KROGER CO
Form 11-K
June 26, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 11-K

(Mark One)

x	**ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934** **For the fiscal year ended December 31, 2008.**
	OR
o	**TRANSITION REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934** **For the transition period from to**

Commission file number 1-303

The Kroger Co. Savings Plan for Bargaining Unit Associates

1014 Vine Street

Cincinnati, OH 45202

(Full title of the plan and the address of the plan)

The Kroger Co.

1014 Vine Street

Cincinnati, OH 45202

(Name of issuer of the securities held pursuant to the

plan and the address of its principal executive office)

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REQUIRED INFORMATION

Item 4. Plan Financial Statements and Schedules Prepared in Accordance with the Financial Reporting Requirements of ERISA.

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THE KROGER CO. SAVINGS PLAN

FOR BARGAINING UNIT ASSOCIATES

Financial Statements

And

Supplemental Schedule

December 31, 2008 and 2007

With

Report of Independent Registered

Public Accounting Firm

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THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To Participants and Administrative Committee of

The Kroger Co. Savings Plan for Bargaining Unit Associates:

We have audited the accompanying statements of net assets available for benefits modified cash basis of The Kroger Co. Savings Plan for Bargaining Unit Associates as of December 31, 2008 and 2007, and the related statements of changes in net assets available for benefits modified cash basis for the years then ended. These financial statements are the responsibility of the Plan s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As described in Note 2, these financial statements and supplemental schedule were prepared on a modified cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2008 and 2007, and the changes in net assets available for benefits for the years then ended, on the basis of accounting described in Note 2.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying supplemental Schedule of Assets (Held at End of Year) is presented for the purpose of additional analysis and is not a required part of the basic financial statements but is supplementary information required by the Department of Labor Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. The supplemental schedule is the responsibility of the Plan s management. The supplemental schedule has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

/s/ Clark, Schaefer, Hackett & Co.

Cincinnati, Ohio

June 25, 2009

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THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

Statements of Net Assets Available for Benefits - Modified Cash Basis

December 31, 2008 and 2007

	2008	2007
Cash	$ 12,095	$ 59,073
Investments, at fair value :		
Common stocks	5,666,296	4,988,258
Mutual funds	20,697,309	35,725,432
Interest in master trust	25,667,271	26,168,634
Collective trusts	12,993,747	26,194,173
Participant loans	3,473,911	2,649,751
Retirement date funds	10,231,047	3,858,140
Total investments	78,729,581	99,584,388
Liabilities:		
Administrative fees payable	0	46,202
Net assets available for benefits at fair value	78,741,676	99,597,259
Adjustment from fair value to contract value for interest in master trust relating to investment contracts	1,330,613	(330,226)
Net assets available for benefits	$ 80,072,289	$ 99,267,033

See accompanying notes to financial statements.

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THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

Statements of Changes in Net Assets Available for Benefits - Modified Cash Basis

Years Ended December 31, 2008 and 2007

	2008	2007
Additions:		
Interest and dividends	$ 535,739	$ 2,467,147
Investment income - Participation in a master trust	1,275,371	1,230,985
Net appreciation (depreciation) in fair value of investments	(27,132,458)	5,032,247
Participant contributions	13,862,850	13,103,466
Net additions	(11,458,498)	21,833,845
Deductions:		
Benefits paid to participants	7,584,693	6,795,709
Administrative expenses	151,553	145,099
Total deductions	7,736,246	6,940,808
Net increase (decrease)	(19,194,744)	14,893,037
Net assets available for benefits:		
Beginning of year	99,267,033	84,373,996
End of Year	$ 80,072,289	$ 99,267,033

See accompanying notes to financial statements.

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THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

Notes to Financial Statements

1. Description of Plan:

The following description of The Kroger Co. Savings Plan for Bargaining Unit Associates (Plan) provides only general information. Participants should refer to the plan document for a more complete description of Plan provisions.

General

The Plan is sponsored by The Kroger Co., an Ohio corporation, and its wholly-owned subsidiaries (collectively the Company). The Plan is a defined contribution plan covering certain employees of the Company who have attained age 21, are covered by a collective bargaining agreement, have been employed 30 days, and have completed 72 hours of service. It is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

Contributions

Subject to certain limits, participants may contribute up to 75% of annual compensation to the Plan. Participants are also permitted to deposit into the Plan distributions from other qualified plans. It is at the discretion of participants to modify and direct investments. Participants are eligible to make catch-up contributions beginning in the year in which they reach age 50. No Company contributions are made to the Plan.

Participant Accounts

Each participant account is credited with the participant contribution, and an allocation of Plan earnings or losses. Allocations of earnings or losses are based upon the performance of the investment funds chosen by the participant. The benefit to which a participant is entitled is the benefit that can be provided from the participant s vested account.

Vesting

All accounts of a participant are fully vested at all times.

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Benefits

Payment of benefits can be made under various methods, depending upon the reason for the distribution, such as termination of service, death, or retirement, as well as other factors. At termination, those participants with a balance of less than or equal to $1,000 will receive a single lump sum distribution. Absent specific elections by the participant, those with balances greater than $1,000 and less than or equal to $5,000 shall be distributed, in the form of a direct rollover, to an individual retirement account designated by the Plan Administrator. Those with balances greater than $5,000 may elect to leave their funds in the Plan or choose other options. Participants are entitled to benefits beginning at normal retirement age (generally age 65). Benefits are recorded when paid. Unclaimed benefits are forfeited and are applied to pay Plan expenses. Forfeited unclaimed benefits are restored if a participant later establishes a valid benefit claim.

Participant Loans

The Plan permits participants to borrow from their vested account. The maximum amount that may be borrowed is the lesser of $50,000 or 50% of the vested balance of the account. Loan terms range from 1-4 years or up to 6 years for the purchase of a primary residence. The loans are collateralized by the balance in the participant s account and bear interest commensurate with local prevailing rates at the time the loan is made. Principal and interest are paid through periodic payroll deductions.

2. Summary of Significant Accounting Policies:

Basis of accounting

The financial statements of the Plan are prepared using the modified cash basis of accounting, which is the equivalent of the accrual basis except that certain income receivable, contributions receivable, and other accruals are not recorded. This is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America and is permitted under ERISA.

Master Trust

Certain investments of the Plan, along with some investments of other plans of The Kroger Co. and its subsidiaries, are pooled for investment purposes in a master trust pursuant to an agreement dated July 1, 2004 (the Master Trust), between Merrill Lynch Trust Company, the trustee, and the Company.

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Investment valuation and income recognition

Investments in common stocks, mutual funds, collective trusts, and investment contracts are valued at fair value based on quoted market prices.

Purchases and sales of securities are recorded on a trade-date basis. Gains or losses on sales of securities are based on average cost. Interest income and dividend income are recorded on the date received by the Plan.

As described in Financial Accounting Standards Board Staff Position, FSP AAG INV-1 and SOP94-4-1, *Reporting of Fully Benefit Responsive Investment Contracts Held by Certain Investment Companies Subject to the AICPA Investment Company Guide and Defined-Contribution Health and Welfare and Pension Plans* (the FSP), investment contracts held by a defined-contribution plan are required to be reported at fair value. However, contract value is the relevant measurement attribute for that portion of the net assets available for benefits of a defined-contribution plan attributable to fully benefit-responsive investment contracts because contract value is the amount participants would receive if they were to initiate a permitted transaction under the terms of the Plan. The Plan invests in investment contracts through The Kroger Defined Contribution Plan Master Trust. The Statement of Net Assets Available for Benefits presents the fair value of the investment in the Master Trust as well as the adjustment of the investment in the master trust from fair value to contract value relating to investment contracts. The Statement of Changes in Net Assets Available for Benefits is prepared on a contract value basis.

Estimates

The presentation of financial statements in conformity with the modified cash basis of accounting requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Actual results may differ from those estimates.

Administrative expenses

The Plan will pay the administrative costs and expenses of the Plan including the trustee and management fees. Any expenses that are unable to be allocated to participants are paid by the Company.

3. <u>Investments</u>:

The Plan provides for participant directed investment into common stock of The Kroger Co., mutual funds, collective trusts, stable value funds, and certain retirement date funds. Investments that represent 5% or more of the Plan s net assets as of December 31, 2008 and 2007 are as follows:

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	2008	2007
The Kroger Co. Common Stock	$ 5,666,296	