in a denomination equal to the total principal amount of outstanding debt securities of the series represented by the global security. We will describe the denomination of debt securities denominated in a foreign or composite currency in a prospectus supplement.

You may present registered securities for registration of transfer at the office of the registrar or at the office of any transfer agent designated by us.

We will pay principal and any premium and interest on registered securities at the office of the paying agent. We may choose to make any interest payment (1) by check mailed to the holder's address appearing in the register or (2) by wire transfer to an account maintained by the holder as specified in the register. We will make interest payments to the person in whose name the debt security is registered at the close of business on the day or days specified by us.

The trustee's principal office in the City of New York, Chicago, Cincinnati, or other location, will be designated as the sole paying agent for payments on registered securities.

### **Global Securities**

We will deposit global securities with the depository identified in the prospectus supplement. A global security is a security, typically held by a depository, that represents the beneficial interests of a number of purchasers of the security.

After we issue a global security, the depository will credit on its book-entry registration and transfer system the respective principal amounts of the debt securities represented by the global security to the accounts of persons that have accounts with the depository. These account holders are known as "participants." The underwriters or agents participating in the distribution of the debt securities will designate the accounts to be credited. Only a participant or a person that holds an interest through a participant may be the beneficial owner of a global security. Ownership of beneficial interests in the global security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the depository and its participants.

We and the trustee will treat the depository or its nominee as the sole owner or holder of the debt securities represented by a global security. Except as set forth below, owners of beneficial interests in a global security will not be entitled to have the debt securities represented by the global security registered in their names. They also will not receive or be entitled to receive physical delivery of the debt securities in definitive form and will not be considered the owners or holders of the debt securities.

Principal, any premium and any interest payments on debt securities represented by a global security registered in the name of a depository or its nominee will be made to the depository or its nominee as the registered owner of the global security. None of Kroger, the trustee or any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the global security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

We expect that the depository, upon receipt of any payments, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security as shown on the depository's records. We

also expect that payments by participants to owners of beneficial interests in the global security will be governed by standing instructions and customary practices, as is the case with the securities held for the accounts of customers registered in "street names" and will be the responsibility of the participants.

If the depository is at any time unwilling or unable to continue as depository and a successor depository is not appointed by us within ninety days, we will issue registered securities in exchange for the global security. In addition, we may at any time in our sole discretion determine not to have any of the debt securities of a series represented by global securities. In that event, we will issue debt securities of that series in definitive form in exchange for the global securities.

#### **Events of Default**

When we use the term "Event of Default" in the indenture, here are examples of what we mean:

we fail to pay the principal or any premium on any debt security when due;

we fail to deposit any sinking fund payment when due;

we fail to pay interest when due on any security for 30 days;

we fail to comply with any other covenant in the debt securities and this failure continues for 60 days after we receive written notice of it;

we default in any of our other indebtedness in excess of \$50,000,000, and that results in an acceleration of maturity; or

we take specified actions relating to our bankruptcy, insolvency or reorganization.

The supplemental indenture or the form of security for a particular series of debt securities may include additional Events of Default or changes to the Events of Default described above. You should refer to the prospectus supplement for the Events of Default relating to a particular series of debt securities. A default under one series of debt securities will not necessarily be a default under another series.

If an Event of Default for debt securities of any series occurs and is continuing, the trustee or the holders of at least 25% in principal amount of all of the debt securities of that series outstanding may require us to immediately repay all of the principal and interest due on the debt securities of that series. The holders of a majority in principal amount of all of the debt securities of that series may rescind this accelerated payment requirement, if the rescission would not conflict with any judgment or decree by a court and if all existing Events of Default have been cured or waived.

If an Event of Default occurs and is continuing, the trustee may pursue any remedy available to it to collect payment or to enforce the performance of any provision of the debt securities or the indenture.

The holders of a majority in principal amount of the debt securities may generally waive an existing default and its consequences.

#### **Modification of the Indenture**

The indenture may be amended without the consent of any holder of debt securities:

to cure any ambiguity, defect or inconsistency;

to permit a successor to assume our obligations under the indenture;

to add additional covenants for the benefit of holders;

to add additional Events of Default;

to add or change provisions necessary to facilitate the issuance of securities; or

to entitle the securities to the benefit of security.

The indenture may be amended with the written consent of the holders of at least 50% in principal amount of the debt securities of the series affected by the amendment. Holders of at least 50% in principal amount of the debt securities may waive our compliance with any provision of the indenture or the debt securities by giving notice to the trustee.

However, no amendment or waiver that

changes the maturity of principal or any installment of principal or interest;

reduces the amount of principal or interest or premium payable on redemption;

reduces the amount of debt securities whose holders must consent to an amendment or waiver;

modifies provisions related to rights of holders to redeem securities at their option; or

changes other rights of holders as specifically identified in the indenture

will be effective against any holder without the holder's consent.

#### **Other Debt Securities**

In addition to the debt securities described above, we may issue subordinated debt securities that rank junior to our senior debt securities. These debt securities will be described in a prospectus supplement and will be issued pursuant to an indenture entered into between Kroger and a trustee that we select. The indenture will be filed with the SEC and qualified under the Trust Indenture Act.

#### **Other Limitations**

The prospectus supplement may contain provisions that limit our ability to consolidate or merge with other companies. It also may contain provisions that limit our right to incur liens and to engage in sale and leaseback transactions.

#### **Description of Capital Stock**

Our Amended Articles of Incorporation authorize us to issue 1,000,000,000 common shares, \$1 par value per share, and 5,000,000 cumulative preferred shares, \$100 par value per share. On May 20, 1999, our shareholders authorized an amendment to the Amended Articles of Incorporation to increase the authorized common shares to 2,000,000,000 shares when our Board of Directors determines it to be in the best interest of Kroger. As of December 11, 2013, there were outstanding 516,526,256 common shares, and no cumulative preferred shares.



## Common Shares

All outstanding common shares are, and any shares issued under this prospectus will be, fully paid and nonassessable. Subject to rights of preferred shareholders if any preferred shares are issued and outstanding, holders of common shares

are entitled to any dividends validly declared;

will share ratably in our net assets in the event of a liquidation; and

are entitled to one vote per share.

The common shares have no conversion rights. Holders of common shares have no preemption, subscription, redemption, or call rights related to those shares.

Wells Fargo Bank, N.A., is the transfer agent and registrar for our common shares.

## Preferred Shares

This prospectus describes the terms and provisions of our preferred shares. When we offer to sell a particular series of preferred shares, we will describe the specific terms of the securities in a supplement to this prospectus. The prospectus supplement will also indicate whether the terms and provisions described in this prospectus apply to the particular series of preferred shares. The preferred shares will be issued under a certificate of designations relating to each series of preferred shares. It is also subject to our Amended Articles of Incorporation.

We have summarized the material portions of the certificate of designations below. The certificate of designations will be filed with the SEC in connection with an offering of preferred shares.

Our Amended Articles of Incorporation authorize us to issue 5,000,000 preferred shares, par value \$100 per share. Our Board is authorized to designate any series of preferred shares and the powers, preferences and rights of the preferred shares without further shareholder action. As of December 13, 2013, we had no preferred shares outstanding.

Our Board is authorized to determine or fix the following terms for each series of preferred shares, which will be described in a prospectus supplement:

the designation and number of shares;

the dividend rate;

the payment date for dividends and the date from which dividends are cumulative;

our redemption rights and the redemption prices;

amounts payable to holders on our liquidation, dissolution or winding up;

the amount of the sinking fund, if any;

whether the shares will be convertible or exchangeable, and if so the prices and terms; and

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whether future shares of the series or any future series or other class of stock is subject to any restrictions, and if so the nature of the restrictions.

When we issue preferred shares, they will be fully paid and nonassessable.

*Dividends*

The holders of preferred shares will be entitled to receive cash dividends if declared by our Board of Directors out of funds we can legally use for payment. The prospectus supplement will indicate the dividend rates and the dates on which we will pay dividends. The rates may be fixed or variable or both. If the dividend rate is variable, the formula used to determine the dividend rate will be described in the prospectus supplement. We will pay dividends to the holders of record as they appear on the record dates fixed by our Board.

Our Board will not declare and pay a dividend on any series of preferred shares unless full dividends for all series of preferred shares ranking equal as to dividends have been declared or paid and sufficient funds are set aside for payment. If dividends are not paid in full, we will declare any dividends pro rata among the preferred shares of each series and any series of preferred shares ranking equal to any other series as to dividends. A "pro rata" declaration means that the dividends we declare per share on each series of preferred shares will bear the same relationship to each other that the full accrued dividends per share on each series of the preferred shares bear to each other.

Unless all dividends on the preferred shares have been paid in full, we will not declare or pay any dividends or set aside sums for payment of dividends or distributions on any common shares or on any class of security ranking junior to the series of preferred shares, except for dividends or distributions paid for with securities ranking junior to the preferred shares. We also will not redeem, purchase, or otherwise acquire any securities ranking junior to the series of preferred shares as to dividends or liquidation preferences, except by conversion into or exchange for stock junior to the series of preferred shares.

*Convertibility*

We will not convert or exchange any series of preferred shares for other securities or property, unless otherwise indicated in the prospectus supplement.

*Redemption and sinking fund*

We will not redeem or pay into a sinking fund any series of preferred shares, unless otherwise indicated in the prospectus supplement.

*Liquidation rights*

If we voluntarily or involuntarily liquidate, dissolve or wind up our business, holders of any series of preferred shares will be entitled to receive the liquidation preference per share specified in the prospectus supplement and all accrued and unpaid dividends. We will pay these amounts to the holders of each series of the preferred shares, and all amounts owing on any preferred shares ranking equally with that series of preferred shares as to distributions upon liquidation. These payments will be made out of our assets available for distribution to shareholders before any distribution is made to holders of common shares or any class of shares ranking junior to the series of preferred shares as to dividends and liquidation preferences.

In the event there are insufficient assets to pay the liquidation preferences for all equally-ranked classes of preferred shares in full, we will allocate the remaining assets equally among all series of equally-ranked preferred shares based upon the aggregate liquidation preference for all outstanding shares for each series. This distribution means that the distribution we pay to the holders of all shares ranking equal as to distributions if we dissolve, liquidate or wind up our business will bear the same relationship to each other that the full distributable amounts for which



the holders are respectively entitled if we dissolve, liquidate or wind up our business bear to each other. After we pay the full amount of the liquidation preference to which they are entitled, the holders of a series of preferred shares will not be entitled to participate in any further distribution of our assets.

*Voting rights*

Holders of preferred shares will be entitled to one vote per share, unless otherwise indicated in the prospectus supplement or otherwise required by law.

*Transfer agent and registrar*

The prospectus supplement for each series of preferred shares will name the transfer agent and registrar.

**Description of Depositary Shares**

This prospectus describes the terms and provisions of our depositary shares. When we offer to sell depositary shares, we will describe the specific terms for the securities in a supplement to this prospectus. The prospectus supplement also will indicate whether the terms and provisions described in this prospectus apply to the depositary shares being offered.

We have summarized the material portions of the deposit agreement below. The deposit agreement will be filed with the SEC in connection with an offering of depositary shares.

We may offer fractional interests in preferred shares, rather than full preferred shares. If we do, we will provide for a depositary to issue to the public receipts for depositary shares, each of which will represent ownership of and entitlement to all rights and preferences of a fractional interest in a preferred share of a specified series. These rights include dividend, voting, redemption and liquidation rights. The applicable fraction will be specified in a prospectus supplement. The preferred shares represented by the depositary shares will be deposited with a depositary named in a prospectus supplement, under a deposit agreement among us, the depositary and the holders of the depositary receipts.

The depositary shares will be evidenced by depositary receipts issued under the deposit agreement. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to file proof of residence and pay charges.

**Dividends**

The depositary will distribute all cash dividends or other cash distributions received to the record holders of depositary receipts in proportion to the number of depositary shares owned by them on the relevant record date. The record date will be the same date as the record date we fix for the applicable series of preferred shares.

If we make a non-cash distribution, the depositary will distribute property to the holders of depositary receipts, unless the depositary determines, after consultation with us, that it is not feasible to make this distribution. If this occurs, the depositary may, with our approval, adopt any other method for the distribution as it deems appropriate, including the sale of the property and distribution of the net proceeds from the sale.

### **Liquidation Preference**

If we voluntarily or involuntarily liquidate, dissolve or wind up our business, the holders of each depositary share will receive the fraction of the liquidation preference accorded each share of the applicable series of preferred shares.

### **Redemption**

If we redeem the series of preferred shares underlying the depositary shares, we will redeem the depositary shares from the redemption proceeds of the preferred shares held by the depositary. Whenever we redeem any preferred shares held by the depositary, the depositary will redeem on the same redemption date the number of depositary shares representing the preferred shares being redeemed. The depositary will mail the notice of redemption between 30 to 60 days prior to the date fixed for redemption to the record holders of the depositary receipts.

### **Voting**

The depositary will promptly mail information contained in any notice of meeting it receives from us to the record holders of the depositary receipts. Each record holder of depositary receipts will be entitled to instruct the depositary as to its exercise of its voting rights pertaining to the number of preferred shares represented by its depositary shares. The depositary will try, if practical, to vote the preferred shares underlying the depositary shares according to the instructions received. We will agree to try to take all action that the depositary finds necessary in order to enable the depositary to vote the preferred shares in that manner. The depositary will not vote any of the preferred shares for which it does not receive specific instructions from the holders of depositary receipts.

### **Withdrawal of Preferred Shares**

If holders surrender depositary receipts at the principal office of the depositary and pay any unpaid amount due to the depositary, the owner of the depositary shares is entitled to receive the number of whole preferred shares and all money and other property represented by the depositary shares. Partial preferred shares will not be issued. If the holder delivers depositary receipts evidencing a number of depositary shares that represent more than a whole number of preferred shares, the depositary will issue a new depositary receipt evidencing the excess number of depositary shares to that holder.

Holders of preferred shares received in exchange for depositary shares will no longer be entitled to deposit these shares under the deposit agreement or to receive depositary receipts.

### **Amendment and Termination of Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary. However, any amendment that materially and adversely alters the rights of the holders, other than any change in fees, of depositary shares will not be effective unless approved by the holders of at least a majority of the depositary shares then outstanding. An amendment may not impair the right of any owner of any depositary shares to surrender its depositary receipt with instructions to the depositary in exchange for preferred shares, money and property, except in order to comply with mandatory provisions of applicable law. The deposit agreement may be terminated by us or the depositary only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution to the holders of the preferred shares in connection with the liquidation, dissolution or winding up of our business, and the distribution has been made to all the holders of depositary shares.

#### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges attributable solely to the depositary arrangements. We will pay the depositary's charges for the initial deposit of the preferred shares and the initial issuance of the depositary shares, any redemption of the preferred shares and all exchanges for preferred shares. Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and other charges stated in the deposit agreement to be for their accounts. In some circumstances, the depositary may refuse to transfer depositary shares, may withhold dividends and distributions and may sell the depositary shares if those charges are not paid.

#### **Obligations of Depositary**

The depositary will forward to the holders of depositary receipts all reports and communications from us that are delivered to it and that we are required to furnish to the holders of the preferred shares. In addition, the depositary will make available for inspection by holders of depositary receipts at its principal office, and at other places it deems advisable, any reports and communications received from us.

We will not assume, and the depositary will not assume, any obligation or any liability under the deposit agreement to holders of depositary receipts other than for gross negligence or willful misconduct. We will not be liable, and the depositary will not be liable, if we are prevented or delayed by law or any circumstance beyond our control in performing our obligations under the deposit agreement. Our obligations and the depositary's obligations under the deposit agreement will be limited to performance in good faith of our and their duties. We and the depositary will not be obligated to prosecute or defend any legal proceeding related to any depositary shares or preferred shares unless we receive satisfactory indemnity. We and the depositary may rely on written advice of our counsel or accountants, on information provided by holders of depositary receipts or other persons believed in good faith to be competent to give this information. We also may rely on documents believed to be genuine and to have been signed or presented by the proper party or parties.

#### **Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so. At any time we may remove the depositary. The resignation or removal will take effect after a successor depositary is appointed and has accepted the appointment. We must appoint a successor within 60 days after delivery of the notice for resignation or removal and the successor depositary must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$150,000,000.

#### **Federal Income Tax Consequences**

Owners of the depositary shares will be treated for federal income tax purposes as if they were owners of the preferred shares underlying the depositary shares. Accordingly, the owners will

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be entitled to take into account for federal income tax purposes income and deductions to which they would be entitled if they were holders of the preferred shares. In addition:

no gain or loss will be recognized for federal income tax purposes upon the withdrawal of preferred shares in exchange for depositary shares;

the tax basis of each preferred share to an exchanging owner of depositary shares will, when exchanged, be the same as the aggregate tax basis of the depositary shares being exchanged; and

the holding period for preferred shares in the hands of an exchanging owner of depositary shares will include the period during which that person owned the depositary shares.

### Description of Warrants

This prospectus describes the terms and provisions of the warrants. When we offer to sell warrants, we will describe the specific terms of the warrants and warrant agreement in a supplement to this prospectus. The prospectus supplement also will indicate whether the terms and provisions described in this prospectus apply to the warrants being offered.

We have summarized the material portions of the warrant agreement below. The warrant agreement will be filed with the SEC in connection with an offering of warrants. You should read the warrant agreement for the provisions that are important to you.

We may issue warrants for the purchase of our debt securities, preferred shares or common shares. Warrants may be issued alone or together with debt securities, preferred shares or common shares offered by any prospectus supplement and may be attached to or separate from those securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

### Debt Warrants

The prospectus supplement relating to a particular issue of warrants to issue debt securities will describe the terms of the debt warrants, including the following:

their title;

their offering price;

their aggregate number;

the designation and terms of the debt securities that can be purchased when they are exercised;

the designation and terms of the debt securities that are issued with the warrants and the number of warrants issued with each debt security;

the date when they and any debt securities issued will be separately transferable;

the principal amount of debt securities that can be purchased when they are exercised and the purchase price;

the date on which the right to exercise warrants begins and the date on which the right expires;

the minimum or maximum amount of warrants that may be exercised at any one time;

whether they and the debt securities that may be issued when they are exercised will be issued in registered or bearer form;

information about book-entry procedures;

the currency in which the offering price and the exercise price are payable;

a discussion of material United States federal income tax considerations;

the antidilution provisions; and

the redemption or call provisions.

#### **Stock Warrants**

The prospectus supplement relating to any particular issue of warrants to issue common shares or preferred shares will describe the terms of the stock warrants, including the following:

their title;

their offering price;

their aggregate number;

the designation and terms of the common shares or preferred shares that can be purchased when they are exercised;

the designation and terms of the common shares or preferred shares that is issued and the number of warrants issued with common shares or preferred shares;

the date when they and any common shares or preferred shares issued will be separately transferable;

the number of common shares or preferred shares that can be purchased when they are exercised and the purchase price;

the date on which the right to exercise them begins and the date on which the right expires;

the minimum or maximum amount that may be exercised at any one time;

the currency in which the offering price and the exercise price are payable;

a discussion of material United States federal income tax considerations;

the antidilution provisions; and

the redemption or call provisions.

**Experts**

The financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended February 2, 2013 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**Legal Matters**

The validity of the securities we are offering in this prospectus will be passed upon for us by Paul Heldman, Esq., Executive Vice President, Secretary and General Counsel of Kroger, and for any underwriters or agents by counsel named in the applicable prospectus supplement. As of November 30, 2013, Mr. Heldman owned approximately 182,262 Kroger common shares, and had options to acquire an additional 272,200 common shares.



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