

KROGER CO  
Form 8-K  
July 24, 2017

**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: **July 24, 2017**

(Date of earliest event reported)

**THE KROGER CO.**

(Exact name of registrant as specified in its charter)

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

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

**31-0345740**  
(IRS Employer  
Identification No.)

**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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 8.01 Other Events.**

On December 14, 2016, The Kroger Co. (the Company) filed Registration Statement No. 333-215085 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 July 17, 2017, the Company is issuing \$400,000,000 of debt securities denominated 2.800% Senior Notes due 2022, \$600,000,000 of debt securities denominated 3.700% Senior Notes due 2027, and \$500,000,000 of debt securities denominated 4.650% Senior Notes due 2048 (collectively, 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 Company has executed an Underwriting Agreement and a Pricing Agreement each dated as of July 17, 2017, among the Company, Mizuho Securities USA LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Wells Fargo Securities, LLC, BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., MUFG Securities Americas Inc., PNC Capital Markets LLC, Santander Investment Securities Inc., The Williams Capital Group, L.P., and CastleOak Securities, L.P. 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 Forty-Second Supplemental Indenture, relating to the 2.800% Senior Notes due 2022, dated as of July 24, 2017, between the Company 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 Company and Firststar Bank, National Association, as Trustee. The Forty-Second Supplemental Indenture is attached hereto as Exhibit 4.3.1.

The Forty-Third Supplemental Indenture, relating to the 3.700% Senior Notes due 2027, dated as of July 24, 2017, between the Company 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 Company and Firststar Bank, National Association, as Trustee. The Forty-Third Supplemental Indenture is attached hereto as Exhibit 4.3.2.

The Forty-Fourth Supplemental Indenture, relating to the 4.650% Senior Notes due 2048, dated as of July 24, 2017, between the Company 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 Company and Firststar Bank, National Association, as Trustee. The Forty-Fourth Supplemental Indenture is attached hereto as Exhibit 4.3.3.

An opinion of Christine S. Wheatley, Esq., including her consent, is attached hereto as Exhibit 5.1. An opinion of Freshfields Bruckhaus Deringer US LLP, including its consent, is attached hereto as Exhibit 5.2.

The Company expects to use the net proceeds of this offering to fund a contribution to its company-sponsored defined benefit plan, to refinance long-term indebtedness that matures in August 2017, and for general corporate purposes.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
1.1	Underwriting Agreement, dated as of July 17, 2017, among the Company, Mizuho Securities USA LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Wells Fargo Securities, LLC, BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., MUFG Securities Americas Inc., PNC Capital Markets LLC, Santander Investment Securities Inc., The Williams Capital Group, L.P., and CastleOak Securities, L.P.
1.1.1	Pricing Agreement, dated as of July 17, 2017, among the Company, Mizuho Securities USA LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBC Capital Markets, LLC, U.S. Bancorp Investments, Inc., Wells Fargo Securities, LLC, BB&T Capital Markets, a division of BB&T Securities, LLC, BNY Mellon Capital Markets, LLC, Fifth Third Securities, Inc., MUFG Securities Americas Inc., PNC Capital Markets LLC, Santander Investment Securities Inc., The Williams Capital Group, L.P., and CastleOak

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Securities, L.P.

- 4.3.1 Forty-Second Supplemental Indenture, relating to the 2.800% Senior Notes due 2022, dated as of July 24, 2017, between the Company and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
- 4.3.2 Forty-Third Supplemental Indenture, relating to the 3.700% Senior Notes due 2027, dated as of July 24, 2017, between the Company and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
- 4.3.3 Forty-Fourth Supplemental Indenture, relating to the 4.650% Senior Notes due 2048, dated as of July 24, 2017, between the Company and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
- 5.1 Opinion of Christine S. Wheatley, Esq.
- 5.2 Opinion of Freshfields Bruckhaus Deringer US LLP.
- 23.1 Consent of Christine S. Wheatley, Esq., which is contained in her opinion filed as Exhibit 5.1.
- 23.2 Consent of Freshfields Bruckhaus Deringer US LLP, which is contained in its 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.

July 24, 2017

By:

*/s/ Christine S. Wheatley*

Christine S. Wheatley

Group Vice President, Secretary and General Counsel

**EXHIBIT INDEX**

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4.3.1	Forty-Second Supplemental Indenture, relating to the 2.800% Senior Notes due 2022, dated as of July 24, 2017, between The Kroger Co. and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
4.3.2	Forty-Third Supplemental Indenture, relating to the 3.700% Senior Notes due 2027, dated as of July 24, 2017, between The Kroger Co. and U.S. Bank National Association (formerly known as Firststar Bank, National Association), as Trustee.
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