

KROGER CO  
Form 8-K  
January 19, 2012

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the**  
**Securities Exchange Act of 1934**

Date of Report: **January 19, 2012**

(Date of earliest event reported)

**THE KROGER CO.**

(Exact name of registrant as specified in its charter)

**An Ohio Corporation**  
(State or other jurisdiction  
of incorporation)

**No. 1-303**  
(Commission File Number)

**31-0345740**  
(IRS Employer Number)

**1014 Vine Street**

**Cincinnati, OH 45202**

(Address of principal executive offices)

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Registrant's telephone number: (513) 762-4000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Section 8 Other Events**

**Item 8.01 Other Events.**

On December 15, 2010, The Kroger Co. filed Registration Statement No. 333-171183 on Form S-3 with the Securities and Exchange Commission pursuant to Rule 415 registering an indeterminate amount of securities (the Registration Statement ). Pursuant to a Prospectus Supplement dated January 12, 2012, The Kroger Co. is issuing \$450,000,000 of debt securities denominated 2.20% Senior Notes due 2017 (the Notes ).

Filed as Exhibit 1.1 to the Registration Statement was a form of Underwriting Agreement for the issuance of debt securities. In connection with the issuance of the Notes, the Registrant has executed an Underwriting Agreement and a Pricing Agreement both dated as of January 12, 2012, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mitsubishi UFJ Securities (USA), Inc., U.S. Bancorp Investments, Inc., Citigroup Global Markets Inc., BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., PNC Capital Markets LLC, and Drexel Hamilton, LLC. The Underwriting Agreement is attached hereto as Exhibit 1.1 and the Pricing Agreement is attached hereto as Exhibit 1.1.1.

The form of Indenture for the Notes was filed as Exhibit 4.1 to the Registration Statement. The Twenty-Fourth Supplemental Indenture, dated as of January 19, 2012, among The Kroger Co. and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee, supplements the Indenture dated as of June 25, 1999, between The Kroger Co. and Firststar Bank, National Association, as Trustee. The Twenty-Fourth Supplemental Indenture is attached hereto as Exhibit 4.3.1.

An opinion of Paul Heldman, Esq., including his consent, is attached as Exhibit 5.1. An opinion of Fried, Frank, Harris, Shriver & Jacobson LLP, including its consent, is attached as Exhibit 5.2.

The Company expects to use the proceeds of the Notes to prefund certain obligations under a new consolidated UFCW/multi-employer pension fund to which the Company contributes, or for general corporate purposes.

**Section 9 Financial Statements and Exhibits**

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

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1.1 Underwriting Agreement dated as of January 12, 2012, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mitsubishi UFJ Securities (USA), Inc., U.S. Bancorp Investments, Inc., Citigroup Global Markets Inc., BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., PNC Capital Markets LLC, and Drexel Hamilton, LLC

1.1.1 Pricing Agreement dated as of January 12, 2012, among The Kroger Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mitsubishi UFJ Securities (USA), Inc., U.S.

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Bancorp Investments, Inc., Citigroup Global Markets Inc., BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., PNC Capital Markets LLC, and Drexel Hamilton, LLC

4.3.1 Twenty-Fourth Supplemental Indenture, dated as of January 19, 2012, relating to the 2.20% Senior Notes due 2017, between The Kroger Co., and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee

5.1 Opinion of Paul Heldman, Esq.

5.2. Opinion of Fried, Frank, Harris, Shriver & Jacobson LLP

23.1 Consent of Paul Heldman, Esq., which is contained in his opinion filed as Exhibit 5.1.

23.2 Consent of Fried, Frank, Harris, Shriver & Jacobson LLP, which is contained in the opinion filed as Exhibit 5.2

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE KROGER CO.

January 19, 2012

By:

/s/ Paul Heldman  
Paul Heldman  
Executive Vice President, Secretary  
and General Counsel

EXHIBIT INDEX

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