

**OFFERING MEMORANDUM AND CONSENT SOLICITATION STATEMENT**



**The Kroger Co.**

**Offers to Exchange Any and All Outstanding Notes Issued by Albertsons Companies, Inc. (“ACI”), New Albertsons, L.P. (“NALP”), Safeway Inc. (“Safeway”), Albertson’s LLC (“Albertsons”), Albertsons Safeway LLC (“ASL”) and American Stores Company, LLC (“ASC”), as applicable, As Listed Below for Up To \$7,441,608,000 Aggregate Principal Amount of New Notes Issued by The Kroger Co. (“Kroger”) and Cash**

**and**

**Solicitation of Consents to Amend the Related Indentures Governing the ACI Notes (as defined herein)**

<b>Title of Series of ACI Notes</b>	<b>Issuer(s)</b>	<b>CUSIP/ISIN No.</b>	<b>Maturity Date</b>	<b>Principal Amount Outstanding</b>	<b>Consent Payment<sup>(1)</sup></b>	<b>Exchange Consideration<sup>(2)</sup></b>	<b>Participation Premium<sup>(3)</sup></b>	<b>Total Consideration<sup>(4)</sup></b>
3.250% Senior Notes due 2026 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AF8 / US013092AF88 Reg S: U0125L AG5 / USU0125LAG50	03/15/2026	\$750,000,000	\$1.00	\$970 principal amount of Kroger 3.250% Senior Notes due 2026	\$30 principal amount of Kroger 3.250% Senior Notes due 2026	\$1,000 principal amount of Kroger 3.250% Senior Notes due 2026 and \$1.00 in cash
7.500% Senior Notes due 2026 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AA9 / US013092AA91 Reg S: U0125L AA8 / USU0125LAA80	03/15/2026	\$600,000,000	\$1.00	\$970 principal amount of Kroger 7.500% Senior Notes due 2026	\$30 principal amount of Kroger 7.500% Senior Notes due 2026	\$1,000 principal amount of Kroger 7.500% Senior Notes due 2026 and \$1.00 in cash
4.625% Senior Notes due 2027 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AC5 / US013092AC57 Reg S: U0125L AC4 / USU0125LAC47 JAN: U0125LAF7 / USU0125LAF77	01/15/2027	\$1,350,000,000	\$1.00	\$970 principal amount of Kroger 4.625% Senior Notes due 2027	\$30 principal amount of Kroger 4.625% Senior Notes due 2027	\$1,000 principal amount of Kroger 4.625% Senior Notes due 2027 and \$1.00 in cash
5.875% Senior Notes due 2028 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AB7 / US013092AB74 Reg S: U0125L AB6 / USU0125LAB63	02/15/2028	\$750,000,000	\$1.00	\$970 principal amount of Kroger 5.875% Senior Notes due 2028	\$30 principal amount of Kroger 5.875% Senior Notes due 2028	\$1,000 principal amount of Kroger 5.875% Senior Notes due 2028 and \$1.00 in cash
6.500% Senior Notes due 2028 .....	ACI, NALP, Safeway, Albertsons and ASL	144A: 01309Q AA6 / US01309QAA67 Reg S: U0126B AA9 / USU0126BAA99	02/15/2028	\$750,000,000	\$1.00	\$970 principal amount of Kroger 6.500% Senior Notes due 2028	\$30 principal amount of Kroger 6.500% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.500% Senior Notes due 2028 and \$1.00 in cash
3.500% Senior Notes due 2029 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AG6 / US013092AG61 Reg S: U0125L AH3 / USU0125LAH34 DEC: U0125LAJ9 / USU0125LAJ99	03/15/2029	\$1,350,000,000	\$1.00	\$970 principal amount of Kroger 3.500% Senior Notes due 2029	\$30 principal amount of Kroger 3.500% Senior Notes due 2029	\$1,000 principal amount of Kroger 3.500% Senior Notes due 2029 and \$1.00 in cash

Title of Series of ACI Notes	Issuer(s)	CUSIP/ISIN No.	Maturity Date	Principal Amount Outstanding	Consent Payment <sup>(1)</sup>	Exchange Consideration <sup>(2)</sup>	Early Participation Premium <sup>(3)</sup>	Total Consideration <sup>(4)</sup>
4.875% Senior Notes due 2030 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AE1 / US013092AE14	02/15/2030	\$1,000,000,000	\$1.00	\$970 principal amount of Kroger 4.875% Senior Notes due 2030	\$30 principal amount of Kroger 4.875% Senior Notes due 2030	\$1,000 principal amount of Kroger 4.875% Senior Notes due 2030 and \$1.00 in cash
		Reg S: U0125L AE0 / USU0125LAE03						
7.450% Senior Debentures due 2027.....	Safeway	786514AS8 / US786514AS84	09/15/2027	\$120,078,000	\$1.00	\$970 principal amount of Kroger 7.450% Senior Notes due 2027	\$30 principal amount of Kroger 7.450% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.450% Senior Notes due 2027 and \$1.00 in cash
7.250% Senior Debentures due 2031.....	Safeway	786514BA6 / US786514BA67	02/01/2031	\$261,099,000	\$1.00	\$970 principal amount of Kroger 7.250% Senior Notes due 2031	\$30 principal amount of Kroger 7.250% Senior Notes due 2031	\$1,000 principal amount of Kroger 7.250% Senior Notes due 2031 and \$1.00 in cash
8.000% Debentures due 2026.....	ASC	030096AF8 / US030096AF88	06/01/2026	\$2,902,000	\$1.00	\$970 principal amount of Kroger 8.000% Senior Notes due 2026	\$30 principal amount of Kroger 8.000% Senior Notes due 2026	\$1,000 principal amount of Kroger 8.000% Senior Notes due 2026 and \$1.00 in cash
7.100% Medium-Term Notes, Series B, due 2028.....	ASC	03009MBB1 / US03009MBB19	03/20/2028	\$756,000	\$1.00	\$970 principal amount of Kroger 7.100% Senior Notes due 2028	\$30 principal amount of Kroger 7.100% Senior Notes due 2028	\$1,000 principal amount of Kroger 7.100% Senior Notes due 2028 and \$1.00 in cash
7.500% Debentures due 2037.....	ASC	030096AH4 / US030096AH45	05/01/2037	\$143,000	\$1.00	\$970 principal amount of Kroger 7.500% Senior Notes due 2037	\$30 principal amount of Kroger 7.500% Senior Notes due 2037	\$1,000 principal amount of Kroger 7.500% Senior Notes due 2037 and \$1.00 in cash
7.110% Medium-Term Notes, Series B due 2027.....	NALP	01310QCH6 / US01310QCH65	07/22/2027	\$11,045,000	\$1.00	\$970 principal amount of Kroger 7.110% Senior Notes due 2027	\$30 principal amount of Kroger 7.110% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.110% Senior Notes due 2027 and \$1.00 in cash
7.150% Medium-Term Notes, Series B due 2027.....	NALP	01310QCK9 / US01310QCK94	07/23/2027	\$310,000	\$1.00	\$970 principal amount of Kroger 7.150% Senior Notes due 2027	\$30 principal amount of Kroger 7.150% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.150% Senior Notes due 2027 and \$1.00 in cash
6.560% Medium-Term Notes, Series B due 2027.....	NALP	01310QCL7 / US01310QCL77	07/26/2027	\$210,000	\$1.00	\$970 principal amount of Kroger 6.560% Senior Notes due 2027	\$30 principal amount of Kroger 6.560% Senior Notes due 2027	\$1,000 principal amount of Kroger 6.560% Senior Notes due 2027 and \$1.00 in cash
6.570% Medium-Term Notes, Series C due 2028.....	NALP	01310QCW3 / US01310QCW33	02/23/2028	\$24,278,000	\$1.00	\$970 principal amount of Kroger 6.570% Senior Notes due 2028	\$30 principal amount of Kroger 6.570% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.570% Senior Notes due 2028 and \$1.00 in cash

<b>Title of Series of ACI Notes</b>	<b>Issuer(s)</b>	<b>CUSIP/ISIN No.</b>	<b>Maturity Date</b>	<b>Principal Amount Outstanding</b>	<b>Consent Payment<sup>(1)</sup></b>	<b>Exchange Consideration<sup>(2)</sup></b>	<b>Early Participation Premium<sup>(3)</sup></b>	<b>Total Consideration<sup>(4)</sup></b>
6.520% Medium-Term Notes, Series C due 2028.....	NALP	01310QCZ6 / US01310QCZ63	04/10/2028	\$5,170,000	\$1.00	\$970 principal amount of Kroger 6.520% Senior Notes due 2028	\$30 principal amount of Kroger 6.520% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.520% Senior Notes due 2028 and \$1.00 in cash
6.530% Medium-Term Notes, Series C due 2028.....	NALP	01310QCY9 / US01310QCY98	04/10/2028	\$12,000,000	\$1.00	\$970 principal amount of Kroger 6.530% Senior Notes due 2028	\$30 principal amount of Kroger 6.530% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.530% Senior Notes due 2028 and \$1.00 in cash
6.625% Medium-Term Notes, Series C due 2028.....	NALP	01310QDB8 / US01310QDB86	06/01/2028	\$19,898,000	\$1.00	\$970 principal amount of Kroger 6.625% Senior Notes due 2028	\$30 principal amount of Kroger 6.625% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.625% Senior Notes due 2028 and \$1.00 in cash
6.630% Medium-Term Notes, Series C due 2028.....	NALP	01310QDA0 / US01310QDA04	06/02/2028	\$6,000,000	\$1.00	\$970 principal amount of Kroger 6.630% Senior Notes due 2028	\$30 principal amount of Kroger 6.630% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.630% Senior Notes due 2028 and \$1.00 in cash
7.750% Debentures due 2026.....	NALP	013104AC8 / US013104AC87	06/15/2026	\$56,536,000	\$1.00	\$970 principal amount of Kroger 7.750% Senior Notes due 2026	\$30 principal amount of Kroger 7.750% Senior Notes due 2026	\$1,000 principal amount of Kroger 7.750% Senior Notes due 2026 and \$1.00 in cash
7.450% Senior Debentures due 2029.....	NALP	013104AF1 / US013104AF19	08/01/2029	\$127,206,000	\$1.00	\$970 principal amount of Kroger 7.450% Senior Notes due 2029	\$30 principal amount of Kroger 7.450% Senior Notes due 2029	\$1,000 principal amount of Kroger 7.450% Senior Notes due 2029 and \$1.00 in cash
8.700% Senior Debentures due 2030.....	NALP	013104AH7 / US013104AH74	05/01/2030	\$135,098,000	\$1.00	\$970 principal amount of Kroger 8.700% Senior Notes due 2030	\$30 principal amount of Kroger 8.700% Senior Notes due 2030	\$1,000 principal amount of Kroger 8.700% Senior Notes due 2030 and \$1.00 in cash
8.000% Senior Debentures due 2031.....	NALP	013104AL8 / US013104AL86	05/01/2031	\$108,879,000	\$1.00	\$970 principal amount of Kroger 8.000% Senior Notes due 2031	\$30 principal amount of Kroger 8.000% Senior Notes due 2031	\$1,000 principal amount of Kroger 8.000% Senior Notes due 2031 and \$1.00 in cash

- (1) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date (as defined herein). On the Settlement Date (as defined herein), the Consent Payment (as defined herein) will be paid to each Eligible Holder (as defined herein) that was the holder of record of such ACI Notes as of the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes as of the Expiration Date (as defined herein).
- (2) For each \$1,000 principal amount of ACI Notes accepted for exchange.
- (3) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date. As discussed in more detail below, each Eligible Holder that validly tenders and does not validly withdraw ACI Notes at or prior to the Early Participation Date will receive a unique voluntary offer instruction number (“VOI number”) with respect to the aggregate principal amount of ACI Notes that such holder validly tendered at or prior to the Early Participation Date (such VOI number, the “Early Participation VOI Number”) and such Early Participation VOI Number shall evidence that such Eligible Holder was the holder of record of such ACI Notes as of the Early Participation Date. On the Settlement Date, the Early Participation Premium (as defined herein) will be paid to each Eligible Holder that validly tenders and did not validly withdraw ACI Notes at or prior to the Early Participation Date and (A) does not validly withdraw such ACI Notes at or prior to the Expiration Date or (B) if an Eligible Holder validly withdraws such ACI Notes following the Early Participation Date, each Eligible Holder that, prior to the Expiration Date, (i) validly re-tenders, and does not validly withdraw, such ACI Notes and (ii) submits the Early Participation VOI Number with respect to such principal amount of ACI Notes tendered. In addition, an Eligible Holder that acquires ACI Notes with an Early

Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration (as defined herein). To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders or re-tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or consideration received by such Eligible Holder may be modified. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.

(4) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date. Includes the Consent Payment, the Exchange Consideration and the Early Participation Premium. For the avoidance of doubt, unless the Exchange Offers are amended, in no event will any holder of ACI Notes receive more than \$1,000 aggregate principal amount of Kroger Notes (as defined herein) for each \$1,000 aggregate principal amount of ACI Notes accepted for exchange.

This offering memorandum and consent solicitation statement (as it may be amended or supplemented, this “offering memorandum and consent solicitation statement”) relates to Exchange Offers (as defined herein) being made by Kroger, and concurrent Consent Solicitations (as defined herein) being made by Kroger on behalf of the Albertsons Issuing Entities (as defined herein, and where context requires, may be all or a subset of such entities). Each Exchange Offer will expire at 5:00 p.m., New York City time, on September 13, 2024, unless extended or terminated (such date and time with respect to an Exchange Offer, as may be extended for such Exchange Offer, the “Expiration Date”). Each Consent Solicitation will expire at the Consent Revocation Deadline (as defined herein).

As discussed in more detail below, each Eligible Holder that validly tenders and does not validly withdraw ACI Notes at or prior to the Early Participation Date will receive an Early Participation VOI Number with respect to the aggregate principal amount of ACI Notes validly tendered at or prior to the Early Participation Date and such Early Participation VOI Number shall evidence that such Eligible Holder was the holder of record of such ACI Notes as of the Early Participation Date. To be eligible to receive the applicable Early Participation Premium (as defined herein), Eligible Holders (as defined herein) must validly tender and not validly withdraw their ACI Notes of the applicable series at or prior to the Early Participation Date. On the Settlement Date, the Early Participation Premium will be paid to each Eligible Holder that validly tendered and did not validly withdraw ACI Notes at or prior to the Early Participation Date and (A) does not validly withdraw such ACI Notes at or prior to the Expiration Date or (B) if an Eligible Holder validly withdraws such ACI Notes following the Early Participation Date, each Eligible Holder that, at or prior to the Expiration Date, (i) validly re-tenders, and does not validly withdraw, such ACI Notes and (ii) submits the Early Participation VOI Number with respect to such principal amount of ACI Notes. In addition, an Eligible Holder that acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such validly tendered ACI Notes corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received by such Eligible Holder may be modified. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.

Eligible Holders may not deliver a consent in the Consent Solicitation without tendering ACI Notes of the applicable series in the applicable Exchange Offer. If an Eligible Holder tenders ACI Notes in an Exchange Offer, such Eligible Holder will be deemed to have delivered its consent, with respect to the aggregate principal amount of such tendered ACI Notes, to the Proposed Amendments. Tendered ACI Notes may be withdrawn at any time before the Expiration Date; however, a valid withdrawal of the tendered ACI Notes after the Consent Revocation Deadline will not be deemed a revocation of the related consents and such consents will continue to be deemed delivered. Consents may not be revoked after the earlier of (i) 5:00 p.m., New York City time, on August 28, 2024, unless extended or terminated (such date and time with respect to an Exchange Offer and Consent Solicitation, as the same may be extended for such Exchange Offer and Consent Solicitation, the “Early Participation Date”), and (ii) the date the applicable supplemental indenture to the corresponding ACI Indenture (as defined herein) implementing the applicable Proposed Amendments (as defined herein) is executed by all applicable parties (the earlier of (i) and (ii), with respect to a Consent Solicitation, the “Consent Revocation Deadline”).

The Exchange Offers and Consent Solicitations are conditioned upon, among other things, the closing of the merger of a subsidiary of Kroger with and into ACI, with ACI surviving the merger as a wholly owned subsidiary of Kroger (the “Merger”). The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations. The Merger is expected to close during the fourth quarter of calendar year 2024. See “Summary—The Transactions.”

The Kroger Notes (as defined herein) offered hereby have not been registered with the Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), or any state or foreign securities laws. The Kroger Notes may not be offered or sold in the United States or to any U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. See “Transfer Restrictions.” The Exchange Offers and Consent Solicitations will only be made, and the Kroger Notes are only being offered and will only be issued, to (i) “qualified institutional buyers” (“QIBs”) within the meaning of Rule 144A under the Securities Act or (ii) not “U.S. persons” and are outside of the United States within the meaning of Regulation S under the Securities Act (such persons, “Eligible Holders”). Only Eligible Holders who properly complete and return the eligibility certification, which is available from the Information Agent (as defined herein), are authorized to receive and review this offering memorandum and consent solicitation statement and to participate in the Exchange Offers and Consent Solicitations. Additionally, in order to participate in the Exchange Offers and Consent Solicitations, Eligible Holders located or resident in Canada are required to complete, sign and submit to the Exchange Agent a Canadian eligibility certification (the form of which is included in the accompanying instructions for the eligibility certification). See “Transfer Restrictions—Notice to Prospective Investors in Canada.” Each person tendering any ACI Notes to the exchange offers without submitting a Canadian eligibility certification to the Exchange Agent will, by doing so, be deemed to be representing and warranting to ACI and the Exchange Agent that such person is not located or resident in Canada.

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THE SECURITIES OFFERED HEREBY HAVE NOT BEEN RECOMMENDED BY ANY UNITED STATES FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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See “Risk Factors” beginning on page 21 to read about important factors you should consider before you decide to participate in the Exchange Offers and Consent Solicitations.

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**Dealer Managers and Consent Solicitation Agents**

**Citigroup**

**Wells Fargo Securities**

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August 15, 2024

## The Exchange Offers by Kroger

Kroger is offering Eligible Holders of each series of ACI Notes, in each case upon the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement, the opportunity to exchange (each, an “Exchange Offer” and, collectively, the “Exchange Offers”) any and all of the outstanding ACI Notes (as defined herein) for new Kroger Notes, as specified below, and cash. Subject to the terms and conditions set forth in this offering memorandum and consent solicitation statement, including the consummation of the Merger, Kroger is making the following Exchange Offers:

- an offer to exchange 3.250% Senior Notes due 2026 issued by the ACI Issuers (as defined herein) (the “ACI 3.250% 2026 Notes”) for (i) up to an aggregate principal amount of \$750,000,000 of new 3.250% Senior Notes due 2026 issued by Kroger (the “Kroger 3.250% 2026 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.500% Senior Notes due 2026 issued by the ACI Issuers (the “ACI 7.500% 2026 Notes”) for (i) up to an aggregate principal amount of \$600,000,000 of new 7.500% Senior Notes due 2026 issued by Kroger (the “Kroger 7.500% 2026 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 4.625% Senior Notes due 2027 issued by the ACI Issuers (the “ACI 4.625% 2027 Notes”) for (i) up to an aggregate principal amount of \$1,350,000,000 of new 4.625% Senior Notes due 2027 issued by Kroger (the “Kroger 4.625% 2027 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 5.875% Senior Notes due 2028 issued by the ACI Issuers (the “ACI 5.875% 2028 Notes”) for (i) up to an aggregate principal amount of \$750,000,000 of new 5.875% Senior Notes due 2028 issued by Kroger (the “Kroger 5.875% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.500% Senior Notes due 2028 issued by the ACI 2023 Issuers (as defined herein) (the “ACI 6.500% 2028 Notes”) for (i) up to an aggregate principal amount of \$750,000,000 of new 6.500% Senior Notes due 2028 issued by Kroger (the “Kroger 6.500% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 3.500% Senior Notes due 2029 issued by the ACI Issuers (the “ACI 3.500% 2029 Notes”) for (i) up to an aggregate principal amount of \$1,350,000,000 of new 3.500% Senior Notes due 2029 issued by Kroger (the “Kroger 3.500% 2029 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 4.875% Senior Notes due 2030 issued by the ACI Issuers (the “ACI 4.875% 2030 Notes”) for (i) up to an aggregate principal amount of \$1,000,000,000 of new 4.875% Senior Notes due 2030 issued by Kroger (the “Kroger 4.875% 2030 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.450% Senior Debentures due 2027 issued by Safeway (as defined herein) (the “Safeway 7.450% 2027 Notes”) for (i) up to an aggregate principal amount of \$120,078,000 of new 7.450% Senior Notes due 2027 issued by Kroger (the “Kroger 7.450% 2027 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.250% Senior Debentures due 2031 issued by Safeway (the “Safeway 7.250% 2031 Notes”) for (i) up to an aggregate principal amount of \$261,099,000 of new 7.250% Senior Notes due 2031 issued by Kroger (the “Kroger 7.250% 2031 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 8.000% Debentures due 2026 issued by ASC (as defined herein) (the “ASC 8.000% 2026 Notes”) for (i) up to an aggregate principal amount of \$2,902,000 of new 8.000% Senior Notes due 2026 issued by Kroger (the “Kroger 8.000% 2026 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.100% Medium-Term Notes, Series B, due 2028 issued by ASC (the “ASC 7.100% 2028 Notes”) for (i) up to an aggregate principal amount of \$756,000 of new 7.100% Senior

Notes due 2028 issued by Kroger (the “Kroger 7.100% 2028 Notes”), with registration rights, and (ii) cash;

- an offer to exchange 7.500% Debentures due 2037 issued by ASC (the “ASC 7.500% 2037 Notes”) for (i) up to an aggregate principal amount of \$143,000 of new 7.500% Senior Notes due 2037 issued by Kroger (the “Kroger 7.500% 2037 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.110% Medium-Term Notes, Series B due 2027 issued by NALP (as defined herein) (the “NALP 7.110% 2027 Notes”) for (i) up to an aggregate principal amount of \$11,045,000 of new 7.110% Senior Notes due 2027 issued by Kroger (the “Kroger 7.110% 2027 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.150% Medium-Term Notes, Series B due 2027 issued by NALP (the “NALP 7.150% 2027 Notes”) for (i) up to an aggregate principal amount of \$310,000 of new 7.150% Senior Notes due 2027 issued by Kroger (the “Kroger 7.150% 2027 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.560% Medium-Term Notes, Series B due 2027 issued by NALP (the “NALP 6.560% 2027 Notes”) for (i) up to an aggregate principal amount of \$210,000 of new 6.560% Senior Notes due 2027 issued by Kroger (the “Kroger 6.560% 2027 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.570% Medium-Term Notes, Series C due 2028 issued by NALP (the “NALP 6.570% 2028 Notes”) for (i) up to an aggregate principal amount of \$24,278,000 of new 6.570% Senior Notes due 2028 issued by Kroger (the “Kroger 6.570% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.520% Medium-Term Notes, Series C due 2028 issued by NALP (the “NALP 6.520% 2028 Notes”) for (i) up to an aggregate principal amount of \$5,170,000 of new 6.520% Senior Notes due 2028 issued by Kroger (the “Kroger 6.520% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.530% Medium-Term Notes, Series C due 2028 issued by NALP (the “NALP 6.530% 2028 Notes”) for (i) up to an aggregate principal amount of \$12,000,000 of new 6.530% Senior Notes due 2028 issued by Kroger (the “Kroger 6.530% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.625% Medium-Term Notes, Series C due 2028 issued by NALP (the “NALP 6.625% 2028 Notes”) for (i) up to an aggregate principal amount of \$19,898,000 of new 6.625% Senior Notes due 2028 issued by Kroger (the “Kroger 6.625% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 6.630% Medium-Term Notes, Series C due 2028 issued by NALP (the “NALP 6.630% 2028 Notes”) for (i) up to an aggregate principal amount of \$6,000,000 of new 6.630% Senior Notes due 2028 issued by Kroger (the “Kroger 6.630% 2028 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.750% Debentures due 2026 issued by NALP (the “NALP 7.750% 2026 Notes”) for (i) up to an aggregate principal amount of \$56,536,000 of new 7.750% Senior Notes due 2026 issued by Kroger (the “Kroger 7.750% 2026 Notes”), with registration rights, and (ii) cash;
- an offer to exchange 7.450% Senior Debentures due 2029 issued by NALP (the “NALP 7.450% 2029 Notes”) for (i) up to an aggregate principal amount of \$127,206,000 of new 7.450% Senior Notes due 2029 issued by Kroger (the “Kroger 7.450% 2029 Notes”), with registration rights, and (ii) cash;

- an offer to exchange 8.700% Senior Debentures due 2030 issued by NALP (the “NALP 8.700% 2030 Notes”) for (i) up to an aggregate principal amount of \$135,098,000 of new 8.700% Senior Notes due 2030 issued by Kroger (the “Kroger 8.700% 2030 Notes”), with registration rights, and (ii) cash; and
- an offer to exchange 8.000% Senior Debentures due 2031 issued by NALP (the “NALP 8.000% 2031 Notes”) for (i) up to an aggregate principal amount of \$108,879,000 of new 8.000% Senior Notes due 2031 issued by Kroger (the “Kroger 8.00% 2031 Notes”), with registration rights, and (ii) cash.

The ACI 3.250% 2026 Notes, the ACI 7.500% 2026 Notes, the ACI 4.625% 2027 Notes, the ACI 5.875% 2028 Notes, the ACI 6.500% 2028 Notes, the ACI 3.500% 2029 Notes, the ACI 4.875% 2030 Notes, the Safeway 7.450% 2027 Notes, the Safeway 7.250% 2031 Notes, the ASC 8.000% 2026 Notes, the ASC 7.100% 2028 Notes, the ASC 7.500% 2037 Notes, the NALP 7.110% 2027 Notes, the NALP 7.150% 2027 Notes, the NALP 6.560% 2027 Notes, the NALP 6.570% 2028 Notes, the NALP 6.520% 2028 Notes, the NALP 6.530% 2028 Notes, the NALP 6.625% 2028 Notes, the NALP 6.630% 2028 Notes, the NALP 7.750% 2026 Notes, the NALP 7.450% 2029 Notes, the NALP 8.700% 2030 Notes and the NALP 8.000% 2031 Notes are referred to herein collectively as the “ACI Notes.”

The Kroger 3.250% 2026 Notes, the Kroger 7.500% 2026 Notes, the Kroger 4.625% 2027 Notes, the Kroger 5.875% 2028 Notes, the Kroger 6.500% 2028 Notes, the Kroger 3.500% 2029 Notes, the Kroger 4.875% 2030 Notes, the Kroger 7.450% 2027 Notes, the Kroger 7.250% 2031 Notes, the Kroger 8.000% 2026 Notes, the Kroger 7.100% 2028 Notes, the Kroger 7.500% 2037 Notes, the Kroger 7.110% 2027 Notes, the Kroger 7.150% 2027 Notes, the Kroger 6.560% 2027 Notes, the Kroger 6.570% 2028 Notes, the Kroger 6.520% 2028 Notes, the Kroger 6.530% 2028 Notes, the Kroger 6.625% 2028 Notes, the Kroger 6.630% 2028 Notes, the Kroger 7.750% 2026 Notes, the Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes and the Kroger 8.000% 2031 Notes are referred to herein collectively as the “Kroger Notes.”

The Kroger Notes will be issued in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

Each series of Kroger Notes will have the same interest rate, interest payment dates, maturity date and redemption terms, if applicable, as the corresponding series of ACI Notes. See “Description of the Kroger Notes.” The first interest payment on any Kroger Notes will include the accrued and unpaid interest on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; *provided* that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the aggregate principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the aggregate principal amount of corresponding ACI Notes tendered for exchange if such holder tendered ACI Notes after the Early Participation Date and at or prior to the Expiration Date without validly delivering an Early Participation VOI Number corresponding to such ACI Notes. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.

## **The Consent Solicitations**

Concurrently with the Exchange Offers, Kroger, on behalf of ACI, New Albertsons, L.P. (“NALP”), Safeway Inc. (“Safeway”), Albertson’s LLC (“Albertsons”), Albertsons Safeway LLC (“ASL”), American Stores Company, LLC (“ASC,” and together with the foregoing, the “Albertsons Issuing Entities”), each, as applicable, is soliciting consents with respect to each series of ACI Notes, in each case upon the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement (each, a “Consent Solicitation” and, collectively, the “Consent Solicitations”), from Eligible Holders. Each series of ACI Notes has been issued under one of the following ten indentures:

- the Indenture dated as of August 31, 2020 among ACI, NALP, Safeway, Albertsons (collectively, the “ACI Issuers”), the ACI Guarantors (as defined herein) party thereto and Wilmington Trust, National

Association (“Wilmington”), as trustee, in respect of the ACI Issuers’ ACI 3.250% 2026 Notes due March 15, 2026 (the “ACI 2026 Base Indenture”), as amended and supplemented by the First Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2026 First Supplemental Indenture” and, collectively with the ACI 2026 Base Indenture, the “ACI 2026 Indenture”);

- the Indenture, dated as of February 5, 2019, among the ACI Issuers, the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI Issuers’ ACI 7.500% 2026 Notes due March 15, 2026 (the “ACI March 2026 Base Indenture”), as amended and supplemented by (i) the First Supplemental Indenture dated as of April 17, 2019 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI March 2026 First Supplemental Indenture”); (ii) the Second Supplemental Indenture dated as of June 9, 2020 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI March 2026 Second Supplemental Indenture”); and (iii) the Third Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI March 2026 Third Supplemental Indenture” and, collectively with the ACI March 2026 Base Indenture, the ACI March 2026 First Supplemental Indenture and the ACI March 2026 Second Supplemental Indenture, the “ACI March 2026 Indenture”);
- the Indenture, dated as of November 22, 2019, among the ACI Issuers, the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI Issuers’ ACI 4.625% 2027 Notes due January 15, 2027 (the “ACI 2027 Base Indenture”), as amended and supplemented by (i) the First Supplemental Indenture dated as of June 9, 2020 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2027 First Supplemental Indenture” and (ii) the Second Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2027 Second Supplemental Indenture” and, collectively with the ACI 2027 Base Indenture and the ACI 2027 First Supplemental Indenture, the “ACI 2027 Indenture”);
- the Indenture, dated as of August 15, 2019, among the ACI Issuers, the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI Issuers’ ACI 5.875% 2028 Notes due February 15, 2028 (the “ACI 2028 Base Indenture”), as amended and supplemented by (i) the First Supplemental Indenture dated as of June 9, 2020 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2028 First Supplemental Indenture” and (ii) the Second Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2028 Second Supplemental Indenture” and, collectively with the ACI 2028 Base Indenture and the ACI 2028 First Supplemental Indenture, the “ACI 2028 Indenture”);
- the Indenture, dated as of February 13, 2023, among the ACI Issuers and ASL (the ACI Issuers together with ASL, the “ACI 2023 Issuers”), the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI 2023 Issuers’ ACI 6.500% 2028 Notes due February 15, 2028 (the “ACI February 2028 Indenture”);
- the Indenture, dated as of August 31, 2020, among the ACI Issuers, the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI Issuers’ ACI 3.500% 2029 Notes due March 15, 2029 (the “ACI 2029 Base Indenture”), as amended and supplemented by the First Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2029 First Supplemental Indenture” and, collectively with the ACI 2029 Base Indenture, the “ACI 2029 Indenture”);
- the Indenture, dated as of February 5, 2020, among the ACI Issuers, the ACI Guarantors party thereto and Wilmington, as trustee, in respect of the ACI Issuers’ ACI 4.875% 2030 Notes due February 15, 2030 (the “ACI 2030 Base Indenture”), as amended and supplemented by (i) the First Supplemental Indenture dated as of June 9, 2020 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2030 First Supplemental Indenture” and (ii) the Second Supplemental Indenture dated as of May 18, 2021 among the ACI Issuers, the other parties thereto and Wilmington (the “ACI 2030

Second Supplemental Indenture” and, collectively with the ACI 2030 Base Indenture and the ACI 2030 First Supplemental Indenture, the “ACI 2030 Indenture”);

- the Indenture, dated as of September 10, 1997 between Safeway and The Bank of New York, as trustee, in respect of Safeway’s Safeway 7.450% 2027 Notes due September 15, 2027 and Safeway 7.250% 2031 Notes due February 1, 2031 (the “Safeway Indenture”);
- the Indenture, dated as of May 1, 1995 between ASC (formerly known as American Stores Company) and First National Bank of Chicago, as trustee (the “ASC 1995 Base Indenture”), as amended and supplemented by (i) the Supplemental Indenture No. 1 dated as of January 23, 2004 among ASC and J.P. Morgan Trust Company, National Association, as trustee (the “ASC First Supplemental Indenture”); (ii) Supplemental Indenture No. 2 dated as of July 6, 2005 among ASC and J.P. Morgan Trust Company, National Association, as trustee (the “ASC Second Supplemental Indenture”); (iii) Supplemental Indenture No. 3, dated as of July 21, 2008, among ASC and Wells Fargo Bank, National Association, as trustee (the “ASC Third Supplemental Indenture”); (iv) Supplemental Indenture No. 4 dated as of March 21, 2013 among ASC and Wells Fargo Bank, National Association, as trustee (the “ASC Fourth Supplemental Indenture”); and (v) Supplemental Indenture No. 5 dated as of January 22, 2014 among ASC and Wells Fargo Bank, National Association, as trustee, in respect of the ASC 8.000% 2026 Notes due June 1, 2026, the ASC 7.100% 2028 Notes due March 20, 2028 and the ASC 7.500% 2037 Notes due May 1, 2037 (the “ASC Fifth Supplemental Indenture” and, collectively with the ASC 1995 Base Indenture, the ASC First Supplemental Indenture, the ASC Second Supplemental Indenture, the ASC Third Supplemental Indenture and the ASC Fourth Supplemental Indenture, the “ASC Indenture”); and
- the Indenture dated as of May 1, 1992 between Albertson’s Inc. and Morgan Guaranty Trust Company of New York, as trustee (the “NALP 1992 Base Indenture”) as amended and supplemented by (i) Supplemental Indenture No. 1 dated as of May 7, 2004 among Albertson’s Inc. and U.S. Bank Trust National Association, as trustee (the “NALP First Supplemental Indenture”), (ii) Supplemental Indenture No. 2 dated as of June 1, 2006 among New Albertson’s Inc., Albertson’s LLC and U.S. Bank Trust National Association, as trustee (the “NALP Second Supplemental Indenture”); (iii) Supplemental Indenture No. 3 dated as of December 29, 2008 among NAI, Inc., New Albertson’s Inc., and U.S. Bank Trust National Association, as trustee (the “NALP Third Supplemental Indenture”); and (iv) Supplemental Indenture No. 4 dated as of December 3, 2017 among NALP and U.S. Bank Trust National Association, as trustee, in respect of the NALP 7.110% 2027 Notes due July 22, 2027, the NALP 7.150% 2027 Notes due July 23, 2027, NALP 6.560% 2027 Notes due July 26, 2027, NALP 6.570% 2028 Notes due February 23, 2028, the NALP 6.520% 2028 Notes due April 10, 2028, the NALP 6.530% 2028 Notes due April 10, 2028, NALP 6.625% 2028 Notes due June 1, 2028, the NALP 6.630% 2028 Notes due June 2, 2028, the NALP 7.750% 2026 Notes due June 15, 2026, the NALP 7.450% 2029 Notes due August 1, 2029, the NALP 8.700% 2030 Notes due May 1, 2030 and the NALP 8.000% 2031 Notes due May 1, 2031 (the “NALP Fourth Supplemental Indenture” and, collectively with the NALP 1992 Base Indenture, the NALP First Supplemental Indenture, the NALP Second Supplemental Indenture and the NALP Third Supplemental Indenture, the “NALP Indenture”).

The ACI 3.250% 2026 Notes were issued under the ACI 2026 Indenture (the “ACI 2026 Indenture Notes”).

The ACI 7.500% 2026 Notes were issued under the ACI March 2026 Indenture (the “ACI March 2026 Indenture Notes”).

The ACI 4.625% 2027 Notes were issued under the ACI 2027 Indenture (the “ACI 2027 Indenture Notes”).

The ACI 5.875% 2028 Notes were issued under the ACI 2028 Indenture (the “ACI 2028 Indenture Notes”).

The ACI 6.500% 2028 Notes were issued under the ACI February 2028 Indenture (the “ACI February 2028 Indenture Notes”).

The ACI 3.500% 2029 Notes were issued under the ACI 2029 Indenture (the “ACI 2029 Indenture Notes”).

The ACI 4.875% 2030 Notes were issued under the ACI 2030 Indenture (the “ACI 2030 Indenture Notes”).

The Safeway 7.450% 2027 Notes and the Safeway 7.250% 2031 Notes were issued under the Safeway Indenture (collectively, the “Safeway Indenture Notes”).

The ASC 8.000% 2026 Notes, ASC 7.100% 2028 Notes and the ASC 7.500% 2037 Notes were issued under the ASC Indenture (collectively, the “ASC Indenture Notes”).

The following series of ACI Notes were issued under the NALP Indenture: NALP 7.110% 2027 Notes, NALP 7.150% 2027 Notes, NALP 6.560% 2027 Notes, NALP 6.570% 2028 Notes, NALP 6.520% 2028 Notes, NALP 6.530% 2028 Notes, NALP 6.625% 2028 Notes, NALP 6.630% 2028 Notes, NALP 7.750% 2026 Notes, NALP 7.450% 2029 Notes, NALP 8.700% 2030 Notes and NALP 8.000% 2031 Notes (collectively, the “NALP Indenture Notes”).

The ACI 2026 Indenture, the ACI March 2026 Indenture, the ACI 2027 Indenture, ACI 2028 Indenture, the ACI February 2028 Indenture, the ACI 2029 Indenture, the ACI 2030 Indenture, the Safeway Indenture, the ASC Indenture and the NALP Indenture are referred to herein collectively as the “ACI Indentures.”

**References in this offering memorandum and consent solicitation statement to “we,” “us,” “our,” the “Company” or the “Issuer” are references solely to Kroger, and in each instance, unless the context otherwise requires, its consolidated subsidiaries.**

If an Eligible Holder tenders ACI Notes in an Exchange Offer, such Eligible Holder will be deemed to have delivered its consent, with respect to the aggregate principal amount of such tendered ACI Notes, to the amendments to the corresponding ACI Indenture and the related ACI Notes for that series, which include, as applicable and as further described under “The Proposed Amendments”: (i) eliminating substantially all of the restrictive covenants in each ACI Indenture, (ii) eliminating certain of the events which may lead to an “Event of Default” in each ACI Indenture, (iii) eliminating the reporting covenant in each ACI Indenture, (iv) eliminating any restrictions on the Albertsons Issuing Entities in the ACI Indentures, as applicable, from consolidating with or merging into any other person or conveying, transferring or leasing all or any of its properties and assets to any person, (v) eliminating the covenant requiring certain subsidiaries of ACI to guarantee certain of the ACI Notes and (vi) eliminating the obligation to offer to repurchase the ACI Notes upon certain change of control transactions in the applicable ACI Indentures (with respect to the corresponding ACI Indenture for that series and, together, as the context requires, the “Proposed Amendments”). Eligible Holders may not deliver a consent in the Consent Solicitation without tendering ACI Notes of the applicable series in the applicable Exchange Offer. Tenders of consents may be validly revoked at any time prior to the Consent Revocation Deadline, but will thereafter be irrevocable and such consents will continue to be deemed delivered. Kroger may complete any Exchange Offer even if valid consents sufficient to effect the Proposed Amendments to the corresponding ACI Indenture are not received. Each Exchange Offer and Consent Solicitation is conditioned upon, among other things, the completion of the other Exchange Offers and Consent Solicitations, although Kroger may waive such condition at any time with respect to an Exchange Offer or Consent Solicitation. Any waiver of a condition by Kroger with respect to an Exchange Offer will automatically waive such condition with respect to the corresponding Consent Solicitation, as applicable. In addition, Kroger may amend the terms of any Exchange Offer or Consent Solicitation without amending the terms of any other Exchange Offer or Consent Solicitation, respectively.

The Proposed Amendments with respect to (i) each series of the ACI Notes under the ACI 2026 Indenture, the ACI March 2026 Indenture, the ACI 2027 Indenture, ACI 2028 Indenture, the ACI February 2028 Indenture, the ACI 2029 Indenture, the ACI 2030 Indenture, the Safeway Indenture and the ASC Indenture require the consent of the holders of not less than a majority in principal amount of the ACI Notes of each affected series then outstanding under the applicable ACI Indenture voting as a separate class, and (ii) each affected series of the NALP Indenture Notes under the NALP Indenture requires the consent of the holders of not less than 66 2/3% in principal amount of the NALP Indenture Notes of each affected series then outstanding under the NALP Indenture voting as a separate class (such consents described in (i) and (ii) required under the applicable ACI Indentures is referred to herein as the “requisite consents,” as the context requires).

Each Exchange Offer and Consent Solicitation is subject to the satisfaction or waiver of certain conditions as described herein, including, among other things, the consummation of the Merger. The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations. The Proposed Amendments to the ACI Indentures are described in this offering memorandum and consent solicitation statement under “The Proposed Amendments” and the conditions to the Exchange Offers and Consent Solicitations are described in this offering memorandum and consent solicitation statement under “Description of the Exchange Offers and Consent Solicitations—Conditions to the Exchange Offers and Consent Solicitations.”

## **Consideration**

For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date, Eligible Holders of ACI Notes will be eligible to receive the total consideration set out in the table on the cover of this offering memorandum and consent solicitation statement (the “Total Consideration”), which includes a consent payment of \$1.00 in cash (the “Consent Payment”), an early participation premium of \$30.00 principal amount of Kroger Notes (the “Early Participation Premium”) and exchange consideration of \$970 principal amount of Kroger Notes (the “Exchange Consideration”). To be eligible to receive the Total Consideration, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes at or prior to the Early Participation Date and either (i) must not have validly withdrawn such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tenders such ACI Notes at or prior to the Expiration Date with the Early Participation VOI Number corresponding to such ACI Notes. In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders or re-tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information. Eligible Holders who acquire ACI Notes following the Early Participation Date will not be eligible to receive the Consent Payment with respect to such ACI Notes (and therefore, will not be eligible to receive the Total Consideration with respect to such ACI Notes). For the avoidance of doubt, unless the Exchange Offers are amended, in no event will any holder of ACI Notes receive more than \$1,000 aggregate principal amount of Kroger Notes for each \$1,000 aggregate principal amount of ACI Notes accepted for exchange. See “Description of the Exchange Offers and Consent Solicitations—Total Consideration.”

For each \$1,000 principal amount of ACI Notes validly tendered (and not validly withdrawn) after the Early Participation Date and at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive the Exchange Consideration. To be eligible to receive the Exchange Consideration, Eligible Holders must validly tender (and not validly withdraw) their ACI Notes at or prior to the Expiration Date.

An Eligible Holder that validly tenders ACI Notes and delivers a consent prior to the Early Participation Date will receive the Consent Payment even if such Eligible Holder has validly withdrawn its tender of such ACI Notes following the Early Participation Date and is no longer the beneficial owner of such ACI Notes on the Expiration Date. An Eligible Holder that first validly tenders ACI Notes after the Early Participation Date will not be eligible to receive the Consent Payment with respect to such ACI Notes.

Because each Exchange Offer and Consent Solicitation is subject to the satisfaction or waiver of certain conditions as described herein, including, among other things, the consummation of the Merger, Eligible Holders of ACI Notes will not receive the Consent Payment, the Early Participation Premium, the Exchange Consideration or the Total Consideration, as applicable, unless the Merger is consummated. In accordance with Rule 14e-1(c), Kroger will return the ACI Notes tendered for exchange promptly after the termination or withdrawal of the Exchange Offers.

No accrued and unpaid interest is payable upon acceptance of any ACI Notes in the Exchange Offers and Consent Solicitations. The first interest payment on any Kroger Notes will include the accrued and unpaid interest

on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; *provided* that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the aggregate principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the aggregate principal amount of corresponding ACI Notes tendered for exchange if such holder tendered ACI Notes after the Early Participation Date and prior to the Expiration Date without validly delivering an Early Participation VOI Number corresponding to such ACI Notes. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.

### **Settlement Date**

The “Settlement Date” is expected to be promptly after the Expiration Date and is expected to occur on or promptly after the closing date of the Merger. See “Description of the Exchange Offers and Consent Solicitations—Settlement Date.” Each Exchange Offer and Consent Solicitation is subject to the satisfaction or waiver of certain conditions as described herein, including, among other things, the consummation of the Merger.

### **Registration Rights**

Kroger will enter into the Registration Rights Agreement (as defined herein) pursuant to which Kroger will agree to file an exchange offer registration statement with the SEC to allow holders to exchange Kroger Notes for the same principal amount of a new issue of notes (the “exchange notes”), with substantially identical terms, except that the exchange notes will generally be freely transferable under the Securities Act. Under certain circumstances, Kroger has agreed to file a shelf registration statement to cover resales of the Kroger Notes. The exchange offer contemplated by the Registration Rights Agreement is separate from the Exchange Offers offered hereby. If Kroger fails to satisfy these obligations, Kroger will be required to pay additional interest on the Kroger Notes. See “Registration Rights.”

### **No SEC Review**

This offering memorandum and consent solicitation statement is not being filed with the SEC and is not subject to SEC review. Kroger expects to file a registration statement relating to the exchange or registration of the Kroger Notes as described under “Registration Rights.” In the course of the SEC’s review of such registration statement, Kroger may be required to modify, reformulate, or delete certain descriptions of Kroger’s or ACI’s business and financial or other information included in this offering memorandum and consent solicitation statement. Any such modification, reformation or deletion could be material.

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There is currently no market for the Kroger Notes, and Kroger cannot assure you that any market will develop. Kroger does not intend to apply for listing of the Kroger Notes on any securities exchange or for inclusion of the Kroger Notes in any automated quotation system. All of the Kroger Notes are expected to be delivered in book-entry form through the facilities of The Depository Trust Company (“DTC”) and its participants, including Clearstream Banking, S.A., and Euroclear Bank SA/NV. To exchange your ACI Notes for Kroger Notes and cash, you must instruct your commercial bank, broker, dealer, trust company or other nominee to further instruct the DTC participant through which your ACI Notes are held to tender for exchange your ACI Notes to DTC through the DTC Automated Tender Offer Program (“ATOP”) (A) by the Early Participation Date to receive the Total Consideration (including the Consent Payment and the Early Participation Premium), assuming you also either (i) do not validly withdraw such ACI Notes at or prior to the Expiration Date or (ii) if you validly withdraw such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date, along with the Early Participation VOI Number with respect to such re-tendered ACI Notes, and (B) by the Expiration Date to receive the Exchange Consideration. If you acquire ACI Notes after the Early Participation Date with an Early Participation VOI Number, you must instruct your commercial bank, broker, dealer, trust company or other nominee to further instruct the DTC participant through which your ACI Notes are held to tender for exchange your ACI Notes to DTC

through the ATOP with such Early Participation VOI Number by the Expiration Date to receive the Exchange Consideration and the Early Participation Premium. To the extent an Eligible Holder submits an Early Participation VOI Number corresponding to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.

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**NONE OF KROGER, THE ALBERTSONS ISSUING ENTITIES, THE DEALER MANAGERS (AS DEFINED HEREIN), THE ACI TRUSTEE, THE SAFEWAY TRUSTEE, THE ASC TRUSTEE, THE NALP TRUSTEE, THE KROGER TRUSTEE OR THE EXCHANGE AGENT OR THE INFORMATION AGENT (EACH, AS DEFINED HEREIN), OR ANY AFFILIATE OF ANY OF THEM, MAKES ANY RECOMMENDATION AS TO WHETHER ELIGIBLE HOLDERS OF ACI NOTES SHOULD EXCHANGE ACI NOTES FOR KROGER NOTES AND CASH OR DELIVER CONSENTS TO THE PROPOSED AMENDMENTS IN RESPONSE TO THE EXCHANGE OFFERS AND CONSENT SOLICITATIONS, AND NO ONE HAS BEEN AUTHORIZED BY ANY OF THEM TO MAKE SUCH A RECOMMENDATION.**

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Kroger is solely responsible for the information contained in this offering memorandum and consent solicitation statement. None of Kroger, Citigroup Global Markets Inc. and Wells Fargo Securities, LLC (together, the “Dealer Managers”) the Albertsons Issuing Entities, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee have authorized any other person to provide you with different information from the information contained and expressly incorporated by reference in this offering memorandum and consent solicitation statement. Kroger does not take any responsibility for any other information that others may give you. The information contained in this offering memorandum and consent solicitation statement speaks only as of the date of this offering memorandum and consent solicitation statement and the information in the documents incorporated by reference in this offering memorandum and consent solicitation statement speak only as of the respective dates of those documents or the dates on which they were filed with the SEC, as applicable. The business, financial condition, results of operations and prospects of Kroger or ACI, as applicable, may have changed since such dates.

Each of Wilmington Trust, National Association (the “ACI Trustee”), The Bank of New York (the “Safeway Trustee”), Computershare Trust Company, N.A., as successor trustee to Wells Fargo Bank, N.A., as successor trustee to First National Bank of Chicago (the “ASC Trustee”), U.S. Bank Trust National Association, as successor trustee to Morgan Guaranty Trust Company of New York (the “NALP Trustee”) and U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association (the “Kroger Trustee”) (nor their respective directors, officers, employees, agents, affiliates or advisers) are not responsible for, have not independently verified and make no representation or warranty as to the validity, accuracy, adequacy or completeness of the information contained in or incorporated by reference into this offering memorandum and consent solicitation statement (or any subsequent modifications or amendments thereof) or any of its contents or any omissions therefrom, and nothing contained in or incorporated by reference into this offering memorandum and consent solicitation statement is or shall be relied upon as a promise or representation by the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee. None of the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee shall be responsible for any statement of Kroger or any other person in this offering memorandum and consent solicitation statement or in any document issued or used in connection with it or the consents or Consent Solicitations.

None of the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee (nor their respective directors, officers, employees, agents, affiliates or advisers) accepts any responsibility for this offering memorandum and consent Solicitation statement, nor expresses an opinion as to the merits of the proposals as presented to Eligible Holders in this offering memorandum and consent solicitation statement. Further, none of the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee (nor their respective directors, officers, employees, agents, affiliates or advisers) makes any assessment of the impact of the proposals as presented to Eligible Holders on the interests of Eligible Holders, either as a class or as individuals, and makes no recommendation as to whether or not Eligible Holders should exchange their Notes or deliver consents to the Proposed Amendments. Accordingly, Noteholders who are in any doubt as to the impact of the Exchange Offers or Consent Solicitations or of the implementation of the Proposed Amendments should seek their own independent professional advice. The ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee and the Kroger Trustee will assess any direction it is given hereunder in accordance with its rights and duties under the Indenture to which it is a party.

IN ACCORDANCE WITH NORMAL AND ACCEPTED MARKET PRACTICE, NONE OF THE ACI TRUSTEE, THE SAFEWAY TRUSTEE, THE ASC TRUSTEE, THE NALP TRUSTEE OR THE KROGER TRUSTEE NOR ANY OF THEIR RESPECTIVE AGENTS AND AFFILIATES, EXPRESSES ANY VIEWS OR OPINIONS AS TO THE MERITS OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS. NONE OF THE ACI TRUSTEE, THE SAFEWAY TRUSTEE, THE ASC TRUSTEE, THE NALP TRUSTEE OR THE KROGER TRUSTEE HAS BEEN INVOLVED IN THE NEGOTIATION OR FORMULATION OF THE TERMS OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS AND MAKE NO REPRESENTATION THAT ALL RELEVANT INFORMATION HAS BEEN DISCLOSED TO ELIGIBLE HOLDERS IN, OR PURSUANT TO, THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS. ACCORDINGLY, ELIGIBLE HOLDERS WHO ARE IN ANY DOUBT AS TO THE IMPACT OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS ON THEIR INVESTMENT OR THE NOTES SHOULD SEEK THEIR OWN INDEPENDENT ADVICE.

No representation is made as to the correctness or accuracy of the CUSIP numbers listed in this offering memorandum and consent solicitation statement. They are provided solely for the convenience of the holders.

Each of the Dealer Managers makes no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in or incorporated by reference into this offering memorandum and consent solicitation statement, and nothing contained in or incorporated by reference into this offering memorandum and consent solicitation statement is or shall be relied upon as a promise or representation by either of the Dealer Managers.

You are responsible for making your own examination of Kroger and your own assessment of the merits and risks of participating in the Exchange Offers and Consent Solicitations. By tendering your ACI Notes for Kroger Notes, you will be deemed to have acknowledged that:

- you have reviewed this offering memorandum and consent solicitation statement;
- you have had an opportunity to request any additional information that you need from Kroger; and
- the Dealer Managers are not responsible for, and are not making any representation to you concerning, Kroger's or ACI's future performance or the accuracy or completeness of this offering memorandum and consent solicitation statement.

None of Kroger, the Dealer Managers, the Albertsons Issuing Entities nor any of ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee is acting for, or owes any duty to, any Eligible Holder in relation to the Exchange Offers or Consent Solicitations, including with regard to any losses an Eligible Holder may incur in connection with the Exchange Offers or Consent Solicitations, and none of them are providing you with any legal, business, tax or other advice in this offering memorandum and consent solicitation statement. Accordingly, none of Kroger, the Dealer Managers, the Albertsons Issuing Entities nor any of ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee is making any recommendation whatsoever as to whether any Eligible Holder should take any of the actions contemplated in this offering memorandum and consent solicitation statement or whether Eligible Holders should exchange their ACI Notes for Kroger Notes or consent to the Proposed Amendments. You should consult with your own advisors as needed to assist you in making your decision, and to advise you whether you are legally permitted to participate in the Exchange Offers and Consent Solicitations.

You must comply with all laws that apply to you in any place in which you participate in the Exchange Offers and Consent Solicitations or possess this offering memorandum and consent solicitation statement. You must also obtain any consents or approvals that you need in order to participate in the Exchange Offers and Consent Solicitations. Kroger, the Dealer Managers and the Albertsons Issuing Entities are not responsible for your compliance with these legal requirements.

The Kroger Notes are subject to restrictions on resale and transfer as described under "Transfer Restrictions." By tendering your ACI Notes for Kroger Notes, you will be deemed to have represented and agreed to all the provisions contained in that section of this offering memorandum and consent solicitation statement. You may be required to bear the financial risks of an investment in the Kroger Notes for an indefinite period of time.

This offering memorandum and consent solicitation statement is confidential. This offering memorandum and consent solicitation statement has been prepared solely for use in connection with the Exchange Offers and Consent Solicitations described in this offering memorandum and consent solicitation statement and is only available to investors who have certified that they are Eligible Holders for the purposes of the Exchange Offers and Consent Solicitations. Eligible Holders are authorized to use this offering memorandum and consent solicitation statement solely for the purpose of considering the exchange of ACI Notes and delivery of consents pursuant to the Exchange Offers and Consent Solicitations. This offering memorandum and consent solicitation statement is personal to each Eligible Holder and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire securities. Distribution of this offering memorandum and consent solicitation statement to any person other than an Eligible Holder and any person retained to advise such Eligible Holder with

respect to its investment decision is unauthorized, and any disclosure of any of its contents, without Kroger's prior written consent, is prohibited. Each Eligible Holder, by accepting delivery of this offering memorandum and consent solicitation statement, agrees to the foregoing and to make no photocopies of this offering memorandum and consent solicitation statement.

The distribution of this offering memorandum and consent solicitation statement and the offers to participate in the Exchange Offers and Consent Solicitations in certain jurisdictions may be restricted by law. Kroger and the Dealer Managers require persons who obtain a copy of this offering memorandum and consent solicitation statement to inform themselves about and to observe any such restrictions. This offering memorandum and consent solicitation statement does not constitute an offer of the Kroger Notes or an invitation to participate in the Exchange Offers and Consent Solicitations in any jurisdiction in which such offer or invitation would be unlawful.

Notwithstanding anything herein to the contrary, investors may disclose to any and all persons, without limitation of any kind, the U.S. federal or state income tax treatment and tax structure of the Exchange Offers and Consent Solicitations and all materials of any kind (including opinions or other tax analyses) that are provided to the Eligible Holders relating to such tax treatment and tax structure. However, any information relating to the U.S. federal income tax treatment or tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable any person to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the U.S. federal or state income tax treatment of the Exchange Offers but does not include information relating to the identity of the issuer of the securities.

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## FORWARD-LOOKING INFORMATION

This offering memorandum and consent solicitation statement (including information included or incorporated by reference herein) contains “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements are based on Kroger’s assumptions and beliefs in light of the information currently available to the Company. These statements are subject to a number of known and unknown risks, uncertainties and other important factors, including the risks and other factors discussed in the “Risk Factors” section of this offering memorandum and consent solicitation statement, that could cause actual results and outcomes to differ materially from any future results or outcomes expressed or implied by such forward looking statements. Such statements are indicated by words or phrases such as “achieve,” “affect,” “anticipate,” “assumptions,” “believe,” “committed,” “continue,” “could,” “deliver,” “effect,” “enable,” “estimate,” “expects,” “future,” “goal,” “growth,” “guidance,” “intended,” “likely,” “maintain,” “may,” “model,” “plan,” “position,” “program,” “result,” “strategy,” “strong,” “trend,” “will” and “would,” and variations of such words and similar phrases.

Forward-looking statements are subject to inherent risks and uncertainties. Various uncertainties and other factors could cause actual results to differ materially from those contained in the forward-looking statements. These include:

- the extent to which Kroger’s sources of liquidity are sufficient to meet its requirements may be affected by the state of the financial markets and the effect that such condition has on its ability to issue commercial paper at acceptable rates. Kroger’s ability to borrow under its committed lines of credit, including its bank credit facilities, could be impaired if one or more of Kroger’s lenders under those lines is unwilling or unable to honor its contractual obligation to lend to Kroger, or in the event that global pandemics, natural disasters or weather conditions interfere with the ability of Kroger lenders to lend to Kroger. Kroger’s ability to refinance maturing debt may be affected by the state of the financial markets;
- Kroger’s ability to achieve sales, earnings, incremental FIFO operating profit, and adjusted free cash flow goals may be affected by: its proposed transaction with Albertsons including, among other things, Kroger’s ability to consummate the proposed transaction and related divestiture plan, including on the terms of the Merger Agreement (as defined herein) and divestiture plan, on the anticipated timeline, with the required regulatory approvals, and/or resolution of pending litigation challenging the Merger; labor negotiations; potential work stoppages; changes in the unemployment rate; pressures in the labor market; changes in government-funded benefit programs; changes in the types and numbers of businesses that compete with us; pricing and promotional activities of existing and new competitors, and the aggressiveness of that competition; Kroger’s response to these actions; the state of the economy, including interest rates, the inflationary, disinflationary and/or deflationary trends and such trends in certain commodities, products and/or operating costs; the geopolitical environment including wars and conflicts; unstable political situations and social unrest; changes in tariffs; the effect that fuel costs have on consumer spending; volatility of fuel margins; manufacturing commodity costs; supply constraints; diesel fuel costs related to Kroger’s logistics operations; trends in consumer spending; the extent to which Kroger’s customers exercise caution in their purchasing in response to economic conditions; the uncertainty of economic growth or recession; stock repurchases; changes in the regulatory environment in which Kroger operates; Kroger’s ability to retain pharmacy sales from third party payors; consolidation in the healthcare industry, including pharmacy benefit managers; Kroger’s ability to negotiate modifications to multi-employer pension plans; natural disasters or adverse weather conditions; the effect of public health crises or other significant catastrophic events; the potential costs and risks associated with potential cyber-attacks or data security breaches; the success of Kroger’s future growth plans; the ability to execute Kroger’s growth strategy and value creation model, including continued cost savings, growth of Kroger’s alternative profit businesses, and Kroger’s ability to better serve its customers and to generate customer loyalty and sustainable growth through its strategic pillars of Fresh, *Our Brands*, Data & Personalization, and Seamless; the successful integration of merged companies and new partnerships; Kroger’s ability to maintain an investment grade credit rating; the risks relating to or arising from its proposed nationwide opioid litigation settlement,

- including our ability to finalize and effectuate the settlement, the scope and coverage of the ultimate settlement and the expected financial or other impacts that could result from the settlement;
- Kroger’s ability to achieve these goals may also be affected by its ability to manage the factors identified above. Kroger’s ability to execute its financial strategy may be affected by its ability to generate cash flow;
- Kroger’s effective tax rate may differ from the expected rate due to changes in tax laws, the status of pending items with various taxing authorities, and the deductibility of certain expenses; and
- the outcome of the Exchange Offers and Consent Solicitations.

The Company cannot fully foresee the effects of changes in economic conditions on Kroger’s business. Other factors and assumptions not identified above, including those discussed in the “Risk Factors” section of this offering memorandum and consent solicitation statement and in any document incorporated by reference herein, could also cause actual results to differ materially from those set forth in the forward-looking information. Accordingly, actual events and results may vary significantly from those included in, contemplated or implied by forward-looking statements made by Kroger or Kroger’s representatives.

Kroger’s ability to complete its proposed transaction with ACI may also be affected by various factors, including those set forth in the “Risk Factors” section of this offering memorandum and consent solicitation statement and in any document incorporated by reference herein. For additional risk factors, refer to (i) Kroger’s filings with the SEC, including the “Risk Factors” section in Kroger’s most recently filed Annual Report on Form 10-K and Quarterly Reports on Form 10-Q and in any subsequent documents that Kroger files with the SEC and (ii) ACI’s filings with the SEC, including the “Risk Factors” section in ACI’s most recently filed Annual Report on Form 10-K and Quarterly Reports on Form 10-Q and in any subsequent documents that ACI files with the SEC. Neither the Company nor ACI undertake any obligation to update the forward-looking information contained in this offering memorandum and consent solicitation statement.

## IMPORTANT TIMES AND DATES

Please take note of the following important times and dates in connection with the Exchange Offers and Consent Solicitations. These dates assume no extension of the Early Participation Date or the Expiration Date. However, the Exchange Offers and Consent Solicitations are subject to the consummation of the Merger, so they may not be completed on the schedule described below. While Kroger and ACI anticipate being able to close the Merger during the fourth quarter of calendar year 2024, the expected timing of the consummation of the Merger is unclear and subject to a number of regulatory obstacles, including the administrative and court proceedings instituted by the Federal Trade Commission (“FTC”) and various states, as further described herein. See “Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—The Exchange Offers and Consent Solicitations may be cancelled or delayed.”

<b>Date</b>	<b>Time and Calendar Date</b>	<b>Event</b>
Launch Date	August 15, 2024.	The commencement of the Exchange Offers and Consent Solicitations (the “Launch Date”).
Early Participation Date	5:00 p.m., New York City time, on August 28, 2024, unless extended or terminated with respect to an Exchange Offer.	The deadline for Eligible Holders to tender ACI Notes in order to be eligible to receive the Early Participation Premium and Consent Payment.  Kroger reserves the right to extend the Early Participation Date with respect to any Exchange Offer.
Consent Revocation Deadline	The earlier of (i) 5:00 p.m., New York City time, on the Early Participation Date, and (ii) the date the applicable supplemental indenture to the corresponding ACI Indenture implementing the applicable Proposed Amendments is executed by all applicable parties.	The deadline for Eligible Holders to validly revoke tenders of consents.  Tendered ACI Notes may be withdrawn at any time before the Expiration Date; however, a valid withdrawal of tendered ACI Notes after the Consent Revocation Deadline will not be deemed a revocation of the related consents and such consents will continue to be deemed delivered.  At any time before the Expiration Date, if ACI receives valid consents sufficient to effect the Proposed Amendments with respect to any ACI Indenture, the Albertsons Issuing Entities and the ACI Trustee, the Safeway Trustee, the ASC Trustee or the NALP Trustee, as applicable, may execute and deliver a supplemental indenture relating to the Proposed Amendments to the corresponding ACI Indenture, that will be effective upon execution but will only become operative upon the Settlement Date of the applicable Exchange Offer.

Withdrawal Deadline	The Withdrawal Deadline is the Expiration Date.	To be eligible to receive the Total Consideration, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes at or prior to the Early Participation Date and either (i) must not validly withdraw such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date, along with the Early Participation VOI Number corresponding to such re-tendered ACI Notes.
Expiration Date	5:00 p.m., New York City time, on September 13, 2024, unless extended or terminated with respect to an Exchange Offer.	In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration.
		To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.
		The deadline for Eligible Holders to tender ACI Notes in order to be eligible to receive the Exchange Consideration for ACI Notes accepted for exchange in the Exchange Offers. Tenders of ACI Notes made pursuant to the Exchange Offers (but not

consents delivered pursuant to the Consent Solicitations) may be validly withdrawn and re-tendered any time prior to the Expiration Date.

Kroger reserves the right to extend the Expiration Date in Kroger's sole discretion (which right is subject to applicable law) with respect to an Exchange Offer without extending the Expiration Date for any other Exchange Offer. The Expiration Date of each of the Exchange Offers is expected to be extended, if necessary, to occur on or promptly after the closing date of the Merger. Each Consent Solicitation will expire at the Early Participation Date.

**Settlement Date**

Promptly after the Expiration Date and is expected to occur on or promptly after the closing date of the Merger, subject to the satisfaction or waiver of certain conditions as described herein.

Kroger will deposit with DTC, upon the direction of Kroger and the Exchange Agent, the Kroger Notes to be delivered in exchange for the ACI Notes accepted for exchange, together with an amount of cash sufficient to pay the Consent Payment component of the Total Consideration payable in respect of consents delivered in the Consent Solicitations, if applicable.

## SUMMARY

*This summary highlights certain information about Kroger's business and the Exchange Offers and Consent Solicitations. This is a summary of information contained elsewhere in this offering memorandum and consent solicitation statement or incorporated by reference herein and does not contain all of the information that you should consider before investing in the Kroger Notes. For a more complete understanding of Kroger's business and the Exchange Offers and Consent Solicitations, you should read this entire offering memorandum and consent solicitation statement, including the sections entitled "Forward-Looking Information" and "Risk Factors" and all documents incorporated by reference herein.*

### Kroger

The Kroger Co. (the "Company" or "Kroger") was founded in 1883 and incorporated in 1902. The Company is built on the foundation of its retail grocery business, which includes the added convenience of its retail pharmacies and fuel centers. Kroger's strategy is focused on growing customer loyalty by delivering great value and convenience, and investing in four strategic pillars: Fresh, *Our Brands*, Data & Personalization and Seamless.

Kroger's revenues are predominately earned and cash is generated as consumer products are sold to customers in Kroger stores, fuel centers and via online platforms. Kroger earns income predominately by selling products at price levels that produce revenues in excess of the costs incurred to make these products available to customers. Such costs include procurement and distribution costs, facility occupancy and operational costs, and overhead expenses. Kroger also utilizes the data and traffic generated by its retail business to deliver incremental value and services for customers that generate alternative profit streams. These alternative profit streams would not exist without Kroger's core retail business. Kroger is diversified across brands, product categories, channels of distribution, geographies and consumer demographics.

Kroger's principal executive offices are located at 1014 Vine Street, Cincinnati, OH 45202, and its telephone number is 513-762-4000. Kroger maintains a website at [www.thekrogerco.com](http://www.thekrogerco.com) where general information about Kroger is available. The information contained on Kroger's website is not a part of this offering memorandum and consent solicitation statement.

### ACI

ACI is a leading food and drug retailer in the United States, with both strong local presence and national scale. ACI also manufactures and processes some of the food for sale in its stores. ACI maintains a website ([www.albertsonscompanies.com](http://www.albertsonscompanies.com)) where general information about ACI is available. Information contained on ACI's website is not a part of this offering memorandum and consent solicitation statement.

### The Transactions

On October 13, 2022, Kroger entered into an agreement and plan of merger (as amended, modified or supplemented from time to time, the "Merger Agreement"), pursuant to which, among other things, a wholly owned, direct subsidiary of Kroger ("Merger Sub") will merge with and into ACI, with ACI surviving the merger as a direct, wholly owned subsidiary of Kroger (the "Merger"). Under the terms of the Merger Agreement, all of the outstanding shares of ACI common and preferred stock (on an as converted basis) automatically will be converted into the right to receive \$34.10 per share, subject to certain reductions described below.

The per share cash purchase price of \$34.10 payable to ACI shareholders in the Merger will be reduced by an amount equal to \$6.85, which is the per share amount of a special pre-closing cash dividend that was paid on January 20, 2023 to ACI shareholders of record as of October 24, 2022. The adjusted per share cash purchase price is expected to be \$27.25.

In connection with obtaining the requisite regulatory clearance necessary to consummate the Merger, the Company and ACI will make certain store divestitures. Subject to the outcome of the divestiture process and as described in the Merger Agreement, ACI was prepared to establish an ACI subsidiary ("SpinCo"). As described in

further detail below, on September 8, 2023, the Company and ACI announced that they entered into a comprehensive divestiture plan with C&S Wholesale Grocers, LLC (“C&S”). As a result of the comprehensive divestiture plan announced with C&S, the Company has exercised its right under the Merger Agreement to sell what would have been the SpinCo business to C&S. Consequently, the spin-off previously contemplated by the Company and ACI is no longer a requirement under the Merger Agreement and will not be pursued by the Company and ACI.

On September 8, 2023, the Company and ACI announced that they entered into a definitive agreement with C&S for the sale of 413 stores, as well as the QFC, Mariano’s and Carrs banners, the exclusive licensing rights to the Albertsons banner in Arizona, California, Colorado and Wyoming, eight distribution centers, two offices and certain other assets in connection with the Merger. In addition, Kroger will divest the Debi Lilly Design, Primo Taglio, Open Nature, ReadyMeals and Waterfront Bistro private label brands. On April 22, 2024, the Company and ACI announced they had entered into an amended and restated purchase agreement with respect to their definitive agreement with C&S which provided for the sale of an additional 166 stores, as well as the addition of the Haggen banner, and revision of the exclusive licensing rights such that in Arizona and Colorado, the exclusive licensing rights are to the Safeway banner rather than the Albertsons banner, with the exclusive licensing of the Albertsons banner in California and Wyoming remaining unchanged. In addition, the amended and restated agreement includes increased distribution capacity of C&S through a combination of different and larger distribution facilities, and expanded transition services agreements to support C&S and the addition of one dairy facility. The amended and restated agreement also provides C&S with access to the Signature and O Organics private label brands and expands the corporate and office infrastructure provided to C&S. All fuel centers and pharmacies associated with the divested stores will remain with the stores. The stores will be divested by the Company following the closing of the Merger (such divestiture, the “Divestiture”). The definitive amended and restated purchase agreement has customary representations and warranties and covenants of a transaction of its type. The Divestiture is subject to fulfillment of customary closing conditions, including clearance by the FTC and the completion of the Merger. C&S will pay the Company all-cash consideration of approximately \$2.9 billion, including customary adjustments.

On February 26, 2024, the FTC instituted an administrative proceeding (the “FTC Administrative Proceeding”) to prohibit the Merger. Simultaneously, the FTC (joined by nine states) filed suit in the United States District Court for the District of Oregon (the “FTC Federal Litigation”) requesting a preliminary injunction to block the Merger. On January 15, 2024 and February 14, 2024, the attorneys general of Washington and Colorado, respectively, filed suit in their respective state courts, also seeking to enjoin the Merger. In the FTC Federal Litigation, the Company and ACI have stipulated to a temporary restraining order that prevents the Merger from closing until after 11:59 PM Eastern Time on the fifth business day after the court rules on the FTC’s motion for a preliminary injunction or until after the date set by the court, whichever is later. On July 12, 2024, the FTC administrative law judge recessed the evidentiary portion of the FTC Administrative Proceeding until after the conclusion of the FTC Federal Litigation. A preliminary injunction hearing in the FTC Federal Litigation is set to begin on August 26, 2024. In the Colorado case, (x) the court has scheduled a permanent injunction hearing to begin on September 30, 2024 and (y) Kroger and ACI have stipulated to a preliminary injunction that prevents the Merger from closing until five business days after the Colorado court rules on Colorado attorney general’s request for a permanent injunction (in the event the Colorado court denies such request). In the Washington case, (x) a trial on the Washington attorney general’s request for a permanent injunction is scheduled to begin on September 16, 2024 and (y) Kroger and ACI have committed that they will not close the Merger until five days after the Washington court rules on the request for a permanent injunction (so long as such ruling occurs on or before September 26, 2024). In addition to these governmental actions, private plaintiffs have filed suit in the United States District Court for the Northern District of California also seeking to enjoin the transaction. That case is stayed pending resolution of the FTC’s motion for a preliminary injunction in the FTC Federal Litigation.

In connection with the Merger Agreement, on October 13, 2022, the Company entered into a commitment letter with certain lenders pursuant to which the lenders have committed to provide a \$17.4 billion senior unsecured bridge term loan facility (the “bridge facility”), which, if entered into, would mature 364 days after the closing date of the Merger. The commitments under the bridge facility are intended to be drawn to fund a portion of the cash consideration for the Merger only to the extent the Company does not arrange for alternative financing prior to closing. As alternative financing for the Merger is secured, the commitments with respect to the bridge facility under the commitment letter will be reduced. Upfront fees with respect to the bridge facility are included in “Financing fees paid” in the Company’s Consolidated Statements of Cash Flows and will be recognized as operating, general and administrative expense in the Company’s Consolidated Statements of Operations over the commitment period.

On July 26, 2024, the Company and the commitment parties under the bridge facility agreed to extend the outside date with respect to the bridge facility commitments to the earlier of (x) the Outside Date (as defined herein) and (y) December 31, 2024.

On November 9, 2022, the Company entered into a term loan credit agreement with certain lenders pursuant to which the lenders committed to provide, contingent upon the completion of the Merger and certain other customary conditions to funding, (1) senior unsecured term loans in an aggregate principal amount of \$3.0 billion maturing on the third anniversary of the Merger closing date and (2) senior unsecured term loans in an aggregate principal amount of \$1.75 billion maturing on the date that is 18 months after the Merger closing date (collectively, the “Term Loan Facilities”). Borrowings under the Term Loan Facilities will be used to pay a portion of the consideration and other amounts payable in connection with the Merger. The entry into the term loan credit agreement reduced the commitments under the Company’s \$17.4 billion bridge facility commitment by \$4.75 billion to \$12.65 billion. On April 12, 2024, the Company and the lenders to the bridge facility, at the Company’s request, further reduced the bridge facility commitment by \$2.0 billion to \$10.65 billion. Borrowings under the Term Loan Facilities will bear interest at rates that vary based on the type of loan and the Company’s debt rating. On July 26, 2024, the Company and the lenders under the Term Loan Facilities agreed to extend the outside date with respect to the term loan commitments to the earlier of (x) the Outside Date and (y) December 31, 2024. In August 2024, the Company announced that it intends to enter into a second amendment to the term loan agreement to, among other things, amend certain covenants applicable thereto. In addition to the sources of financing described above, the Company expects to finance the Merger with cash on hand, senior notes issuances, and, if necessary, borrowings under its commercial paper program or revolving credit facility.

As of May 25, 2024, Kroger maintained a \$2.75 billion (with the ability to increase by up to \$1.25 billion) unsecured revolving credit facility that terminates, unless extended, on July 6, 2026. Outstanding borrowings under the existing revolving credit facility and commercial paper borrowings, and certain outstanding letters of credit, reduce funds available under the existing revolving credit facility. As of May 25, 2024, Kroger had no outstanding commercial paper and no borrowings under the existing revolving credit facility. The outstanding letters of credit that reduce the funds available under Kroger’s existing revolving credit facility totaled \$2.0 million as of May 25, 2024. In August 2024, the Company announced it intends to enter into a new unsecured revolving credit facility with certain lenders pursuant to which the lenders would commit to provide a new \$5.0 billion unsecured revolving credit facility (of which \$2.75 billion of commitments will be made available upon effectiveness of the new revolving credit facility and \$2.25 billion of commitments will be made available upon the completion of the Merger, of which up to \$750.0 million may be borrowed on the closing date of the Merger to fund a portion of the cash consideration for the Merger). The new revolving credit facility would replace the Company’s existing revolving credit facility and would mature on the fifth anniversary of the closing date of the new revolving credit facility. The Company would have the ability to increase the commitments under the new revolving credit facility by up to an additional \$2.0 billion, subject to certain conditions.

In accordance with and subject to the Merger Agreement, ACI has extended, and either party may continue to extend, the original outside date of January 13, 2024 from time to time in 30-day increments for up to 270 days in the aggregate ending on October 9, 2024 (as may be extended or waived by the terms of the Merger Agreement, the “Outside Date”). The Company will be obligated to pay a termination fee of \$600 million if the Merger Agreement is terminated by either party in connection with the occurrence of the Outside Date, and, at the time of such termination, all closing conditions other than regulatory approval have been satisfied. The expected timing of the consummation of the Merger is unclear and subject to a number of regulatory obstacles, including the administrative and court proceedings instituted by the FTC and various states, as further described herein. Nevertheless, Kroger and ACI anticipate being able to close the Merger during the fourth quarter of calendar year 2024. There can be no guarantee that the parties will agree to extend the Outside Date or that the Merger will be consummated, see “Risk Factors—Risks Related to the Merger” for more information. If the Merger is not consummated by the Outside Date, the Company expects to terminate the Exchange Offers and Consent Solicitations (see “Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—The Exchange Offers and Consent Solicitations may be cancelled or delayed”).

The closing of the Merger is subject to satisfaction or waiver of certain conditions, including: (i) the absence of any injunctions or restraints issued by any governmental entity of competent jurisdiction which would restrain, enjoin or otherwise prohibit the consummation of the transactions or make the consummation of the

transactions illegal; (ii) the waiting period (or any extension thereof) applicable to the transactions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”) has expired or been terminated, and any agreement with any governmental entity not to close the transaction shall have expired or been terminated; (iii) the accuracy of each party’s representations and warranties, subject in most cases to materiality or material adverse effect qualifications; (iv) material compliance with each party’s covenants; and (v) a certificate of compliance signed by an executive officer of each party confirming satisfaction of the respective party’s conditions set forth in the Merger Agreement. The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations.

The adoption of the Merger Agreement and the approval of the Merger and the other transactions contemplated thereby required the consent of the holders of a majority in voting power of ACI’s outstanding common stock and the holders of a majority in voting power of ACI’s outstanding preferred stock, which was delivered on October 14, 2022. Accordingly, no further action by any stockholder of ACI is required.

The Merger, the Divestiture, the Exchange Offers and any other financings related to the Merger are collectively referred to herein as the “Transactions.”

## THE EXCHANGE OFFERS AND CONSENT SOLICITATIONS

*The following is a brief summary of certain terms of the Exchange Offers and Consent Solicitations. It may not contain all the information that is important to you. For additional information regarding the Exchange Offers, Consent Solicitations and the Kroger Notes, see “Description of the Exchange Offers and Consent Solicitations” and “Description of the Kroger Notes.”*

Kroger Notes Issuer ..... The Kroger Co., an Ohio corporation.

Kroger Notes Guarantees ..... The Kroger Notes will not be guaranteed by any of Kroger’s existing subsidiaries and are not expected to be guaranteed by ACI or any of its subsidiaries following the consummation of the Merger (subject to the Cross-Guarantee Scenario (as defined herein)).

Albertsons Issuing Entities ..... Albertsons Companies, Inc., a Delaware corporation; New Albertsons L.P., a Delaware limited partnership; Safeway Inc., a Delaware corporation; Albertson’s LLC, a Delaware limited liability company; Albertsons Safeway LLC, a Delaware limited liability company; and American Stores Company, LLC, a Delaware limited liability company, each, insofar as applicable.

ACI Notes Guarantees ..... Certain of the ACI Notes are guaranteed by the ACI Guarantors; however, upon consummation of the Merger and the successful completion of these Exchange Offers, the Kroger Notes issued in exchange for the ACI Notes are not expected to be guaranteed by the Albertsons Issuing Entities, the ACI Guarantors, or any existing subsidiary of Kroger (subject to the Cross-Guarantee Scenario).

“ACI Guarantors” means each of ACI’s subsidiaries that guarantee any series of the ACI Notes, each as set forth in the relevant ACI Indenture.

See “Description of the Exchange Offers and Consent Solicitations—Treatment of ACI Notes Not Tendered in the Exchange Offers and Consent Solicitations.”

Kroger Notes Offered ..... Up to \$7,441,608,000 aggregate principal amount of notes, consisting of:

- up to \$750 million aggregate principal amount of the Kroger 3.250% 2026 Notes,
- up to \$600 million aggregate principal amount of the Kroger 7.500% 2026 Notes,
- up to \$1.350 billion aggregate principal amount of the Kroger 4.625% 2027 Notes,
- up to \$750 million aggregate principal amount of the Kroger 5.875% 2028 Notes,
- up to \$750 million aggregate principal amount of the Kroger 6.500% 2028 Notes,
- up to \$1.350 billion aggregate principal amount of the Kroger

3.500% 2029,

- up to \$1.0 billion aggregate principal amount of the Kroger 4.875% 2030 Notes,
- up to \$120.078 million aggregate principal amount of the Kroger 7.450% 2027 Notes,
- up to \$261.099 million aggregate principal amount of the Kroger 7.250% 2031 Notes,
- up to \$2.902 million aggregate principal amount of the Kroger 8.000% 2026 Notes,
- up to \$0.756 million aggregate principal amount of the Kroger 7.100% 2028 Notes,
- up to \$0.143 million aggregate principal amount of the Kroger 7.500% 2037 Notes,
- up to \$11.045 million aggregate principal amount of the Kroger 7.110% 2027 Notes,
- up to \$0.310 million aggregate principal amount of the Kroger 7.150% 2027 Notes,
- up to \$0.210 million aggregate principal amount of the Kroger 6.560% 2027 Notes,
- up to \$24.278 million aggregate principal amount of the Kroger 6.570% 2028 Notes,
- up to \$5.17 million aggregate principal amount of the Kroger 6.520% 2028 Notes,
- up to \$12 million aggregate principal amount of the Kroger 6.530% 2028 Notes,
- up to \$19.898 million aggregate principal amount of the Kroger 6.625% 2028 Notes,
- up to \$6 million aggregate principal amount of the Kroger 6.630% 2028 Notes,
- up to \$56.536 million aggregate principal amount of the Kroger 7.750% 2026 Notes,
- up to \$127.206 million aggregate principal amount of the Kroger 7.450% 2029 Notes,
- up to \$135.098 million aggregate principal amount of the Kroger 8.700% 2030 Notes, and
- up to \$108.879 million aggregate principal amount of the Kroger

8.000% 2031 Notes.

Exchange Offers ..... Kroger is offering Eligible Holders of each series of ACI Notes the opportunity to exchange any and all of their ACI Notes for Kroger Notes of the applicable series and cash as indicated in the table on the cover hereof, upon the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement, including the consummation of the Merger. For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date, Eligible Holders of ACI Notes will be eligible to receive the Total Consideration.

To be eligible to receive the Total Consideration, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes at or prior to the Early Participation Date and either (i) must not validly withdraw such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date, along with the Early Participation VOI Number corresponding to such re-tendered ACI Notes. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders or re-tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.

For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive the Exchange Consideration.

For each \$1,000 principal amount of ACI Notes acquired after the Early Participation Date with an Early Participation VOI Number that are validly tendered and not validly withdrawn, with the corresponding Early Participation VOI Number, at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive the Exchange Consideration and the Early Participation Premium.

The Consent Payment will be paid on the Settlement Date to each Eligible Holder who is the holder of the ACI Notes validly tendered and not validly withdrawn, where the related consent has been delivered, as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. See “—Consent Payment,” “—Exchange Consideration” and “—Total Consideration” below.

Denomination ..... The Kroger Notes will only be issued in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. No tender of ACI Notes will be accepted if it results in the issuance of less than \$1,000 principal amount of Kroger Notes. If, pursuant to the Exchange Offers, a tendering Eligible Holder would otherwise be entitled to receive a principal amount of Kroger Notes that is not equal to \$1,000

or an integral multiple of \$1,000 in excess thereof, then the principal amount of such ACI Notes will be rounded down to the nearest \$1,000 or integral multiple of \$1,000 in excess thereof, and such Eligible Holder will receive the rounded principal amount of Kroger Notes and Kroger will pay cash (in lieu of such ACI Notes not delivered) equal to the remaining portion of the Exchange Consideration for such ACI Notes plus accrued and unpaid interest with respect to that portion to but not including the Settlement Date.

Holders Eligible to Participate in the Exchange Offers .....	<p>Kroger will conduct the Exchange Offers in accordance with the applicable requirements of the Securities Act and the Exchange Act, and the rules and regulations of the SEC promulgated thereunder. Prior to the distribution of this offering memorandum and consent solicitation statement, Kroger distributed to certain holders of ACI Notes a letter requesting a certification that each such holder is either a “qualified institutional buyer” (“QIB”) as defined in Rule 144A under the Securities Act (“Rule 144A”) or a person that is not a “U.S. person” and is outside of the United States within the meaning of Regulation S under the Securities Act (“Regulation S”).</p> <p><b>Only holders of ACI Notes who have properly completed and returned the eligibility certification, which is available from the Information Agent, are authorized to receive and review this offering memorandum and consent solicitation statement and to participate in the Exchange Offers and Consent Solicitations.</b></p> <p><b>Additionally, in order to participate in the Exchange Offers and Consent Solicitations, Eligible Holders located or resident in Canada are required to complete, sign and submit to the Exchange Agent a Canadian eligibility certification (the form of which is included in the accompanying instructions for the eligibility certification). See “Transfer Restrictions—Notice to Prospective Investors in Canada.”</b></p>
Consent Solicitations .....	<p>Concurrently with the Exchange Offers, Kroger, on behalf of ACI, is soliciting consents from the Eligible Holders of ACI Notes to amend the ACI Indentures to adopt the Proposed Amendments. Eligible Holders of ACI Notes may deliver their consent to the Proposed Amendments to the corresponding ACI Indenture for that series only by tendering ACI Notes of the applicable series. Eligible Holders may not deliver a consent in a Consent Solicitation without tendering ACI Notes of the applicable series in the applicable Exchange Offer. If an Eligible Holder tenders ACI Notes in an Exchange Offer, such Eligible Holder will be deemed to have delivered its consent, with respect to the principal amount of such tendered ACI Notes, to the Proposed Amendments to the corresponding ACI Indenture.</p>
Proposed Amendments .....	<p>If the requisite consents sufficient to effect the applicable Proposed Amendments are received hereunder, the corresponding ACI Indenture will be amended to, among other things and each, insofar as applicable, eliminate from each ACI Indenture (i) substantially all of the restrictive covenants, (ii) certain of the events which may lead to an “Event of Default,” (iii) the reporting covenant, (iv) the restrictions on the Albertsons Issuing Entities, as applicable, from consolidating with or merging into another person or conveying, transferring or leasing all or any of its properties and assets to any person, (v) the covenant requiring</p>

certain subsidiaries of ACI to guarantee certain of the ACI Notes and (vi) the obligation to offer to repurchase certain of the ACI Notes upon certain change of control transactions. The Proposed Amendments with respect to each series of the ACI Notes under the ACI Indentures require the consent of the holders of not less than a majority in principal amount of such series of the ACI Notes outstanding, except for those NALP Indenture Notes issued under the NALP Indenture, which requires the consent of holders of not less than 66 2/3% in principal amount of such series of such NALP Indenture Notes outstanding.

Consent Payment ..... For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or before the Early Participation Date, Eligible Holders of ACI Notes will be eligible to receive a Consent Payment equal to \$1.00 in cash.

If the applicable Exchange Offer is completed, the Consent Payment will be paid only to Eligible Holders who had validly tendered and not validly withdrawn their ACI Notes at or before the Early Participation Date. Eligible Holders who validly tender their ACI Notes after the Early Participation Date but at or prior to the Expiration Date will not be eligible to receive the Consent Payment. The Consent Payment will be paid on the Settlement Date to each Eligible Holder who is the holder of such ACI Notes as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. An Eligible Holder that validly tenders ACI Notes and delivers a consent at or prior to the Early Participation Date, but withdraws such ACI Notes after the Early Participation Date but prior to the Expiration Date, will receive the Consent Payment, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes at the Expiration Date. See “Description of the Exchange Offers and Consent Solicitations—Consent Payment.”

Early Participation Premium ..... For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or before the Early Participation Date, Eligible Holders of such ACI Notes will be eligible to receive an Early Participation Premium of \$30.00 principal amount of Kroger Notes; *provided* that the applicable Eligible Holder either (i) must not validly withdraw such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date, along with the Early Participation VOI Number corresponding to such re-tendered ACI Notes. In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent

Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.

If any such Eligible Holder wishes to withdraw ACI Notes from the tender that are evidenced by an Early Participation VOI Number as described above after the Early Participation Date and subsequently re-tender or transfer such ACI Notes, it will need to contact its broker or custodian to obtain such Early Participation VOI Number to be eligible to receive or transfer the right to receive the Early Participation Premium with respect to the aggregate principal amount of ACI Notes evidenced by such Early Participation VOI Number.

Total Consideration ..... To be eligible to receive the Total Consideration, composed of the Consent Payment, Early Participation Premium and the Exchange Consideration with respect to any ACI Notes, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes at or prior to the Early Participation Date and either (i) must not validly withdraw such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date, along with the Early Participation VOI Number corresponding to such re-tendered ACI Notes.

For the avoidance of doubt, unless the Exchange Offers are amended, in no event will any holder of ACI Notes receive more than \$1,000 aggregate principal amount of Kroger Notes for each \$1,000 aggregate principal amount of ACI Notes accepted for exchange.

Notwithstanding the foregoing, the Consent Payment will be paid on the Settlement Date to the Eligible Holder who is the holder of such ACI Notes validly tendered and not validly withdrawn, where the related consent has been delivered, as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. See “Description of the Exchange Offers and the Consent Solicitations—Consent Payment.” Eligible Holders who acquire ACI Notes following the Early Participation Date will not be eligible to receive the Consent Payment with respect to such notes.

Exchange Consideration ..... For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive \$970 principal amount of Kroger Notes. If an Eligible Holder acquires ACI Notes following the Early Participation Date (but prior to the Expiration Date) and receives the Early Participation VOI Number corresponding to such ACI Notes and such Eligible Holder validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date along with the corresponding Early Participation VOI Number, then the Eligible Holder will instead receive the Exchange Consideration and Early Participation Premium. To the extent an Eligible Holder acquires ACI Notes following the Early Participation Date, validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal

amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information. See “Description of the Exchange Offers and the Consent Solicitations—Exchange Consideration.”

Accrued and Unpaid Interest .....	No accrued and unpaid interest is payable upon acceptance for exchange of any ACI Notes in the Exchange Offers and Consent Solicitations. However, the first interest payment on any Kroger Notes will include the accrued and unpaid interest on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; <i>provided</i> that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the principal amount of corresponding ACI Notes tendered for exchange if such holder validly tendered ACI Notes after the Early Participation Date and at or prior to the Expiration Date without validly delivering an Early Participation VOI Number corresponding to such ACI Notes. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.
Early Participation Date.....	5:00 p.m., New York City time, on August 28, 2024 unless extended or terminated by Kroger.
Expiration Date.....	Each Exchange Offer will expire at 5:00 p.m., New York City time, on September 13, 2024, and may be extended for each Exchange Offer in Kroger’s sole discretion (which right is subject to applicable law). The Expiration Date of each of the Exchange Offers is expected to be extended, if necessary, to occur on or promptly after the closing date of the Merger. Each Consent Solicitation will expire at the Early Participation Date.
Settlement Date .....	The Settlement Date for the Exchange Offers and Consent Solicitations will be promptly following the Expiration Date and is expected to occur on or promptly after the closing date of the Merger. The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations.
Withdrawal of Tenders and Revocation of Consents .....	Tenders of ACI Notes of any particular series in the Exchange Offers may be validly withdrawn at any time prior to the Expiration Date and tenders of consents in the Consent Solicitation may be validly revoked at any time prior to the Consent Revocation Deadline, except in certain limited circumstances as set forth herein. Consents for any particular series of ACI Notes may not be revoked after the earlier of (i) the Early Participation Date and (ii) the execution by all applicable parties of the supplemental indenture to the corresponding ACI Indenture implementing the applicable Proposed Amendments, unless extended or terminated. A valid withdrawal of tendered ACI Notes prior to the

Consent Revocation Deadline will also constitute the revocation of the related consent to the Proposed Amendments to the ACI Indentures. See “Description of the Exchange Offers and Consent Solicitations—Withdrawal of Tenders and Revocation of Consents.”

Conditions to the Exchange Offers and Consent Solicitation.....

The Exchange Offers and Consent Solicitations are subject to certain conditions, including the consummation of the Merger. The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations. Kroger may generally waive any such condition at any time with respect to an Exchange Offer and Consent Solicitation but may not waive the condition that the Merger shall have been consummated. Each Exchange Offer and Consent Solicitation is also conditioned upon the completion of the other Exchange Offers and Consent Solicitations, although Kroger may waive such condition at any time with respect to an Exchange Offer or Consent Solicitation. Any waiver of a condition by Kroger with respect to an Exchange Offer will automatically waive such condition with respect to the corresponding Consent Solicitation, as applicable. In addition, Kroger may amend the terms of any Exchange Offer or Consent Solicitation without amending the terms of any other Exchange Offer or Consent Solicitation, respectively. Any amendment of the terms of an Exchange Offer by Kroger will automatically amend such terms with respect to the corresponding Consent Solicitation, as applicable.

The Exchange Offers and Consent Solicitations are not subject to a financing condition. Kroger may complete the Exchange Offers even if valid consents sufficient to effect the Proposed Amendments to the corresponding ACI Indenture are not received. See “Description of the Exchange Offers and Consent Solicitations—Conditions to the Exchange Offers and Consent Solicitations.”

Termination; Extension; Amendment.....

Kroger, in its sole discretion (which right is subject to applicable law), may extend the Early Participation Date and the Expiration Date with respect to any or all of the Consent Solicitations and Exchange Offers, subject to applicable law. Any extension of the Early Participation Date or the Expiration Date with respect to any of the Consent Solicitation or Exchange Offers by Kroger will automatically extend the Early Participation Date or the Expiration Date, as applicable, with respect to the corresponding Consent Solicitation or Exchange Offer. Subject to applicable law, Kroger expressly reserves the right, with respect to any or all of the Exchange Offers, to: (i) delay accepting any ACI Notes, extend the Exchange Offer or terminate the Exchange Offer and not accept any ACI Notes and (ii) amend, modify or waive in part or whole, at any time, or from time to time, the terms of the Exchange Offer in any respect, including waiver of any conditions to consummation of the Exchange Offer (other than the condition that the Merger shall have been consummated). Any such delay, extension, termination, amendment, modification or waiver with respect to any Exchange Offer by Kroger will automatically delay, extend, terminate, amend, modify or waive conditions precedent to the corresponding Consent Solicitation,. See “Description of the Exchange Offers and Consent Solicitations—Early Participation Date; Expiration Date; Extensions; Amendments; Termination.”

Procedures for Tendering ..... If you are an Eligible Holder and wish to participate in the Exchange Offers and Consent Solicitations and your ACI Notes are held by a custodial entity, such as a commercial bank, broker, dealer, trust company or other nominee, you must instruct that custodial entity to tender your ACI Notes on your behalf pursuant to the procedures of that custodial entity. Please ensure that you contact your custodial entity as soon as possible to give them sufficient time to meet your requested deadline. **Beneficial owners are urged to appropriately instruct their commercial bank, broker, custodian or other nominee at least five business days prior to the Early Participation Date or the Expiration Date, as applicable, in order to allow adequate processing time for their instruction.**

In the ordinary course, when notes are tendered by (or on behalf of) an Eligible Holder, a VOI number is automatically generated and is available to the tendering custodian or broker of such Eligible Holder. Each Eligible Holder that validly tenders and does not validly withdraw ACI Notes at or prior to the Early Participation Date will receive a unique VOI number with respect to the aggregate principal amount of ACI Notes that such holder validly tendered at or prior to the Early Participation Date and such VOI number shall evidence that such Eligible Holder was the holder of record of such ACI Notes as of the Early Participation Date (referred to herein as the Early Participation VOI Number). If any such Eligible Holder wishes to withdraw ACI Notes from the tender that are evidenced by an Early Participation VOI Number as described above after the Early Participation Date and subsequently re-tender or transfer such ACI Notes, it will need to contact its broker or custodian to obtain such Early Participation VOI Number to be eligible to receive or transfer the right to receive the Early Participation Premium with respect to the aggregate principal amount of ACI Notes evidenced by such Early Participation VOI Number. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for further information on how to tender ACI Notes after the Early Participation Date to be eligible to receive the Early Participation Premium and Exchange Consideration.

Note that in all cases where an Eligible Holder is tendering an aggregate principal amount of ACI Notes in excess of what was initially tendered and for which an Early Participation VOI Number was received, such Eligible Holder must make two separate elections when re-tendering following the Early Participation Date, one election with an aggregate principal amount of ACI Notes that matches the Early Participation VOI Number, and another with the remainder aggregate principal amount of ACI Notes, in order to avoid the tender being rejected.

Each Early Participation VOI Number will only be valid for up to the aggregate principal amount of ACI Notes to which it corresponds and will be applied on a first-use basis up to such amount if multiple Eligible Holders validly tender ACI Notes along with the same Early Participation VOI Number, and in all cases, acceptance of any given Early Participation VOI Number is subject to the discretion of the Company in all respects.

Custodial entities that are participants in DTC must tender ACI Notes

through ATOP maintained by DTC. No letter of transmittal is required for tenders through ATOP. No letter of transmittal will be required for the Exchange Offers and Consent Solicitations. Kroger has not provided guaranteed delivery procedures in conjunction with the Exchange Offers and Consent Solicitations.

**Consequences of Failure to Exchange ....** If your ACI Notes are not exchanged for Kroger Notes in the Exchange Offers, you will not receive the benefit of having Kroger as the primary obligor of your notes. If the Proposed Amendments to an ACI Indenture are adopted with respect to a particular series of ACI Notes and the Merger is consummated and the other conditions specified herein are satisfied, the amendments will apply to such series of ACI Notes issued pursuant to such indenture that are not acquired in the Exchange Offers, even though the holders of those ACI Notes did not consent to the Proposed Amendments. Thereafter, all such ACI Notes will be governed by the relevant ACI Indenture as amended by the Proposed Amendments, which will have less restrictive terms and afford reduced protections to the holders of those securities compared to those currently in such ACI Indenture with respect to such series of ACI Notes. In particular, holders of the ACI Notes under the amended ACI Indentures will no longer be entitled to the benefits of various covenants and other provisions in the ACI Indentures.

In addition, the trading market for any remaining ACI Notes may also be more limited than it is at present, and the smaller outstanding principal amount of such notes (that are not held by Kroger following consummation of the Exchange Offers) may make the trading price of any ACI Notes that are not tendered and accepted for exchange more volatile. Consequently, the liquidity, market value and price volatility of ACI Notes that remain outstanding may be materially and adversely affected. Therefore, if your ACI Notes are not tendered and accepted in the applicable Exchange Offer, it may become more difficult for you to sell or transfer your unexchanged ACI Notes. Furthermore, it is expected that certain credit ratings on the ACI Notes will be withdrawn after the completion of the Exchange Offers, which could materially adversely affect the market price for each series of ACI Notes. ACI and Kroger cannot assure holders of the ACI Notes that existing rating agency ratings for the ACI Notes will be maintained, or that rating agencies will continue to rate the ACI Notes.

See “Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—The Proposed Amendments to the ACI Indentures will afford reduced protection to remaining holders of ACI Notes” and “Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—Kroger cannot assure holders of the ACI Notes that existing rating agency ratings for the ACI Notes will be maintained, or that rating agencies will continue to rate the ACI Notes.”

**Brokerage Fees and Commissions .....** No brokerage fees or commissions are payable by the holders of the ACI Notes to the Dealer Managers, the Exchange Agent, Kroger or ACI in connection with the Exchange Offers and Consent Solicitations. If a tendering holder handles the transaction through its broker, dealer, commercial bank, trust company or other institution, that holder may be required to pay brokerage fees or commissions.

**Certain U.S. Federal Income Tax**

Holders of ACI Notes should consider the material U.S. federal income

Considerations .....	tax consequences of the Exchange Offers and Consent Solicitations; please consult your tax advisor about the tax consequences to you of the exchange. For a discussion of certain U.S. federal income tax considerations of the Exchange Offers and Consent Solicitations, see “Certain U.S. Federal Income Tax Considerations.”
Use of Proceeds .....	None of Kroger or ACI will receive any cash proceeds from the Exchange Offers and Consent Solicitations. See “Use of Proceeds.”
Exchange Agent and Information Agent .....	Global Bondholder Services Corporation is serving as the exchange agent (the “Exchange Agent”) and the information agent (the “Information Agent”) in connection with the Exchange Offers and Consent Solicitations. The address, email address and telephone numbers of the Information and Exchange Agent are listed on the back cover of this offering memorandum and consent solicitation statement.
Dealer Managers and Consent Solicitation Agents .....	Citigroup Global Markets Inc. and Wells Fargo Securities, LLC are serving as the dealer managers for the Exchange Offers (the “Dealer Managers”) and the consent solicitation agents for the Consent Solicitations (the “Consent Solicitation Agents”). The address and telephone number of Citigroup Global Markets Inc. and Wells Fargo Securities, LLC are listed on the back cover page of this offering memorandum and consent solicitation statement.
No Recommendation .....	None of Kroger, the Albertsons Issuing Entities, the Dealer Managers, the Information and Exchange Agent, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee or the Kroger Trustee (as defined herein) makes any recommendation in connection with the Exchange Offers or Consent Solicitations as to whether any holder of ACI Notes should tender or refrain from tendering all or any portion of the principal amount of that holder’s ACI Notes (and in so doing, consent to the adoption of the Proposed Amendments to the ACI Indentures), and no one has been authorized by any of them to make such a recommendation.
Further Information .....	Questions or requests for assistance related to the Exchange Offers and Consent Solicitations or for additional copies of this offering memorandum and consent solicitation statement may be directed to the Information Agent at its telephone numbers and address listed on the back cover page of this offering memorandum and consent solicitation statement. You may also contact your broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Exchange Offers and Consent Solicitations. The contact information for Citigroup Global Markets Inc. and Wells Fargo Securities, LLC and the Exchange Agent is set forth on the back cover page of this offering memorandum and consent solicitation statement. See also “Where You Can Find More Information and Incorporation By Reference.”

## THE KROGER NOTES

*The following summary contains basic information about the Kroger Notes and is not intended to be complete. It does not contain all the information that is important to you. For a more complete understanding of the Kroger Notes, please refer to “Description of the Kroger Notes.”*

Issuer ..... The Kroger Co., an Ohio corporation

Securities Offered ..... Up to \$7,441,608,000 aggregate principal amount of notes, consisting of:

- up to \$750 million aggregate principal amount of the Kroger 3.250% 2026 Notes,
- up to \$600 million aggregate principal amount of the Kroger 7.500% 2026 Notes,
- up to \$1.350 billion aggregate principal amount of the Kroger 4.625% 2027 Notes,
- up to \$750 million aggregate principal amount of the Kroger 5.875% 2028 Notes,
- up to \$750 million aggregate principal amount of the Kroger 6.500% 2028 Notes,
- up to \$1.350 billion aggregate principal amount of the Kroger 3.500% 2029,
- up to \$1.0 billion aggregate principal amount of the Kroger 4.875% 2030 Notes,
- up to \$120.078 million aggregate principal amount of the Kroger 7.450% 2027 Notes,
- up to \$261.099 million aggregate principal amount of the Kroger 7.250% 2031 Notes,
- up to \$2.902 million aggregate principal amount of the Kroger 8.000% 2026 Notes,
- up to \$0.756 million aggregate principal amount of the Kroger 7.100% 2028 Notes,
- up to \$0.143 million aggregate principal amount of the Kroger 7.500% 2037 Notes,
- up to \$11.045 million aggregate principal amount of the Kroger 7.110% 2027 Notes,
- up to \$0.310 million aggregate principal amount of the Kroger 7.150% 2027 Notes,

- up to \$0.210 million aggregate principal amount of the Kroger 6.560% 2027 Notes,
- up to \$24.278 million aggregate principal amount of the Kroger 6.570% 2028 Notes,
- up to \$5.17 million aggregate principal amount of the Kroger 6.520% 2028 Notes,
- up to \$12 million aggregate principal amount of the Kroger 6.530% 2028 Notes,
- up to \$19.898 million aggregate principal amount of the Kroger 6.625% 2028 Notes,
- up to \$6 million aggregate principal amount of the Kroger 6.630% 2028 Notes,
- up to \$56.536 million aggregate principal amount of the Kroger 7.750% 2026 Notes,
- up to \$127.206 million aggregate principal amount of the Kroger 7.450% 2029 Notes,
- up to \$135.098 million aggregate principal amount of the Kroger 8.700% 2030 Notes, and
- up to \$108.879 million aggregate principal amount of the Kroger 8.000% 2031 Notes.

Interest Rates; Interest Payment Dates; Maturity Dates ..... Each new series of Kroger Notes will have the same interest rate, interest payment dates, maturity date, and redemption terms, if applicable, as the corresponding series of ACI Notes for which they are being offered in exchange.

The first interest payment on any Kroger Notes will include the accrued and unpaid interest on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; *provided* that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the principal amount of corresponding ACI Notes tendered for exchange if such holder tendered ACI Notes after the Early Participation Date and at or prior to the Expiration Date without validly delivering an Early Participation VOI Number corresponding to such ACI Notes. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.

<b>Interest Rates and Maturity Dates</b>	<b>Semi-Annual Interest Payment Dates</b>
Kroger 3.250% 2026 Notes due March 15, 2026 .....	March 15 and September 15
Kroger 7.500% 2026 Notes due March 15, 2026 .....	March 15 and September 15
Kroger 4.625% 2027 Notes due January 15, 2027 .....	January 15 and July 15
Kroger 5.875% 2028 Notes due February 15, 2028 .....	February 15 and August 15
Kroger 6.500% 2028 Notes due February 15, 2028 .....	February 15 and August 15
Kroger 3.500% 2029 Notes due March 15, 2029 .....	March 15 and September 15
Kroger 4.875% 2030 Notes due February 15, 2030 .....	February 15 and August 15
Kroger 7.450% 2027 Notes due September 15, 2027.....	March 15 and September 15
Kroger 7.250% 2031 Notes due February 1, 2031 .....	February 1 and August 1
Kroger 8.000% 2026 Notes due June 1, 2026 .....	June 1 and December 1
Kroger 7.100% 2028 Notes due March 20, 2028 .....	March 20 and September 20
Kroger 7.500% 2037 Notes due May 1, 2037 .....	May 1 and November 1
Kroger 7.110% 2027 Notes due July 22, 2027 .....	June 1 and December 1
Kroger 7.150% 2027 Notes due July 23, 2027 .....	June 1 and December 1
Kroger 6.560% 2027 Notes due July 26, 2027 .....	June 1 and December 1
Kroger 6.570% 2028 Notes due February 23, 2028 .....	June 1 and December 1
Kroger 6.520% 2028 Notes due April 10, 2028 .....	June 1 and December 1
Kroger 6.530% 2028 Notes due April 10, 2028 .....	June 1 and December 1
Kroger 6.625% 2028 Notes due June 1, 2028 .....	June 1 and December 1
Kroger 6.630% 2028 Notes due June 2, 2028 .....	June 1 and December 1
Kroger 7.750% 2026 Notes due June 15, 2026 .....	June 15 and December 15
Kroger 7.450% 2029 Notes due August 1, 2029 .....	February 1 and August 1
Kroger 8.700% 2030 Notes due May 1, 2030 .....	May 1 and November 1
Kroger 8.000% 2031 Notes due May 1, 2031 .....	May 1 and November 1
Optional Redemption.....	Each series of Kroger Notes will have the same redemption terms as the corresponding series of ACI Notes, if such series of ACI Notes is redeemable.
	For additional information, see “Description of the Kroger Notes—Optional Redemption.”
Certain Covenants.....	Kroger will issue the Kroger Notes under an indenture (the “Kroger Base Indenture”), dated as of June 25, 1999, among The Kroger Co., as issuer, and U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association (formerly known as Firststar Bank, N.A.), as trustee (the “Kroger Trustee”), as supplemented by a supplemental indenture to be entered into concurrently with the delivery of the Kroger Notes (the “Kroger Fifty-First Supplemental Indenture” and, together with the Kroger Base Indenture, the “Kroger Indenture”). The Kroger Indenture restricts Kroger’s ability to incur certain liens securing debt, enter into certain sale and lease-back transactions and sell all or substantially all of its assets or merge or consolidate with or into other companies. Each covenant is subject to a number of important exceptions, limitations and qualifications that are described under “Description of the Kroger Notes—Certain Covenants.”
Change of Control – Redemption at the Option of the Holders .....	A Change of Control Triggering Event will be deemed to occur if both a Change of Control and a Below Investment Grade Rating Event (each as defined under “Description of the Kroger Notes—Change of Control Triggering Event”) occur with respect to each series of notes being offered, in which case, unless we have exercised our right to redeem such series of notes, as applicable, as described under “Description of the Notes—Optional Redemption,” we will be

required to make an offer to repurchase all of such series of notes, at a price equal to 101% of the principal amount of each such series of notes, plus any accrued and unpaid interest to, but excluding, the date of repurchase. See “Description of the Kroger Notes—Change of Control Triggering Event.”

Guarantees ..... Kroger Notes are not expected to be guaranteed by ACI or any other subsidiary of Kroger or ACI (subject to the Cross-Guarantee Scenario).

Ranking ..... Each series of the Kroger Notes will be Kroger’s unsecured and unsubordinated debt and will be:

- equal in right of payment with all of Kroger’s other existing and future unsecured senior obligations (including each other series of the Kroger Notes, all existing notes issued by Kroger, the Term Loan Facilities and the revolving credit facility);
- effectively subordinated to any future secured indebtedness of Kroger, to the extent of the assets securing such indebtedness; and
- structurally subordinated to all existing and any future obligations of Kroger’s subsidiaries that do not guarantee the Kroger Notes.

Following consummation of the Exchange Offers, none of ACI, nor any of its subsidiaries are expected to be an obligor of the Kroger Notes (subject to the Cross-Guarantee Scenario).

As of May 25, 2024, after giving pro forma effect to the Transactions (assuming all of the outstanding ACI Notes are tendered and accepted in the Exchange Offers for \$1,000 principal amount of new Kroger Notes for each \$1,000 principal amount of ACI Notes), Kroger would have had approximately \$32.4 billion of outstanding indebtedness.

To the extent ACI Notes are not tendered in the Exchange Offers (and subject to the Cross-Guarantee Scenario), the aggregate principal amount of such ACI Notes may be structurally senior to the Kroger Notes and the other indebtedness of Kroger with respect to the assets of ACI and certain of its subsidiaries following consummation of the Merger. As of June 15, 2024, ACI and its subsidiaries had approximately \$26.1 billion in assets.

See “Risk Factors—Risks Relating to the Kroger Notes--The Kroger Notes are expected to be structurally subordinated to all the obligations of Kroger’s subsidiaries and its ability to service its debt is dependent on the performance of its subsidiaries” and “Description of the Exchange Offers and Consent Solicitations—Treatment of ACI Notes Not Tendered in the Exchange Offers and Consent Solicitations.”

Form and Denomination ..... The Kroger Notes of each series will be issued in fully registered form in denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof.

DTC Eligibility .....	The Kroger Notes of each series will be represented by global certificates deposited with, or on behalf of, DTC or its nominee. See “Book-Entry Issuance.”
Registration Rights .....	Kroger will enter into the Registration Rights Agreement pursuant to which Kroger will agree to file an exchange offer registration statement with the SEC to allow holders to exchange Kroger Notes for the same principal amount of exchange notes, with substantially identical terms, except that the exchange notes will generally be freely transferable under the Securities Act. Under certain circumstances, Kroger has agreed to file a shelf registration statement to cover resales of the Kroger Notes. If Kroger fails to satisfy these obligations, Kroger will be required to pay additional interest on the Kroger Notes. See “Registration Rights.”
Transfer Restrictions.....	Kroger has not registered the Kroger Notes offered hereby under the Securities Act, and the Kroger Notes will be subject to certain restrictions on transfer until registered. See “Transfer Restrictions” and “Registration Rights.”
No Trading Market .....	Each series of Kroger Notes constitutes a new issue of securities, for which there is no existing trading market. In addition, Kroger does not intend to apply to list any of the Kroger Notes on any securities exchange or for quotation on any automated quotation system. Kroger cannot provide you with any assurance regarding whether trading markets for any series of the Kroger Notes will develop, the ability of holders of the Kroger Notes to sell their notes or the prices at which holders may be able to sell their notes. If no active trading markets develop, you may be unable to resell the Kroger Notes at their fair market value or at all.
Governing Law .....	The Kroger Indenture and the Kroger Notes will be governed by, and construed in accordance with, the laws of the State of New York.
Trustee, Paying Agent and Security Registrar .....	U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association will be the trustee with respect to the Kroger Notes and maintains various commercial and investment banking relationships with Kroger and its affiliates. The Kroger Trustee will initially act as paying agent and security registrar for the Kroger Notes, acting through its corporate trust office currently located at 100 Wall Street, 16th Floor, New York, NY 10005.
Risk Factors .....	For certain risks related to the Kroger Notes and the Exchange Offers and Consent Solicitations, please read the section entitled “Risk Factors” in this offering memorandum and consent solicitation statement.

## RISK FACTORS

*Investing in the Kroger Notes involves risks. You should consider carefully the information set forth in this section and all the other information provided to you or incorporated by reference in this offering memorandum and consent solicitation statement before deciding whether to participate in the Exchange Offers and Consent Solicitations. You also should read and consider the risk factors contained in (i) Part I, Item 1A, "Risk Factors" in each of Kroger's and ACI's Annual Report on Form 10-K for the year ended February 3, 2024 and February 24, 2024, respectively, and (ii) subsequent filings of Kroger and ACI with the SEC, each of which is on file or will be filed with the SEC and is incorporated by reference into this offering memorandum and consent solicitation statement.*

### Risks Related to the Merger

*The ability to complete the Merger is subject to the receipt of consents and approvals from government entities, which may impose conditions that could cause Kroger or ACI to abandon the Merger.*

Completion of the Merger is conditioned upon, among other things, the expiration or termination of the required waiting period (and any extension thereof) applicable to the Merger under the HSR Act, and any voluntary agreement with the FTC, or the Department of Justice Antitrust Division ("DOJ"). In deciding whether to grant antitrust approvals, the FTC or DOJ and other state regulatory agencies will consider the effect of the Merger on competition and will likely condition their approval of the Merger on Kroger and/or ACI's agreement to various requirements, limitations and divestitures or impose restrictions on the conduct of the combined entity's business following the Merger. The Company cannot provide any assurance that Kroger or ACI will obtain the necessary approvals to complete the Merger. In addition, these requirements, limitations, divestitures, or restrictions may result in the delay or abandonment of the Merger.

On February 26, 2024, the FTC instituted the FTC Administrative Proceeding to prohibit the Merger. Simultaneously, the FTC (joined by nine states) filed the FTC Federal Litigation in the United States District Court for the District of Oregon requesting a preliminary injunction to block the Merger. On January 15, 2024 and February 14, 2024, the attorneys general of Washington and Colorado, respectively, filed suit in their respective state courts, also seeking to enjoin the Merger. In the FTC Federal Litigation, the Company and ACI have stipulated to a temporary restraining order that prevents the Merger from closing until after 11:59 PM Eastern Time on the fifth business day after the court rules on the FTC's motion for a preliminary injunction or until after the date set by the court, whichever is later. On July 12, 2024, the FTC administrative law judge recessed the evidentiary portion of the FTC Administrative Proceeding until after the conclusion of the FTC Federal Litigation. A preliminary injunction hearing in the FTC Federal Litigation is set to begin on August 26, 2024. In the Colorado case, (x) the court has scheduled a permanent injunction hearing to begin on September 30, 2024 and (y) Kroger and ACI have stipulated to a preliminary injunction that prevents the Merger from closing until five business days after the Colorado court rules on Colorado attorney general's request for a permanent injunction (in the event the Colorado court denies such request). In the Washington case, (x) a trial on the Washington attorney general's request for a permanent injunction is scheduled to begin on September 16, 2024 and (y) Kroger and ACI have committed that they will not close the Merger until five days after the Washington court rules on the request for a permanent injunction (so long as such ruling occurs on or before September 26, 2024). In addition to these governmental actions, private plaintiffs have filed suit in the United States District Court for the Northern District of California also seeking to enjoin the transaction. That case is stayed pending resolution of the FTC's motion for a preliminary injunction in the FTC Federal Litigation.

Notwithstanding the foregoing, the DOJ or any other state regulatory agency could take further or other actions under the antitrust laws as they deem necessary or desirable in the public interest, including seeking to enjoin the completion of the Merger, seeking additional divestiture of assets of Kroger and/or ACI, or requiring Kroger or ACI to agree to other remedies or requirements. The Company cannot be certain that Kroger or ACI will prevail in the face of the legal challenges to the Merger. Failure to prevail in any legal challenge to the Merger may result in the delay or abandonment of the Merger.

***The effect and terms and conditions of any potential divestitures, including those that may be imposed by regulators as a condition to the approval of the proposed transaction, may have material adverse effects on the Merger.***

In connection with obtaining the requisite regulatory clearance necessary to consummate the transaction, the Company and ACI have agreed to make store divestitures. On September 8, 2023, the Company and ACI announced that they entered into a definitive agreement with C&S for the sale of 413 stores, as well as the QFC, Mariano's and Carrs banners, the exclusive licensing rights to the Albertsons banner in Arizona, California, Colorado and Wyoming, eight distribution centers, two offices and certain other assets in connection with the Merger. In addition, Kroger will divest the Debi Lilly Design, Primo Taglio, Open Nature, ReadyMeals and Waterfront Bistro private label brands. On April 22, 2024, the Company and ACI announced they had entered into an amended and restated purchase agreement with respect to their definitive agreement with C&S which provided for the sale of an additional 166 stores, as well as the addition of the Haggen banner, and revision of the exclusive licensing rights such that in Arizona and Colorado, the exclusive licensing rights are to the Safeway banner rather than the Albertsons banner, with the exclusive licensing of the Albertsons banner in California and Wyoming remaining unchanged. In addition, the amended and restated agreement includes increased distribution capacity of C&S through a combination of different and larger distribution facilities, as well as expanded transition services agreements to support C&S and the addition of one dairy facility. The amended and restated agreement also provides C&S with access to the Signature and O Organics private label brands and expands the corporate and office infrastructure provided to C&S. All fuel centers and pharmacies associated with the divested stores will remain with the stores. The stores will be divested by the Company following the closing of the Merger. Any change in the expected number of stores to be divested or other changes to the stores to be divested could materially impact the pro forma financial information incorporated by reference herein. Such divestitures or any additional required divestitures may have material adverse effects on the Merger. If Kroger and/or ACI is required to divest additional assets or businesses, there can be no assurance that it will be able to negotiate such divestitures expeditiously or on favorable terms or that regulators will approve the terms of such divestitures. Kroger can provide no assurance that the effect and terms and conditions of any potential divestitures will not have material adverse effects or otherwise result in abandonment of the Merger.

***The unaudited pro forma condensed combined financial information reflecting the Merger incorporated by reference into this offering memorandum and consent solicitation statement is based on assumptions and is subject to change based on various factors.***

Kroger and ACI have no prior history as a combined company and their assets and operations have not been managed on a combined basis. As a result, the unaudited pro forma condensed combined financial information, which was prepared in accordance with Article 11 of Regulation S-X and historical financial statements of the Kroger and ACI businesses are presented for informational purposes only and are not necessarily indicative of the financial position or results of operations that would have actually occurred had the proposed Merger, the Divestiture and related financings been completed at or as of the dates indicated, nor is it indicative of the future operating results or financial position of the combined company if the Proposed Merger, the Divestiture and related financings are consummated.

The unaudited pro forma condensed combined financial information of the Company does not reflect future charges or future events resulting from the Merger that may occur, including restructuring activities or other costs related to the integration of the Kroger and ACI businesses, and does not consider potential impacts of current market conditions on revenues, expense efficiencies or asset dispositions. The unaudited pro forma condensed combined financial information incorporated by reference into this offering memorandum and consent solicitation statement is based in part on certain assumptions regarding the Merger, including the assumption that 579 stores will be divested in connection with the Divestiture and the related financings. The Company believes the assumptions underlying such unaudited pro forma condensed combined financial information are reasonable under the circumstances, however, such assumptions and estimates are preliminary and may not prove to be accurate over time. In addition, if and to the extent there are any further changes to the Divestiture, or additional divestitures are

required, or changes in market conditions affecting the financings, including the results of the Exchange Offers, then the pro forma condensed combined financial information and the future operating results or financial position of the combined company may be impacted, and such impact may be material. Kroger has no obligation to update the pro forma condensed financial information incorporated by reference herein for any subsequent event and may not do so.

As a result, investors should not place any undue reliance on the unaudited pro forma financial information, and our actual results following the completion of the Merger, Divestiture and related financings may differ from those that are anticipated.

***The Merger creates incremental business, regulatory and reputational risks.***

The Merger and the Divestiture entail important risks, including, among others: the expected timing and likelihood of completion of the Merger and the Divestiture, including the timing, receipt and terms and conditions of any required governmental and regulatory clearance of the Merger and the Divestiture, and/or resolution of pending litigation challenging the Merger; the effect of the Divestiture; the occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement or amended and restated agreement with C&S; the outcome of any legal proceedings that have been instituted and may in the future be instituted against the parties and others following announcement of the Merger or the Divestiture; the inability to consummate the Merger or the Divestiture due to the failure to satisfy other conditions to complete the Merger or the Divestiture; risks that the Merger or the Divestiture disrupts Kroger's or ACI's current plans and operations; the ability to identify and recognize, including on the expected timeline, the anticipated total shareholder return, revenue and EBITDA expectations; the amount of the costs, fees, expenses and charges related to the Merger or the Divestiture; the risk that transaction and/or integration costs are greater than expected, including as a result of conditions regulators put on any approvals of the transaction; the potential effect of the announcement and/or consummation of the Merger or the Divestiture on relationships, including with associates, suppliers and competitors; Kroger's ability to maintain an investment grade credit rating; the risk that management's attention is diverted from other matters; risks related to the potential effect of general economic, political and market factors, including changes in the financial markets as a result of inflation or measures implemented to address inflation, and any epidemic, pandemic or disease outbreaks, on us, ACI or the Merger or the Divestiture; the risk of adverse effects on the market price of Kroger's or ACI's securities or on Kroger's or ACI's operating results for any reason; the occurrence of any event, change or other circumstances that could give rise to the termination of the Merger Agreement or amended and restated divestiture agreement with C&S; and other risks described in our filings with the SEC.

**Risks Related to the Exchange Offers and Consent Solicitations**

***The Proposed Amendments to the ACI Indentures will afford reduced protection to remaining holders of ACI Notes.***

If the Proposed Amendments to an ACI Indenture are adopted, the covenants and certain other terms of all series of ACI Notes issued thereunder will be materially less restrictive and will afford significantly reduced protection to holders of those series compared to the covenants and other provisions currently contained in the ACI Indenture governing those series of ACI Notes.

The Proposed Amendments to the ACI Indentures would, among other things:

- eliminate the reporting covenant under the ACI Indentures, so that holders of ACI Notes will no longer receive annual, quarterly and other reports from ACI;
- eliminate any restrictions on the ACI Issuers and ASC under the applicable ACI Indentures from consolidating with or merging into any other person or conveying, transferring or leasing all or any of its properties and assets to any person (as may be defined in such ACI Indentures);

- eliminate the covenant requiring the ACI Issuers to offer to repurchase the ACI Notes upon certain specified change of control triggering events, as applicable;
- eliminate the covenant prohibiting the ACI Issuers and its subsidiaries from incurring certain liens securing indebtedness;
- eliminate the covenant requiring all wholly-owned domestic restricted subsidiaries of ACI that guarantee certain other debt to also guarantee the ACI Notes;
- eliminate the covenants restricting the ACI Issuers and ASL from incurring certain indebtedness and issuing disqualified and preferred stock, making certain restricted payments, selling assets without making an offer to holders of ACI Notes for the ACI Issuers to repurchase such notes and entering into transactions with affiliates, as applicable;
- eliminate the covenants restricting Safeway and NALP from entering into certain sale and lease-back transactions under the Safeway Indenture and NALP Indenture, respectively;
- eliminate the covenants in the Safeway Indenture limiting the ability for Safeway to take the benefit of stay, extension or usury laws for the performance of covenants in the Safeway Indenture, preserve full corporate existence of Safeway, and pay prior to delinquency all taxes;
- eliminate the covenants in the NALP Indenture requiring NALP to deposit sums in trust if engaging a paying agent to pay holders, maintain properties, and to pay prior to delinquency all taxes;
- eliminate the covenants in the ASC Indenture with certain requirements as to the vacancy of the office of the trustee, as to a paying agent if one is so appointed and to publish certain notices in Luxembourg; and
- eliminate certain of the events which may lead to an “Event of Default” under the ACI Indentures (other than for the failure to pay principal, premium or interest).

If the Proposed Amendments become operative with respect to an ACI Indenture, each non-exchanging holder of a series of ACI Notes issued under that ACI Indenture will be bound by the Proposed Amendments even if that holder did not consent to the Proposed Amendments. These amendments will permit Kroger or ACI to take certain actions previously prohibited that could increase the credit risk with respect to ACI and might adversely affect the liquidity, market price and price volatility of any applicable series of ACI Notes or otherwise be adverse to the interests of the holders of the ACI Notes of such series. See “The Proposed Amendments.”

***Even if the Proposed Amendments are not adopted with respect to a series of ACI Notes and such ACI Notes remain outstanding, holders of such ACI Notes may not be afforded the same protections under the relevant ACI Indenture as prior to the Merger.***

Upon closing of the Merger, Kroger expects to repay and terminate ACI’s existing credit facility and, as a result of such repayment and termination, Kroger expects to release all of the guarantees of the ACI Entities of the ACI 2026 Indenture Notes, ACI March 2026 Indenture Notes, ACI 2027 Indenture Notes, ACI 2028 Indenture Notes, ACI February 2028 Indenture Notes, ACI 2029 Indenture Notes and the ACI 2030 Indenture Notes. Therefore, following the consummation of the Exchange Offers, none of Kroger or any of its subsidiaries, other than the Albertsons Issuing Entities, each, insofar as applicable, is expected to be an obligor of any such ACI Notes that are not exchanged in the Exchange Offers, and as a result, holders of such ACI Notes will have no claims against the assets of Kroger and its subsidiaries other than the Albertsons Issuing Entities, each, in so far as applicable (subject to the Cross-Guarantee Scenario).

If requisite consents to adopt the Proposed Amendments are not received with respect to any of the ACI 2026 Indenture Notes, ACI March 2026 Indenture Notes, ACI 2027 Indenture Notes, ACI 2028 Indenture Notes, ACI February 2028 Indenture Notes, ACI 2029 Indenture Notes and the ACI 2030 Indenture Notes, Kroger may

seek an investment grade rating on such ACI Notes by at least two nationally recognized statistical rating organizations which would allow Kroger to terminate substantially all of the restrictive covenants under each applicable ACI Indenture pursuant to the covenant termination provisions therein. If successful, such covenant termination would be effective for so long as such ACI Notes remain outstanding, regardless of any subsequent downgrades in the ratings of such ACI Notes, and any Eligible Holder that does not tender ACI Notes of the relevant series would not have the benefit of such restrictive covenants following the consummation of the Merger. In connection with the covenant termination, Kroger may elect to provide guarantees of the applicable series of ACI Notes. Furthermore, if Kroger determines to guarantee any series of ACI Notes following the closing of the Merger, Kroger may cause the obligors with respect to any such ACI Notes to guarantee Kroger's existing and future senior indebtedness, including the Kroger Notes, any of Kroger's existing notes, the Term Loan Facilities and the revolving credit facility, and, thus, any such ACI Notes would effectively rank equal in right of payment with the new Kroger Notes and Kroger's existing and future senior indebtedness, with respect to the assets of Kroger and the obligors under such ACI Notes.

***You may not revoke your consent to the Proposed Amendments at or after the Consent Revocation Deadline.***

Consents to the Proposed Amendments may be revoked at any time prior to the Consent Revocation Deadline, but may not be revoked on or after the Consent Revocation Deadline. Consents may be revoked only by validly withdrawing the associated tendered ACI Notes. A valid withdrawal of tendered ACI Notes of a series prior to the Consent Revocation Deadline will also constitute the revocation of the related consent to the Proposed Amendments to the corresponding ACI Indenture and the related ACI Notes for that series. Tendered ACI Notes may be withdrawn at any time before the Expiration Date; however, a valid withdrawal of the tendered ACI Notes at or after the Consent Revocation Deadline will not be deemed a revocation of the related consents and such consents will continue to be deemed delivered.

***The liquidity of the ACI Notes that are not exchanged will be reduced.***

The trading market for unexchanged ACI Notes could become more limited and could cease to exist due to the reduction in the amount of the ACI Notes held by holders other than Kroger upon consummation of the Exchange Offers, and Kroger intends to cancel any tendered ACI Notes that are accepted in the Exchange Offers following completion of the Exchange Offers. A more limited trading market might adversely affect the liquidity, market price and price volatility of these securities. If a market for unexchanged ACI Notes exists or develops, those securities may trade at a discount to the price at which the securities would trade if the amount outstanding were not reduced, depending on prevailing interest rates, the market for similar securities and other factors. However, there can be no assurance that an active market in the unexchanged ACI Notes will exist, develop or be maintained or as to the prices at which the unexchanged ACI Notes may be traded. In addition, it is expected that certain credit ratings on the unexchanged ACI Notes will be withdrawn after the completion of the Exchange Offers, which could further materially adversely affect the market price for each series of unexchanged ACI Notes.

***The Exchange Offers and Consent Solicitations may be cancelled or delayed.***

The consummation of the Exchange Offers and Consent Solicitations are subject to, and conditional upon, among other things, the receipt of requisite consents to the Proposed Amendments. The Proposed Amendments with respect to certain series of the ACI Notes under the ACI Indentures requires the consent of the holders of not less than a majority in principal amount of such series of the ACI Notes outstanding and, with respect to the NALP Indenture Notes issued under the NALP Indenture, requires the consent of holders of not less than 66 2/3% in principal amount of such series of NALP Indenture Notes outstanding under the NALP Indenture. The Exchange Offers and Consent Solicitations are also subject to the consummation of the Merger and to the condition that nothing has occurred or may occur that would or might, in Kroger's judgment, be expected to prohibit, prevent, restrict or delay the Exchange Offers and Consent Solicitations or impair Kroger from realizing the anticipated benefits of the Exchange Offers and Consent Solicitations (among other conditions). In addition, either Kroger or ACI may terminate the Merger Agreement under certain circumstances, including if the Merger is not completed by the Outside Date, determined pursuant to the Merger Agreement. The expected timing of the consummation of the Merger is unclear and subject to a number of regulatory obstacles, including the administrative and court proceedings instituted by the FTC and various states, as further described herein. While Kroger and ACI anticipate being able to close the Merger during the fourth quarter of calendar year 2024, there can be no assurance that the

Merger will be consummated. Even if each of the Exchange Offers and Consent Solicitations is completed, the Exchange Offers and Consent Solicitations may not be completed on the schedule described in this offering memorandum and consent solicitation statement.

***Kroger cannot assure holders of the ACI Notes that existing rating agency ratings for the ACI Notes will be maintained, or that rating agencies will continue to rate the ACI Notes.***

We cannot assure holders of the ACI Notes that, as a result of the Exchange Offers and Consent Solicitations or otherwise, one or more rating agencies would not take action to downgrade or negatively comment upon their respective ratings on the ACI Notes. Any downgrade or negative comment may adversely affect the market price of the ACI Notes. In addition, Kroger cannot assure holders of the ACI Notes that such rating agencies will continue to provide ratings for the ACI Notes, including if the remaining aggregate principal amount of ACI Notes outstanding is deemed to be an inconsequential amount.

***The consideration to be received in the Exchange Offers does not reflect any valuation of the ACI Notes or the Kroger Notes and is subject to market volatility.***

Kroger has not made a determination that the consideration to be received in the Exchange Offers represents a fair valuation of either the ACI Notes or the Kroger Notes. Kroger has not obtained a fairness opinion from any financial advisor about the fairness to Kroger or to you of the consideration to be received by Eligible Holders who tender their ACI Notes.

None of Kroger, the Albertsons Issuing Entities, the Dealer Managers, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee, the Kroger Trustee, the Exchange Agent, or the Information Agent, or any affiliate of any of them, makes any recommendation as to whether Eligible Holders of the ACI Notes should exchange their ACI Notes for Kroger Notes and cash in response to the Exchange Offers and Consent Solicitations.

***Late deliveries of ACI Notes or any other failure to comply with the terms and conditions of the Exchange Offers and Consent Solicitations could prevent a holder from exchanging its ACI Notes and from receiving the Consent Payment, Early Participation Premium and/or the Exchange Consideration.***

Holders of ACI Notes are responsible for complying with all the procedures of the Exchange Offers and Consent Solicitations. The issuance of Kroger Notes in exchange for ACI Notes will only occur upon proper completion of the procedures described in this offering memorandum and consent solicitation statement under “Description of the Exchange Offers and Consent Solicitations.” Therefore, holders of ACI Notes who wish to exchange such ACI Notes for Kroger Notes should allow sufficient time for timely completion of the exchange procedures. Additionally, Eligible Holders who validly tender ACI Notes after the Early Participation Date but at or prior to the Expiration Date without a corresponding Early Participation VOI Number eligible for the Early Participation Premium as described herein will only receive the Exchange Consideration if such ACI Notes are accepted for exchange. An Eligible Holder, however, who acquires ACI Notes after the Early Participation Date with a corresponding Early Participation VOI Number and validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. If any such Eligible Holder wishes to withdraw ACI Notes from the tender that are evidenced by an Early Participation VOI Number, as described above, after the Early Participation Date and subsequently re-tenders or transfers such ACI notes, it will need to contact its broker or custodian to obtain such Early Participation VOI Number to be eligible to receive or transfer the right to receive the Early Participation Premium with respect to the aggregate principal amount of ACI Notes evidenced by such Early Participation VOI Number. A holder who acquires ACI Notes after the Early Participation Date is solely responsible for acquiring the related Early Participation VOI Number. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tender corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information. See “Description of the Exchange Offers and the Consent Solicitations—Exchange Consideration.” Neither Kroger nor the Exchange Agent is obligated to extend any or all of the Exchange Offers and Consent Solicitations or notify you

of any failure to follow the proper procedures. Eligible Holders of ACI Notes who validly tender and hold such notes at or prior to the Early Participation Date and beneficially own such ACI Notes at the Expiration Date may receive Total Consideration. In addition to the foregoing, trading and settlement of the ACI Notes during the Exchange Offers may be impacted by the mechanics of the Exchange Offers, and Eligible Holders of ACI Notes should contact their broker or custodian to resolve any such impacts.

***Kroger may repurchase any ACI Notes that are not tendered in the Exchange Offers on terms that are more favorable to the remaining holders of the ACI Notes than the terms of the Exchange Offers.***

Kroger or its affiliates may, to the extent permitted by applicable law and the applicable indentures, after the Expiration Date of the Exchange Offers, acquire ACI Notes that are not tendered and accepted in the Exchange Offers and Consent Solicitations through open market purchases, privately negotiated transactions, tender offers, exchange offers, redemption or otherwise, upon such terms and at such prices as Kroger may determine, which with respect to the ACI Notes may be more or less favorable (including different consideration) to holders than the terms of the Exchange Offers. There can be no assurance as to which, if any, of these alternatives or combinations thereof Kroger or its affiliates may choose to pursue in the future.

***Upon the consummation of the Merger and the Exchange Offers, neither Kroger nor ACI will be required to publicly file or otherwise provide holders of the unexchanged ACI Notes with information of ACI.***

Upon the consummation of the Merger and the Exchange Offers, ACI will no longer be a publicly traded company and Kroger will be its direct parent. As a result, ACI will no longer be required to file periodic reports or other information with the SEC. Furthermore, the covenants in the ACI Indentures governing certain of the ACI Notes that require ACI to file periodic reports or other information with the SEC or the ACI Trustee will be eliminated in connection with the Proposed Amendments. Even if the requisite consents to adopt the Proposed Amendments are not received and the Merger is consummated, Kroger will have no obligation to provide holders of the unexchanged ACI Notes with information of ACI.

### **Risks Related to the Kroger Notes**

***Kroger's indebtedness could adversely affect it by reducing its flexibility to respond to changing business and economic conditions and increasing its borrowing costs.***

As of May 25, 2024, after giving pro forma effect to the Transactions (assuming all of the outstanding ACI Notes are tendered and accepted in the Exchange Offer for \$1,000 principal amount of new Kroger Notes for each \$1,000 principal amount of ACI Notes), Kroger would have had approximately \$32.4 billion of outstanding indebtedness, including finance leases and the current portion thereof. As of May 25, 2024, Kroger maintained a \$2.75 billion (with the ability to increase by up to \$1.25 billion) unsecured revolving credit facility that terminates, unless extended, on July 6, 2026. Outstanding borrowings under the existing revolving credit facility and commercial paper borrowings, and certain outstanding letters of credit, reduce funds available under the existing revolving credit facility. As of May 25, 2024, Kroger had no outstanding commercial paper and no borrowings under the credit facility. The outstanding letters of credit that reduce the funds available under Kroger's existing revolving credit facility totaled \$2.0 million as of May 25, 2024. In August 2024, the Company announced it intends to enter into a new unsecured revolving credit facility with certain lenders pursuant to which the lenders would commit to provide a new \$5.0 billion unsecured revolving credit facility to replace the Company's existing revolving credit facility. See "Summary—Transactions" for more information.

In connection with the Merger Agreement, on October 13, 2022, the Company entered into a commitment letter with certain lenders pursuant to which the lenders have committed to provide a \$17.4 billion bridge facility. The commitments under the bridge facility are intended to be drawn to fund a portion of the cash consideration for the Merger, only to the extent the Company does not arrange for alternative financing prior to closing. As alternative financing for the Merger is secured, the commitments with respect to the bridge facility under the commitment letter will be reduced.

On November 9, 2022, the Company entered into a term loan credit agreement with certain lenders pursuant to which the lenders committed to provide, contingent upon the completion of the Merger and certain other customary conditions to funding, \$4.75 billion of borrowings under the Term Loan Facilities to pay a portion of the consideration and other amounts payable in connection with the Merger. The entry into the term loan credit agreement reduced the bridge facility commitments by \$4.75 billion to \$12.65 billion. On April 12, 2024, the Company elected to further reduce the bridge facility commitment by \$2.0 billion to \$10.65 billion. The Company expects to fund the balance of the cash consideration for the Merger, and reduce the remaining commitments under the bridge facility, with cash on hand, senior notes issuances, and, if necessary, borrowings under its commercial paper program or revolving credit facility.

This indebtedness could reduce Kroger's ability to obtain additional financing for working capital, mergers and acquisitions or other purposes and could make it vulnerable to future economic downturns as well as competitive pressures. If debt markets do not permit us to refinance certain maturing debt, we may be required to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness. Changes in our credit ratings, or in the interest rate environment, could have an adverse effect on our financing costs and structure.

Kroger believes that it will have sufficient funds from all sources to meet its needs over the next several years. Kroger cannot assure you, however, that its business will generate cash flow at or above current levels. If Kroger is unable to generate sufficient cash flow from operations in the future to pay its debt and make necessary investments, Kroger will be required to:

- refinance all or a portion of our existing debt;
- seek new borrowings;
- forego strategic opportunities; or
- delay, scale back or eliminate some aspects of our operations.

If necessary, any of these actions could have a material negative impact on Kroger's business, financial condition or results of operations.

Despite the Company's current level of indebtedness, the Company and its subsidiaries may be able to incur significant additional indebtedness, including secured indebtedness, in the future. If new indebtedness is incurred, the related risks that the Company and its subsidiaries face would be increased, and the Company may not be able to meet all its debt obligations, including the repayment of the Kroger Notes or ACI Notes, in whole or in part.

In addition, the condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future, which could have an adverse effect on the market prices of the Kroger Notes.

***The Kroger Notes are expected to be structurally subordinated to all the obligations of Kroger's subsidiaries and its ability to service its debt is dependent on the performance of its subsidiaries.***

The Kroger Notes are expected to be structurally subordinated in right of payment to all existing and future indebtedness and other liabilities, including trade payables and other accrued rebates and liabilities, of Kroger's subsidiaries, including ACI and its subsidiaries following the Merger (subject to the Cross-Guarantee Scenario).

Kroger and its subsidiaries may incur substantial additional indebtedness, including secured indebtedness, in the future. The terms of the Kroger Indenture generally do not restrict Kroger from doing so. In addition, the Kroger Indenture will allow Kroger to issue additional notes under certain circumstances. Although the Kroger Indenture places some limitations on Kroger's ability and the ability of its subsidiaries to create liens securing indebtedness, there are significant exceptions to these limitations that will allow Kroger and its subsidiaries to secure significant amounts of indebtedness without equally and ratably securing the Kroger Notes. If Kroger or its subsidiaries incur secured indebtedness and such secured indebtedness is either accelerated or becomes subject to a bankruptcy, liquidation or reorganization, Kroger and its subsidiaries' assets would be used to satisfy obligations with respect to the indebtedness secured thereby before any payment could be made on the Kroger Notes that are not

similarly secured. Subject to certain limitations relating to creation of liens, the Kroger Indenture also does not restrict Kroger's subsidiaries from incurring additional debt, which would be structurally senior to the Kroger Notes if such subsidiary does not guarantee the Kroger Notes. In addition, the Kroger Indenture will not prevent Kroger or its subsidiaries from incurring other liabilities that do not constitute indebtedness.

In addition, upon consummation of the Merger, ACI will become Kroger's wholly owned subsidiary and the Kroger Notes are expected to be structurally subordinated in right of payment to the ACI Notes that are not exchanged in the Exchange Offers with respect to the assets of the ACI Issuers, ASL and ASC and each of their subsidiaries (subject to the Cross-Guarantee Scenario). Upon closing of the Merger, Kroger expects to repay and terminate ACI's existing credit facility and, as a result of such repayment and termination, Kroger expects to release all of the guarantees of the ACI Entities of the ACI 2026 Indenture Notes, ACI March 2026 Indenture Notes, ACI 2027 Indenture Notes, ACI 2028 Indenture Notes, ACI February 2028 Indenture Notes, ACI 2029 Indenture Notes and the ACI 2030 Indenture Notes. Therefore, following the consummation of the Exchange Offers, none of Kroger or any of its subsidiaries, other than the Albertsons Issuing Entities, each, insofar as applicable, is expected to be an obligor of any such ACI Notes that are not exchanged in the Exchange Offers, and as a result, holders of such ACI Notes will have no claims against the assets of Kroger and its subsidiaries other than the Albertsons Issuing Entities, each, in so far as applicable (subject to the Cross-Guarantee Scenario). As of June 15, 2024, ACI and its subsidiaries had approximately \$26.1 billion in assets.

Depending on the results of the Exchange Offers and Consent Solicitations, Kroger may provide guarantees to all or a portion of the ACI Notes that remain outstanding following consummation of the Exchange Offers and cause the obligors under such ACI Notes to guarantee the Kroger Notes and Kroger's other indebtedness, including the Term Loan Facilities, the revolving credit facility and Kroger's existing and future senior notes. In such event, the Kroger Notes and Kroger's other indebtedness would effectively rank equal in right of payment with any ACI Notes that are not exchanged in the Exchange Offers with respect to the assets of Kroger and such obligors of the ACI Notes. The foregoing scenario is referred to herein as the "Cross-Guarantee Scenario." See "Description of the Exchange Offers and Consent Solicitations—Treatment of ACI Notes Not Tendered in the Exchange Offers and Consent Solicitations."

As a result of the foregoing, the Kroger Notes are expected to be exclusively obligations of Kroger. Since Kroger conducts a significant portion of its operations through its subsidiaries, its cash flow and its consequent ability to service its debt, including the Kroger Notes, depends in part upon the earnings of its subsidiaries and the distribution of those earnings, or upon loans or other payments of funds by those subsidiaries, to Kroger. The payment of dividends and the making of loans and advances to Kroger by its subsidiaries may be subject to statutory or contractual restrictions, may depend upon the earnings of those subsidiaries and may be subject to various business considerations.

***The Kroger Notes will be unsecured and therefore will be effectively subordinated to any secured debt Kroger may incur in the future.***

The Kroger Notes will not be secured by any of Kroger's assets or those of its subsidiaries. As a result, the Kroger Notes will be effectively subordinated to any secured debt Kroger may incur to the extent of the value of the assets securing such debt, including capital lease obligations. In any liquidation, dissolution, bankruptcy or other similar proceeding, the holders of Kroger secured debt may assert rights against the secured assets in order to receive full payment of their debt before the assets may be used to pay the holders of the Kroger Notes.

***Kroger's sources of liquidity are dependent upon our lenders honoring their commitments.***

As of May 25, 2024, Kroger's \$2.75 billion committed revolving credit facility, maturing on July 6, 2026, remained available. Letters of credit totaling \$2.0 million as of May 25, 2024 reduced amounts available under the existing revolving credit facility. In addition, as of April 12, 2024, \$10.65 billion remained available under the bridge facility for financing the Merger. Kroger's liquidity could be affected if its committed lenders are unable or unwilling to honor their contractual obligations to Kroger. See "Summary—Transactions" for more information regarding Kroger's revolving credit facility.

***Kroger's indebtedness could adversely affect its business, financial condition and results of operations, as well as its ability to meet payment obligations under the Kroger Notes and other debt.***

Following the closing of the Merger and the consummation of the Exchange Offers, Kroger will continue to have a significant amount of debt and debt service requirements. This level of debt could have significant consequences on Kroger's future operations, including:

- making it more difficult for Kroger to meet payment and other obligations under the Kroger Notes and other outstanding debt;
- resulting in an event of default if Kroger fails to comply with the financial and other restrictive covenants contained in its debt agreements, which event of default could result in all of Kroger's debt becoming immediately due and payable;
- reducing the availability of Kroger's cash flows to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting its ability to obtain additional financing for these purposes;
- limiting Kroger's flexibility in planning for, or reacting to, and increasing its vulnerability to, changes in its business, the industry in which it operates and the general economy; and
- placing Kroger at a competitive disadvantage compared to its competitors that have less debt or are less leveraged.

Any of the above-listed factors could have an adverse effect on Kroger's business, financial condition and results of operations and its ability to meet its payment obligations under the Kroger Notes and other debt.

Kroger's ability to comply with its debt covenants, to repay, extend, or refinance its existing debt obligations, to make payments of interest on, and the principal of, the Kroger Notes, and to obtain future credit will depend primarily on Kroger's operating performance. Kroger's ability to refinance its existing debt obligations or obtain future credit will also depend upon the current conditions in the credit markets and the availability of credit generally. If Kroger is unable to comply with these covenants, meet its debt service obligations, or obtain future credit on favorable terms, or at all, it could be forced to restructure or refinance its indebtedness, seek additional equity capital or sell assets. Kroger may be unable to obtain financing or sell assets on satisfactory terms, or at all.

Kroger's failure to comply with its debt covenants could result in events of default, which could render such indebtedness due and payable. Kroger may not have sufficient liquidity to repay its indebtedness in such circumstances. In addition, cross-default or cross-acceleration provisions in Kroger's debt agreements could cause a default or acceleration to have a wider impact on its liquidity than might otherwise arise from a default or acceleration of a single debt instrument.

Kroger is not prohibited under the Kroger Indenture that will govern the Kroger Notes or the indentures that govern its existing and future senior unsecured notes from incurring additional indebtedness in addition to the Kroger Notes. The incurrence of significant additional indebtedness by Kroger or any of its subsidiaries would exacerbate the negative consequences mentioned above and could adversely affect Kroger's ability to pay the interest on, and principal of, the Kroger Notes.

***Kroger may not be able to generate sufficient cash from operations to service its debt.***

Kroger's ability to make payments on, and to refinance, its indebtedness and to fund working capital depends on its ability to generate cash from operations which may be negatively impacted by a variety of factors.

Kroger obtains sales growth from new square footage, as well as from increased productivity from existing stores. Kroger's ability to generate sales and earnings could be adversely affected by the increasingly competitive environment in which it operates. In addition, a prolonged labor dispute, delays in opening new stores, changes in

the economic climate, unexpected changes in product cost, weather conditions and natural disasters, government regulations, or other unanticipated events, could adversely affect Kroger's operations.

***Kroger's ability to meet its debt obligations largely depends on the performance of its subsidiaries and its ability to utilize the cash flows from those subsidiaries.***

Kroger is a retail company with a majority of assets owned by its subsidiaries and a majority of operations conducted through its subsidiaries. Kroger's ability to meet its debt and other obligations largely depends on cash flows from its subsidiaries and, in the short term, its ability to raise capital from external sources. In the long term, cash flows from Kroger's subsidiaries depend on their ability to generate operating cash flows in excess of their own expenditures, common and preferred stock dividends (if any), and debt or other obligations. Kroger's subsidiaries are separate and distinct legal entities that are not obligated to pay dividends or make loans or distributions to Kroger (whether to enable Kroger to pay principal and interest on our debt (including the Kroger Notes), to pay dividends on its common stock, to settle, repurchase or redeem Kroger's debt, or to satisfy Kroger's other obligations, absent a guarantee by such subsidiary to pay Kroger's debt or other obligations). In addition, notwithstanding Kroger's controlling interest in such subsidiaries, many of them are limited in their ability to pay dividends or make loans or distributions to Kroger, including, without limitation, as a result of legislation, regulation, court order, contractual restrictions and other restrictions or in times of financial distress. As a result, Kroger may not be able to cause such subsidiaries and other entities to distribute funds or provide loans sufficient to enable Kroger to meet its debt and other obligations, including obligations under the Kroger Notes, and to pay dividends.

***There are differences between the ACI Notes and the Kroger Notes.***

Although the Kroger Notes to be issued in the Exchange Offers will have the same interest payment and maturity dates, interest rates and redemption provisions as the ACI Notes, certain other terms of the Kroger Notes will be different from those of the ACI Notes, and these differences may be significant. Holders of the ACI Notes should review the terms of the Kroger Notes and the ACI Notes and consider the differences carefully.

***Redemption prior to maturity may adversely affect your return on the Kroger Notes.***

Since certain of the Kroger Notes are redeemable at Kroger's option, Kroger may choose to redeem your Kroger Notes at times when prevailing interest rates are relatively low. As a result, you generally will not be able to reinvest the redemption proceeds in a comparable security at an effective interest rate as high as the interest rate on your notes being redeemed.

***Under the Kroger Indenture, the change of control events that would require Kroger to repurchase the Kroger Notes are subject to a number of significant limitations, and change of control events that affect the market price of the Kroger Notes may not give rise to any obligation to repurchase the Kroger Notes.***

Although Kroger will be required under the Kroger Indenture to make an offer to repurchase the Kroger Notes upon the occurrence of a Change of Control Triggering Event, the term "Change of Control Triggering Event" is limited in its scope and does not include all change of control events that might affect the market value of the Kroger Notes. In particular, Kroger is only required to offer to repurchase the Kroger Notes upon certain change of control events only if, as a result of such change of control event, the ratings of the Kroger Notes are lowered below investment grade during the relevant "trigger period" and the rating agencies assigning such lowered ratings expressly link the reduction in rating to the change of control event. As a result, Kroger's obligation to repurchase the Kroger Notes upon the occurrence of a change of control is limited and may not preserve the value of the Kroger Notes in the event of a highly leveraged transaction, reorganization, merger or similar transaction.

***Kroger may be unable to purchase the Kroger Notes upon a change of control.***

The terms of the Kroger Notes will require Kroger to make an offer to repurchase the Kroger Notes upon the occurrence of a Change of Control Triggering Event at a purchase price equal to 101% of the principal amount of the Kroger Notes, plus accrued and unpaid interest to the date of the purchase. The occurrence of a change of

control (including a Change of Control Triggering Event) would cause an event of default under Kroger's senior credit facilities and therefore could cause Kroger to have to repay amounts outstanding thereunder, and any financing arrangements it may enter into in the future may also require repayment of amounts outstanding in the event of a change of control and/or Change of Control Triggering Event and therefore limit Kroger's ability to fund the repurchase of the Kroger Notes pursuant to the Change of Control Offer (as defined herein). It is possible that Kroger will not have sufficient funds, or be able to arrange for additional financing, at the time of the Change of Control Triggering Event to make the required repurchase of Kroger Notes. If Kroger has insufficient funds to repurchase all the Kroger Notes that holders tender for purchase pursuant to the Change of Control Offer, and Kroger is unable to raise additional capital, an event of default would occur under the Kroger Indenture. An event of default could cause any other debt that Kroger may have at that time to become automatically due, further exacerbating Kroger's financial condition and diminishing the value and liquidity of the Kroger Notes. Kroger cannot assure you that additional capital would be available to it on acceptable terms, or at all. See "Description of the Kroger Notes—Change of Control Triggering Event."

***Active trading markets for the Kroger Notes may not develop.***

The Kroger Notes are new issues of securities. There is no existing market for the Kroger Notes of any series, and Kroger does not intend to apply for listing of the Kroger Notes of any series on any securities exchange or any automated quotation system. Accordingly, there can be no assurance that a trading market for the Kroger Notes of any series will ever develop or will be maintained. Further, there can be no assurance as to the liquidity of any market that may develop for the Kroger Notes of any series, your ability to sell your Kroger Notes or the price at which you will be able to sell your Kroger Notes. Future trading prices of the Kroger Notes of any series will depend on many factors, including prevailing interest rates, Kroger's financial condition and results of operations, the then-current ratings assigned to the Kroger Notes of such series and the market for similar securities. Any trading market that develops for the Kroger Notes of any series would be affected by many factors independent of and in addition to the foregoing, including:

- the time remaining to the maturity of the Kroger Notes of such series;
- the outstanding amount of the Kroger Notes of such series;
- the terms related to optional redemption of the Kroger Notes of such series; and
- the level, direction and volatility of market interest rates generally.

***The market prices of the Kroger Notes may be volatile.***

The market prices of the Kroger Notes will depend on many factors that may vary over time, some of which are beyond Kroger's control, including:

- Kroger's financial performance;
- the amount of Kroger indebtedness outstanding;
- market interest rates;
- the market for similar securities;
- competition;
- the size and liquidity of the markets for the Kroger Notes; and
- general economic conditions.

As a result of these factors, you may only be able to sell your Kroger Notes at prices below those you believe to be appropriate, including prices below the price you paid for them.

Our credit ratings may not reflect all risks of your investment in the Kroger Notes. The credit ratings assigned to the Kroger Notes are limited in scope and do not address all material risks relating to an investment in

the Kroger Notes, but rather reflect only the view of each rating agency at the time the rating is issued. An explanation of the significance of a rating may be obtained from the rating agency. There can be no assurance that credit ratings will remain in effect or that a rating will not be lowered, suspended or withdrawn by the rating agency if, in the rating agency's judgment, circumstances so warrant. Agency credit ratings are not a recommendation to buy, sell or hold any security. Each agency's rating should be evaluated independently of any other agency's rating. Actual or anticipated changes or downgrades in our credit ratings, including any announcement that our ratings are under review for a downgrade, could affect the market value of the Kroger Notes and increase our corporate borrowing costs.

***An increase in market interest rates could result in a decrease in the market value of the Kroger Notes.***

In general, as market interest rates rise, debt securities bearing interest at fixed rates of interest decline in value. Consequently, if market interest rates increase, the market value of the Kroger Notes may decline. Kroger cannot predict the future level of market interest rates.

***The Kroger Notes have not been registered under applicable federal and state securities laws and, accordingly, are not freely transferable.***

The Kroger Notes have not been registered under the Securities Act or any state securities laws. Unless the Kroger Notes are so registered, they may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

Kroger has agreed to use its commercially reasonable efforts to commence an offer to exchange the Kroger Notes for equivalent notes in an exchange registered under U.S. securities laws or, in certain circumstances, register the reoffer and resale of the Kroger Notes under U.S. securities laws, but there can be no assurance that Kroger will complete the subsequent exchange. See "Registration Rights" and "Transfer Restrictions."

**Certain Risks Related to U.S. Federal Income Tax**

***Consummation of the Merger and the Exchange Offers may result in a significant amount of cancellation of indebtedness income for U.S. federal income tax purposes.***

A significant amount of cancellation of indebtedness ("COD") income for U.S. federal income tax purposes may be recognized upon consummation of the Merger and related transactions, including the Exchange Offers by Albertsons and certain of its subsidiaries. Because the amount of such COD income to be recognized by Albertsons and certain of its subsidiaries will depend on the fair market value of the Kroger Notes to be issued, the precise amount of COD income, if any, cannot be determined prior to the date of such transactions. See "Certain U.S. Federal Income Tax Considerations."

***If the Exchange Offers are consummated, participating holders of ACI Notes are expected to recognize gain or loss on the exchange of ACI Notes for Kroger Notes.***

The exchange of ACI Notes for Kroger Notes is expected to be a taxable exchange for participating Eligible Holders for U.S. federal income tax purposes. Accordingly, a U.S. Holder (as defined in "Certain U.S. Federal Income Tax Considerations") that tenders ACI Notes generally will recognize taxable gain or loss for U.S. federal income tax purposes. See "Certain U.S. Federal Income Tax Considerations—Tax Considerations for Non-Participating U.S. Holders of Notes."

***If the Exchange Offers are consummated, non-participating holders of ACI Notes may be deemed to have exchanged their ACI Notes for "new" ACI Notes for U.S. federal income tax purposes and may have adverse tax consequences as a result of such deemed exchange and the ownership of "new" ACI Notes.***

If the Exchange Offers are consummated, non-participating holders will not recognize any gain or loss for U.S. federal income tax purposes unless the transactions described in this offering memorandum and consent solicitation statement, including the adoption of the Proposed Amendments, constitute a "significant modification"

for U.S. federal income tax purposes that results in a deemed exchange of non-participating holders' ACI Notes for modified "new" ACI Notes. It is unclear whether the transactions will constitute a "significant modification" of the ACI Notes for non-participating holders for U.S. federal income tax purposes. See "Certain U.S. Federal Income Tax Considerations—Tax Considerations for Non-Participating U.S. Holders of Notes." Non-participating holders of ACI Notes should consult their own tax advisor regarding the U.S. federal income tax consequences of the Exchange Offers.

***The Kroger Notes may be issued with original issue discount for U.S. federal income tax purposes.***

To the extent that the stated principal amount of a Kroger Note exceeds its issue price by more than a *de minimis* amount, such note will be treated as issued with original issue discount ("OID") for U.S. federal income tax purposes. Because the amount of such OID will depend on the fair market value of the Kroger Notes to be issued, the precise amount of OID, if any, cannot be determined prior to the date of such transactions. A U.S. Holder (as defined in "Certain U.S. Federal Income Tax Considerations") of a Kroger Note that is issued with OID will be required to accrue such OID on a current basis before receiving cash attributable to that income regardless of the U.S. Holder's method of tax accounting. For further discussion of the computation and reporting of OID, see "Certain U.S. Federal Income Tax Considerations."

## **USE OF PROCEEDS**

Neither Kroger nor ACI will receive any cash proceeds from the issuance of the Kroger Notes in connection with the Exchange Offers and Consent Solicitations. In exchange for issuing the Kroger Notes and paying the cash consideration, Kroger will receive the tendered ACI Notes. Following consummation of the Exchange Offers, the tendered ACI Notes that are accepted in the Exchange Offers are expected to be cancelled and not reissued.

## DESCRIPTION OF THE EXCHANGE OFFERS AND CONSENT SOLICITATIONS

### The Exchange Offers

Kroger is offering Eligible Holders of each series of ACI Notes the opportunity to exchange any and all of their ACI Notes for Kroger Notes and cash, upon the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement. For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date, Eligible Holders of ACI Notes will be eligible to receive the Total Consideration. For each \$1,000 principal amount of ACI Notes validly tendered after the Early Participation Date and not validly withdrawn at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive the Exchange Consideration. To be eligible to receive the Consent Payment, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes and delivered a consent at or prior to the Early Participation Date. The Consent Payment will be paid on the Settlement Date to the Eligible Holder who is the holder of such ACI Notes as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. See “—Consent Payment,” “—Exchange Consideration” and “—Total Consideration” below.

No accrued and unpaid interest is payable upon acceptance of any ACI Notes for exchange in the Exchange Offers and Consent Solicitations. The first interest payment on any Kroger Notes will include the accrued and unpaid interest on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; *provided* that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the principal amount of corresponding ACI Notes tendered for exchange if such holder tendered ACI Notes after the Early Participation Date and at or prior to the Expiration Date without validly delivering an Early Participation VOI Number corresponding to such ACI Notes. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.

The ACI Notes may be tendered and consents may be delivered only in principal amounts equal to minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof, except with respect to the ACI Notes issued under the ACI 2026 Indenture, the ACI March 2026 Indenture, the ACI 2027 Indenture, ACI 2028 Indenture, the ACI February 2028 Indenture, the ACI 2029 Indenture and the ACI 2030 Indenture, which may be tendered and consents may be delivered only in principal amounts equal to minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. No alternative, conditional or contingent tenders will be accepted. Eligible Holders who do not tender all of their ACI Notes should ensure that they retain a principal amount of ACI Notes amounting to at least the authorized minimum denomination of their ACI Notes and integral multiples of \$1,000 in excess thereof.

The Kroger Notes will only be issued in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. No tender of ACI Notes will be accepted if it results in the issuance of less than \$1,000 principal amount of Kroger Notes. If, pursuant to the Exchange Offers, a tendering Eligible Holder would otherwise be entitled to receive a principal amount of Kroger Notes that is not equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, such principal amount will be rounded down to the nearest \$1,000 or integral multiple of \$1,000 in excess thereof, and such Eligible Holder will receive the rounded principal amount of Kroger Notes plus cash equal to the principal amount of Kroger Notes not received as a result of rounding down.

The interest rate, interest payment dates, maturity and redemption terms of each series of Kroger Notes to be issued by Kroger in the Exchange Offers will be the same as those of the corresponding series of ACI Notes to be exchanged.

Each series of Kroger Notes is a new series of debt securities that will be issued under the Kroger Indenture. The terms of the Kroger Notes will include those expressly set forth in such notes and the Kroger Indenture and those made part of the Kroger Indenture by reference to the Trust Indenture Act (if any).

## **The Consent Solicitations**

Concurrently with the Exchange Offers, upon the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement, Kroger, on behalf of ACI, is soliciting consents from the Eligible Holders of the ACI Notes to, among other things, eliminate from each ACI Indenture (i) substantially all of the restrictive covenants, (ii) certain of the events which may lead to an “Event of Default,” (iii) the reporting covenant, (iv) the restrictions on the Albertsons Issuing Entities, each as applicable, consolidating with or merging into another person or conveying, transferring or leasing all or any of its properties and assets to any person, (v) the covenant requiring all wholly-owned domestic restricted subsidiaries of ACI that guarantee certain other debt to also guarantee the ACI Notes, and (vi) the obligation to offer to repurchase the ACI Notes upon the occurrence of certain change of control transactions. The Proposed Amendments are described in more detail under “The Proposed Amendments.” The Proposed Amendments with respect to each series of the ACI Notes under the ACI Indentures require the consent of the holders of not less than a majority in principal amount of such series of the ACI Notes outstanding received hereunder.

If the Proposed Amendments become operative with respect to a particular series of ACI Notes under an ACI Indenture, they will be binding on all holders of such series of ACI Notes issued thereunder, including those who do not deliver their consent to the Proposed Amendments and do not tender their ACI Notes in the applicable Exchange Offer. If for any reason the requisite consents with respect to a particular series of ACI Notes under an ACI Indenture are not obtained, the Proposed Amendments to such particular series of ACI Notes under the ACI Indenture will not become operative and such series of ACI Notes issued thereunder will be subject to the same terms and conditions that existed before the Exchange Offers and the Consent Solicitations were made. You may not deliver a consent in the Consent Solicitation without tendering the ACI Notes of the applicable series in the applicable Exchange Offer. If you tender ACI Notes in an Exchange Offer, you will be deemed to have delivered your consent, with respect to the principal amount of such tendered ACI Notes, to the Proposed Amendments.

The Proposed Amendments with respect to (i) each series of the ACI Notes under the ACI 2026 Indenture, the ACI March 2026 Indenture, the ACI 2027 Indenture, ACI 2028 Indenture, the ACI February 2028 Indenture, the ACI 2029 Indenture, the ACI 2030 Indenture, the Safeway Indenture and the ASC Indenture require the consent of the holders of not less than a majority in principal amount of the ACI Notes of each affected series then outstanding under the applicable ACI Indenture voting as a separate class, and (ii) each affected series of the NALP Indenture Notes under the NALP Indenture require the consent of the holders of not less than 66 2/3% in principal amount of the NALP Indenture Notes of each affected series then outstanding under the NALP Indenture voting as a separate class.

If an Eligible Holder tenders ACI Notes in an Exchange Offer, such Eligible Holder will be deemed to have delivered its consent, with respect to the principal amount of such tendered ACI Notes, to the Proposed Amendments. Tendered ACI Notes may be withdrawn at any time before the Expiration Date; however, a valid withdrawal of the tendered ACI Notes after the Consent Revocation Deadline will not be deemed a revocation of the related consents and such consents will continue to be deemed delivered. Tenders of consents may be validly revoked at any time prior to the Consent Revocation Deadline, but will thereafter be irrevocable and such consents will continue to be deemed delivered. Eligible Holders may not deliver a consent in the Consent Solicitation without tendering ACI Notes of the applicable series in the applicable Exchange Offer.

The Proposed Amendments constitute a single proposal and a consenting and tendering holder must consent to the adoption of the Proposed Amendments in their entirety and may not consent selectively with respect to certain Proposed Amendments.

The following table sets forth the Consent Payment, the Exchange Consideration, the Early Participation Premium and the Total Consideration for ACI Notes for which the Kroger Notes are being offered:

Title of Series of ACI Notes	Issuer(s)	CUSIP/ISIN No.	Maturity Date	Principal Amount Outstanding	Consent Payment <sup>(1)</sup>	Exchange Consideration <sup>(2)</sup>	Early Participation Premium <sup>(3)</sup>	Total Consideration <sup>(4)</sup>
3.250% Senior Notes due 2026 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AF8 / US013092AF88 Reg S: U0125L AG5 / USU0125LAG50	03/15/2026	\$750,000,000	\$1.00	\$970 principal amount of Kroger 3.250% Senior Notes due 2026	\$30 principal amount of Kroger 3.250% Senior Notes due 2026	\$1,000 principal amount of Kroger 3.250% Senior Notes due 2026 and \$1.00 in cash
7.500% Senior Notes due 2026 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AA9 / US013092AA91 Reg S: U0125L AA8 / USU0125LAA80	03/15/2026	\$600,000,000	\$1.00	\$970 principal amount of Kroger 7.500% Senior Notes due 2026	\$30 principal amount of Kroger 7.500% Senior Notes due 2026	\$1,000 principal amount of Kroger 7.500% Senior Notes due 2026 and \$1.00 in cash
4.625% Senior Notes due 2027 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AC5 / US013092AC57 Reg S: U0125L AC4 / USU0125LAC47 JAN: U0125LAF7 / USU0125LAF77	01/15/2027	\$1,350,000,000	\$1.00	\$970 principal amount of Kroger 4.625% Senior Notes due 2027	\$30 principal amount of Kroger 4.625% Senior Notes due 2027	\$1,000 principal amount of Kroger 4.625% Senior Notes due 2027 and \$1.00 in cash
5.875% Senior Notes due 2028 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AB7 / US013092AB74 Reg S: U0125L AB6 / USU0125LAB63	02/15/2028	\$750,000,000	\$1.00	\$970 principal amount of Kroger 5.875% Senior Notes due 2028	\$30 principal amount of Kroger 5.875% Senior Notes due 2028	\$1,000 principal amount of Kroger 5.875% Senior Notes due 2028 and \$1.00 in cash
6.500% Senior Notes due 2028 .....	ACI, NALP, Safeway, Albertsons and ASL	144A: 01309Q AA6 / US01309QAA67 Reg S: U0126B AA9 / USU0126BAA99	02/15/2028	\$750,000,000	\$1.00	\$970 principal amount of Kroger 6.500% Senior Notes due 2028	\$30 principal amount of Kroger 6.500% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.500% Senior Notes due 2028 and \$1.00 in cash
3.500% Senior Notes due 2029 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AG6 / US013092AG61 Reg S: U0125L AH3 / USU0125LAH34 DEC: U0125LAJ9 / USU0125LAJ99	03/15/2029	\$1,350,000,000	\$1.00	\$970 principal amount of Kroger 3.500% Senior Notes due 2029	\$30 principal amount of Kroger 3.500% Senior Notes due 2029	\$1,000 principal amount of Kroger 3.500% Senior Notes due 2029 and \$1.00 in cash
4.875% Senior Notes due 2030 .....	ACI, NALP, Safeway and Albertsons	144A: 013092 AE1 / US013092AE14 Reg S: U0125L AE0 / USU0125LAE03	02/15/2030	\$1,000,000,000	\$1.00	\$970 principal amount of Kroger 4.875% Senior Notes due 2030	\$30 principal amount of Kroger 4.875% Senior Notes due 2030	\$1,000 principal amount of Kroger 4.875% Senior Notes due 2030 and \$1.00 in cash
7.450% Senior Debentures due 2027 .....	Safeway	786514AS8 / US786514AS84	09/15/2027	\$ 120,078,000	\$1.00	\$970 principal amount of Kroger 7.450% Senior Notes due 2027	\$30 principal amount of Kroger 7.450% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.450% Senior Notes due 2027 and \$1.00 in cash
7.250% Senior Debentures due 2031 .....	Safeway	786514BA6 / US786514BA67	02/01/2031	\$ 261,099,000	\$1.00	\$970 principal amount of Kroger 7.250% Senior Notes due 2031	\$30 principal amount of Kroger 7.250% Senior Notes due 2031	\$1,000 principal amount of Kroger 7.250% Senior Notes due 2031 and \$1.00 in cash

<b>Title of Series of ACI Notes</b>	<b>Issuer(s)</b>	<b>CUSIP/ISIN No.</b>	<b>Maturity Date</b>	<b>Principal Amount Outstanding</b>	<b>Consent Payment<sup>(1)</sup></b>	<b>Exchange Consideration<sup>(2)</sup></b>	<b>Early Participation Premium<sup>(3)</sup></b>	<b>Total Consideration<sup>(4)</sup></b>
8.000% Debentures due 2026 .....	ASC	030096AF8 / US030096AF88	06/01/2026	\$ 2,902,000	\$1.00	\$970 principal amount of Kroger 8.000% Senior Notes due 2026	\$30 principal amount of Kroger 8.000% Senior Notes due 2026	\$1,000 principal amount of Kroger 8.000% Senior Notes due 2026 and \$1.00 in cash
7.100% Medium-Term Notes, Series B, due 2028 .....	ASC	03009MBB1 / US03009MBB19	03/20/2028	\$ 756,000	\$1.00	\$970 principal amount of Kroger 7.100% Senior Notes due 2028	\$30 principal amount of Kroger 7.100% Senior Notes due 2028	\$1,000 principal amount of Kroger 7.100% Senior Notes due 2028 and \$1.00 in cash
7.500% Debentures due 2037 .....	ASC	030096AH4 / US030096AH45	05/01/2037	\$ 143,000	\$1.00	\$970 principal amount of Kroger 7.500% Senior Notes due 2037	\$30 principal amount of Kroger 7.500% Senior Notes due 2037	\$1,000 principal amount of Kroger 7.500% Senior Notes due 2037 and \$1.00 in cash
7.110% Medium-Term Notes, Series B due 2027 .....	NALP	01310QCH6 / US01310QCH65	07/22/2027	\$ 11,045,000	\$1.00	\$970 principal amount of Kroger 7.110% Senior Notes due 2027	\$30 principal amount of Kroger 7.110% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.110% Senior Notes due 2027 and \$1.00 in cash
7.150% Medium-Term Notes, Series B due 2027 .....	NALP	01310QCK9 / US01310QCK94	07/23/2027	\$ 310,000	\$1.00	\$970 principal amount of Kroger 7.150% Senior Notes due 2027	\$30 principal amount of Kroger 7.150% Senior Notes due 2027	\$1,000 principal amount of Kroger 7.150% Senior Notes due 2027 and \$1.00 in cash
6.560% Medium-Term Notes, Series B due 2027 .....	NALP	01310QCL7 / US01310QCL77	07/26/2027	\$ 210,000	\$1.00	\$970 principal amount of Kroger 6.560% Senior Notes due 2027	\$30 principal amount of Kroger 6.560% Senior Notes due 2027	\$1,000 principal amount of Kroger 6.560% Senior Notes due 2027 and \$1.00 in cash
6.570% Medium-Term Notes, Series C due 2028 .....	NALP	01310QCW3 / US01310QCW33	02/23/2028	\$ 24,278,000	\$1.00	\$970 principal amount of Kroger 6.570% Senior Notes due 2028	\$30 principal amount of Kroger 6.570% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.570% Senior Notes due 2028 and \$1.00 in cash
6.520% Medium-Term Notes, Series C due 2028 .....	NALP	01310QCZ6 / US01310QCZ63	04/10/2028	\$ 5,170,000	\$1.00	\$970 principal amount of Kroger 6.520% Senior Notes due 2028	\$30 principal amount of Kroger 6.520% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.520% Senior Notes due 2028 and \$1.00 in cash
6.530% Medium-Term Notes, Series C due 2028 .....	NALP	01310QCY9 / US01310QCY98	04/10/2028	\$ 12,000,000	\$1.00	\$970 principal amount of Kroger 6.530% Senior Notes due 2028	\$30 principal amount of Kroger 6.530% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.530% Senior Notes due 2028 and \$1.00 in cash
6.625% Medium-Term Notes, Series C due 2028 .....	NALP	01310QDB8 / US01310QDB86	06/01/2028	\$ 19,898,000	\$1.00	\$970 principal amount of Kroger 6.625% Senior Notes due 2028	\$30 principal amount of Kroger 6.625% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.625% Senior Notes due 2028 and \$1.00 in cash

<b>Title of Series of ACI Notes</b>	<b>Issuer(s)</b>	<b>CUSIP/ISIN No.</b>	<b>Maturity Date</b>	<b>Principal Amount Outstanding</b>	<b>Consent Payment<sup>(1)</sup></b>	<b>Exchange Consideration<sup>(2)</sup></b>	<b>Early Participation Premium<sup>(3)</sup></b>	<b>Total Consideration<sup>(4)</sup></b>
6.630% Medium-Term Notes, Series C due 2028 .....	NALP	01310QDA0 / US01310QDA04	06/02/2028	\$ 6,000,000	\$1.00	\$970 principal amount of Kroger 6.630% Senior Notes due 2028	\$30 principal amount of Kroger 6.630% Senior Notes due 2028	\$1,000 principal amount of Kroger 6.630% Senior Notes due 2028 and \$1.00 in cash
7.750% Debentures due 2026 .....	NALP	013104AC8 / US013104AC87	06/15/2026	\$ 56,536,000	\$1.00	\$970 principal amount of Kroger 7.750% Senior Notes due 2026	\$30 principal amount of Kroger 7.750% Senior Notes due 2026	\$1,000 principal amount of Kroger 7.750% Senior Notes due 2026 and \$1.00 in cash
7.450% Senior Debentures due 2029 .....	NALP	013104AF1 / US013104AF19	08/01/2029	\$ 127,206,000	\$1.00	\$970 principal amount of Kroger 7.450% Senior Notes due 2029	\$30 principal amount of Kroger 7.450% Senior Notes due 2029	\$1,000 principal amount of Kroger 7.450% Senior Notes due 2029 and \$1.00 in cash
8.700% Senior Debentures due 2030 .....	NALP	013104AH7 / US013104AH74	05/01/2030	\$ 135,098,000	\$1.00	\$970 principal amount of Kroger 8.700% Senior Notes due 2030	\$30 principal amount of Kroger 8.700% Senior Notes due 2030	\$1,000 principal amount of Kroger 8.700% Senior Notes due 2030 and \$1.00 in cash
8.000% Senior Debentures due 2031 .....	NALP	013104AL8 / US013104AL86	05/01/2031	\$ 108,879,000	\$1.00	\$970 principal amount of Kroger 8.000% Senior Notes due 2031	\$30 principal amount of Kroger 8.000% Senior Notes due 2031	\$1,000 principal amount of Kroger 8.000% Senior Notes due 2031 and \$1.00 in cash

- (1) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date. On the Settlement Date, the Consent Payment will be paid in cash to each Eligible Holder that was the holder of record of such ACI Notes as of the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date.
- (2) For each \$1,000 principal amount of ACI Notes accepted for exchange.
- (3) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date. On the Settlement Date, the Early Participation Premium will be paid to each Eligible Holder that validly tenders and does not withdraw ACI Notes at or prior to the Early Participation Date and (A) does not validly withdraw such ACI Notes at or prior to the Expiration Date or (B) if an Eligible Holder validly withdraws such ACI Notes following the Early Participation Date, each Eligible Holder that, at or prior to the Expiration Date, (i) validly re-tenders, and does not validly withdraw, such ACI Notes and (ii) submits the Early Participation VOI Number with respect to such principal amount of ACI Notes tendered. In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes at or prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders or re-tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received by such Eligible Holder may be modified. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information.
- (4) For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn at or prior to the Early Participation Date. Includes the Consent Payment, the Exchange Consideration and the Early Participation Premium. For the avoidance of doubt, unless the Exchange Offers are amended, in no event will any holder of ACI Notes receive more than \$1,000 aggregate principal amount of Kroger Notes for each \$1,000 aggregate principal amount of ACI Notes accepted for exchange.

## Consent Payment

For each \$1,000 principal amount of ACI Notes validly tendered and not validly withdrawn and with which a consent was delivered at or prior to the Early Participation Date, Eligible Holders of ACI Notes will be eligible to receive the Consent Payment of \$1.00 in cash. The Consent Payment will be paid on the Settlement Date to the Eligible Holder who is the holder of the ACI Notes as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. Eligible Holders who acquire ACI Notes following the Early Participation Date will not be eligible to receive the Consent Payment with respect to such notes.

## **Total Consideration**

To be eligible to receive the Total Consideration, composed of the Consent Payment, Early Participation Premium and the Exchange Consideration, Eligible Holders must have validly tendered and not validly withdrawn their ACI Notes at or prior to the Early Participation Date and either (i) must not have validly withdrawn such ACI Notes between the Early Participation Date and the Expiration Date or (ii) if such Eligible Holder has validly withdrawn such ACI Notes after the Early Participation Date, validly re-tender such ACI Notes at or prior to the Expiration Date along with the Early Participation VOI Number corresponding to such ACI Notes. In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such Notes prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium in addition to the Exchange Consideration. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tendered ACI Notes corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of validly tendered ACI Notes, the tender may be rejected or the consideration received may be modified. If any such Eligible Holder wishes to withdraw ACI Notes from the tender that are evidenced by an Early Participation VOI Number as described above after the Early Participation Date and subsequently re-tender or transfer such ACI Notes, it will need to contact its broker or custodian to obtain such Early Participation VOI Number to be eligible to receive or transfer the right to receive the Early Participation Premium with respect to the aggregate principal amount of ACI Notes evidenced by such Early Participation VOI Number. See “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information. An Eligible Holder that validly tenders ACI Notes and delivers a consent at or prior to the Early Participation Date, but withdraws such ACI Notes after the Early Participation Date but prior to the Expiration Date, will receive the Consent Payment, even if such Eligible Holder is no longer the holder of such ACI Notes as of the Expiration Date. An Eligible Holder that validly tenders ACI Notes after the Early Participation Date will not receive the Consent Payment. For the avoidance of doubt, unless the Exchange Offers are amended, in no event will any holder of ACI Notes receive more than \$1,000 aggregate principal amount of Kroger Notes for each \$1,000 aggregate principal amount of ACI Notes accepted for exchange.

## **Exchange Consideration**

For each \$1,000 principal amount of ACI Notes validly tendered after the Early Expiration Date and not validly withdrawn at or prior to the Expiration Date, Eligible Holders of ACI Notes will be eligible to receive the Exchange Consideration. In addition, an Eligible Holder who acquires ACI Notes with an Early Participation VOI Number after the Early Participation Date and validly tenders and does not validly withdraw such ACI Notes prior to the Expiration Date, along with the corresponding Early Participation VOI Number, is also eligible to receive the Early Participation Premium. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders or re-tenders corresponds to an aggregate principal amount of previously tendered and withdrawn ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received may be modified, see “Description of the Exchange Offers and Consent Solicitations—Procedures for Re-Tendering and VOI Numbers” for more information. See “Description of the Exchange Offers and the Consent Solicitations—Exchange Consideration.”

Because each Exchange Offer and Consent Solicitation is subject to the satisfaction or waiver of certain conditions as described herein, including, among other things, the consummation of the Merger, Eligible Holders of ACI Notes will not receive the Consent Payment, the Early Participation Premium, the Exchange Consideration or the Total Consideration, as applicable, unless the Merger is consummated.

## **Early Participation Date; Expiration Date; Extensions; Amendments; Termination**

The Early Participation Date with respect to any Exchange Offer is 5:00 p.m., New York City time, on August 28, 2024, subject to Kroger’s right to extend that time and date in Kroger’s sole discretion (which right is subject to applicable law), in which case the Early Participation Date means the latest time and date to which the Early Participation Date is extended. The Expiration Date with respect to any Exchange Offer is 5:00 p.m., New York City time, on September 13, 2024, subject to Kroger’s right to extend that time and date in Kroger’s sole

discretion (which right is subject to applicable law), in which case the Expiration Date means the latest time and date to which the Exchange Offers and Consent Solicitations are extended. Kroger expects to extend the Expiration Date of each of the Exchange Offers and Consent Solicitations, if necessary, until the date that is on or about the closing date of the Merger. If it extends the Expiration Date, Kroger will notify the Exchange Agent and will make a public announcement as soon as practicable, and in any event, no later than 9:00 a.m. New York City time on the next business day after the previously scheduled Expiration Date. The public announcement will include the approximate principal amount of the ACI Notes that had been validly tendered and not validly withdrawn. During any extension of the Early Participation Date or the Expiration Date, all ACI Notes previously tendered in an extended Exchange Offer will remain subject to such Exchange Offer and may be accepted for exchange by Kroger.

Subject to applicable law, Kroger expressly reserves the right with respect to any of the Exchange Offers to:

- delay accepting any ACI Notes, to extend the Exchange Offer or to terminate the Exchange Offer and not accept any ACI Notes;
- terminate the Exchange Offer and return all tendered ACI Notes to the respective tendering holders; and
- amend, modify or waive in part or whole, at any time, or from time to time, the terms of the Exchange Offer in any respect, including waiver of any conditions to consummation of the Exchange Offer (other than the condition that the Merger shall have been consummated).

Any such delay, extension, termination, amendment, modification or waiver with respect to any and all of the Exchange Offers by Kroger will automatically delay, extend, terminate, amend, modify or waive conditions precedent to the corresponding Consent Solicitation, as applicable. The expected timing of the consummation of the Merger is unclear and subject to a number of regulatory obstacles, including the administrative and court proceedings instituted by the FTC and various states, as further described herein. Nevertheless, Kroger and ACI anticipate being able to close the Merger during the fourth quarter of calendar year 2024.

Without limiting the manner in which Kroger may choose to make a public announcement of any extension, amendment or termination of any or all of the Exchange Offers and Consent Solicitations, Kroger will not be obligated to publish, advertise or otherwise communicate any such public announcement, other than by making a timely press release. The minimum period during which any of the Exchange Offers and Consent Solicitations will remain open following material changes in the terms of such Exchange Offer and Consent Solicitation or in the information concerning such Exchange Offer and Consent Solicitation will depend upon the facts and circumstances of such change, including the relative materiality of the changes. If the terms of an Exchange Offer and Consent Solicitation are amended in a manner determined by Kroger to constitute a material change adversely affecting any Eligible Holder, Kroger will promptly disclose any such amendment in a manner reasonably calculated to inform Eligible Holders of such amendment, and Kroger will extend such Exchange Offer and Consent Solicitation for a time period that it deems appropriate, depending upon the significance of the amendment, if such Exchange Offer and Consent Solicitation would otherwise expire during such time period.

## **Settlement Date**

The Settlement Date is expected to be promptly after the Expiration Date and is expected to occur on or promptly after the closing date of the Merger. Kroger will not be obligated to deliver Kroger Notes or pay any cash amounts unless the applicable Exchange Offer and Consent Solicitation is consummated.

## **Holders Eligible to Participate in the Exchange Offers and Consent Solicitations**

Kroger will conduct the Exchange Offers in accordance with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC thereunder. Prior to the distribution of this offering memorandum and consent solicitation statement, Kroger distributed to certain holders of ACI Notes a letter

requesting a certification that each such holder is either a QIB as defined in Rule 144A or a person that is not a “U.S. person” within the meaning of Regulation S.

Additionally, in order to participate in the Exchange Offers and Consent Solicitations, Eligible Holders located or resident in Canada are required to complete, sign and submit to the Exchange Agent a Canadian eligibility certification (the form of which is included in the accompanying instructions for the eligibility certification). See “Transfer Restrictions—Notice to Prospective Investors in Canada.” Each person tendering any ACI Notes to the Exchange Offers without submitting a Canadian eligibility certification to the Exchange Agent will, by doing so, be deemed to be representing and warranting to ACI and the Exchange Agent that such person is not located or resident in Canada.

Only Eligible Holders of ACI Notes who have properly completed and returned the eligibility certification, which is also available from the Information Agent, are authorized to receive and review this offering memorandum and consent solicitation statement and to participate in the Exchange Offers and Consent Solicitations.

### **Conditions to the Exchange Offers and Consent Solicitations**

Notwithstanding any other provisions of the Exchange Offers and Consent Solicitations, or any extension of the Exchange Offers and Consent Solicitations, but subject to applicable law, (1) Kroger will not be required to accept any ACI Notes, deliver Kroger Notes or pay any cash amounts and may, with respect to any or all of the Exchange Offers or Consent Solicitations, terminate the Exchange Offers or Consent Solicitations, or, at Kroger’s option, modify, extend or otherwise amend any or all of the Exchange Offers or Consent Solicitations, and (2) ACI will not be required to enter into any amendment to the ACI Indentures (or have the Proposed Amendments in any executed supplemental indenture become operative), in each case, if any of the following conditions have not been satisfied or waived at or prior to the Expiration Date:

- the Merger shall have been consummated;
- no action or event shall have occurred, been threatened, or may occur, and no statute, rule, regulation, judgment, order, stay, decree or injunction shall have been proposed, issued, promulgated, enacted, entered, enforced or deemed to be applicable to the Exchange Offers, the exchange of ACI Notes for Kroger Notes and cash under the Exchange Offers or the Consent Solicitations by or before any court or governmental, regulatory or administrative agency, authority, instrumentality or tribunal, including, without limitation, taxing authorities, that either:
  - challenges the making of an Exchange Offer, the exchange of ACI Notes for Kroger Notes and cash under an Exchange Offer or Consent Solicitation or might, directly or indirectly, be expected to prohibit, prevent, restrict or delay consummation of, or might otherwise adversely affect in any manner, the Exchange Offers, the exchange of ACI Notes for Kroger Notes and cash under the Exchange Offers or the Consent Solicitations; or
  - in Kroger’s reasonable judgment, could materially adversely affect Kroger’s, ACI’s or each of their respective subsidiaries’ business, condition (financial or otherwise), income, operations, properties, assets, liabilities or prospects or impair the contemplated benefits to Kroger and ACI of the Exchange Offers, the exchange of ACI Notes for Kroger Notes and cash under the Exchange Offers or the Consent Solicitations;
- at any time prior to the anticipated consummation of the Exchange Offers and Consent Solicitations, Kroger has determined, in its reasonable judgment, that the consummation of the Exchange Offers and Consent Solicitations is not reasonably likely to result in Kroger or ACI recognizing any adverse tax consequences (other than a *de minimis* one), including as a result of the recognition of cancellation of indebtedness income for U.S. federal income tax purposes;
- there shall not have occurred (a) any general suspension of or limitation on trading in securities in the United States securities or financial markets, whether or not mandatory, (b) any material adverse

change in the price of the ACI Notes, (c) a material impairment in the general trading market for debt securities in the United States, (d) a declaration of a banking moratorium or any suspension of payments in respect of banks by federal or state authorities in the United States, whether or not mandatory, (e) any (i) material escalation or commencement of a war, armed hostilities, a terrorist act or other national or international calamity directly or indirectly relating to the United States or (ii) other calamity or crisis or change in political, financial or economic conditions, if the effect of any such event in clause (i) or (ii), in Kroger's reasonable judgment, makes it impracticable or inadvisable to proceed with the Exchange Offers or Consent Solicitations, (f) any limitation, whether or not mandatory, by any governmental authority on, or other event in Kroger's reasonable judgment, having a reasonable likelihood of affecting, the extension of credit by banks or other lending institutions in the United States, (g) any material adverse change in the securities or financial markets in the United States generally or (h) in the case of any of the foregoing existing at the time of the commencement of the Exchange Offers or Consent Solicitations, a material acceleration or worsening thereof;

- each of the ACI Trustee, with respect to the ACI 2026 Indenture, ACI March 2026 Indenture, ACI 2027 Indenture, ACI 2028 Indenture, ACI February 2028 Indenture, ACI 2029 Indenture, ACI 2030 Indenture; the Safeway Trustee, with respect to the Safeway Indenture; the ASC Trustee, with respect to the ASC Indenture; and the NALP Trustee, with respect to the NALP Indenture, shall not have been directed by any holders of the relevant series of ACI Notes to object in any respect to, or take any action that could, in Kroger's reasonable judgment, adversely affect the consummation of the Exchange Offers or the exchange of ACI Notes for Kroger Notes and cash under the Exchange Offers or the ability to effect the Proposed Amendments, nor shall the ACI Trustee, the Safeway Trustee, the ASC Trustee nor the NALP Trustee have taken any action that challenges the validity or effectiveness of the procedures used by Kroger in making the Exchange Offers, the exchange of ACI Notes for Kroger Notes and cash under the Exchange Offers or the Consent Solicitations; *provided that*, if any such action has been taken by any one of the ACI Trustee, the Safeway Trustee, the ASC Trustee or the NALP Trustee, Kroger may, in its sole discretion, still elect to proceed with the Exchange Offers and Consent Solicitations for the other series of ACI Notes where the relevant trustee has not so objected;
- Kroger shall have received the requisite consents with respect to each series of ACI Notes for the Proposed Amendments, as described above under "—The Consent Solicitations"; or
- each of the ACI Issuers, ASL, the ACI Trustee, the Safeway Trustee, ASC, the ASC Trustee and the NALP Trustee, as applicable, shall have executed and delivered one or more supplemental indentures relating to the Proposed Amendments and not objected in any respect to, or taken any action that could in Kroger's reasonable judgment adversely affect the Consent Solicitations or Kroger's ability to effect the Proposed Amendments, nor shall any such trustee have taken any action that challenges the validity or effectiveness of the procedures used to solicit consents (including the form thereof).

Additionally, each Exchange Offer and Consent Solicitation is conditioned upon the completion of the other Exchange Offers and Consent Solicitations, although Kroger may waive such condition at any time with respect to an Exchange Offer or Consent Solicitation. Any waiver of a condition by Kroger with respect to an Exchange Offer will automatically waive such condition with respect to the corresponding Consent Solicitation, as applicable. The closing of the Merger is not conditioned upon the commencement or completion of the Exchange Offers or Consent Solicitations.

The foregoing conditions are for the benefit of Kroger and, other than the condition that the Merger shall have been consummated, may be waived by Kroger, in whole or in part, in its sole discretion, subject to applicable law, at any time. Because each Exchange Offer and Consent Solicitation is subject to the satisfaction or waiver of certain conditions as described herein, including, among other things, the consummation of the Merger, Eligible Holders of ACI Notes will not receive the Consent Payment, the Early Participation Premium, the Exchange Consideration or the Total Consideration, as applicable, unless the Merger is consummated. Any determination made by Kroger concerning an event, development or circumstance described or referred to above will be conclusive and binding.

If any of the foregoing conditions are not satisfied, Kroger may, with respect to any or all of the Exchange Offers, at any time:

- terminate the Exchange Offer and return all tendered ACI Notes to the respective tendering holders;
- modify, extend or otherwise amend the Exchange Offer and retain all tendered ACI Notes until the Expiration Date, as extended, subject, however, to any withdrawal rights of holders;
- accept all ACI Notes tendered and not previously validly withdrawn, but not waive the unsatisfied conditions with respect to the Exchange Offer, which would automatically waive such conditions with respect to the corresponding Consent Solicitation, or adopt the Proposed Amendments; or
- waive the unsatisfied conditions with respect to the Exchange Offers and accept all ACI Notes tendered and not previously validly withdrawn.

Kroger may amend the terms of any Exchange Offer without amending the terms of any other Exchange Offer. Kroger may complete any Exchange Offer even if valid consents sufficient to effect the Proposed Amendments to the corresponding ACI Indenture are not received. Any such amendment, termination, modification, extension or waiver with respect to any Exchange Offer will automatically amend, terminate, modify, extend or waive conditions precedent to the corresponding Consent Solicitation, as applicable.

#### **Treatment of ACI Notes Not Tendered in the Exchange Offers and Consent Solicitations**

ACI Notes of any series that are not tendered or that are tendered but not accepted will remain outstanding and will continue to be subject to their existing terms immediately following the completion of the corresponding Exchange Offer, including interest rate, interest payment dates and maturity, except as otherwise stated herein.

If the Consent Solicitation with respect to a particular series of ACI Notes issued under an ACI Indenture is consummated and the Proposed Amendments become operative, the amendments will apply to such series of ACI Notes issued under such indenture not accepted in the applicable Exchange Offer, and those ACI Notes will no longer have the benefit of the protection of the covenants and restrictive provisions eliminated by the Proposed Amendments. Any ACI Notes not tendered or that are tendered but not accepted will not be subject to the Registration Rights Agreement.

In addition, upon closing of the Merger, Kroger expects to repay and terminate ACI's existing credit facility and, as a result of such repayment and termination, Kroger expects to release all of the guarantees of the ACI Entities of the ACI 2026 Indenture Notes, ACI March 2026 Indenture Notes, ACI 2027 Indenture Notes, ACI 2028 Indenture Notes, ACI February 2028 Indenture Notes, ACI 2029 Indenture Notes and the ACI 2030 Indenture Notes. Therefore, following the consummation of the Exchange Offers, none of Kroger or any of its subsidiaries (other than the Albertsons Issuing Entities, each, insofar as applicable) is expected to be an obligor of any such ACI Notes that are not exchanged in the Exchange Offers, and as a result, holders of the ACI Notes will have no claims against the assets of Kroger and its subsidiaries other than the Albertsons Issuing Entities, each, in so far as applicable (subject to the Cross-Guarantee Scenario).

If requisite consents to adopt the Proposed Amendments are not received with respect to any of the ACI 2026 Indenture Notes, ACI March 2026 Indenture Notes, ACI 2027 Indenture Notes, ACI 2028 Indenture Notes, ACI February 2028 Indenture Notes, ACI 2029 Indenture Notes and the ACI 2030 Indenture Notes, Kroger may seek an investment grade rating on such ACI Notes by at least two nationally recognized statistical rating organizations which would allow Kroger to terminate substantially all of the restrictive covenants under each applicable ACI Indenture pursuant to the covenant termination provisions therein. If successful, such covenant termination would be effective for so long as such ACI Notes remain outstanding, regardless of any subsequent downgrades in the ratings of such ACI Notes, and any Eligible Holder that does not tender ACI Notes of the relevant series would not have the benefit of such restrictive covenants following the consummation of the Merger. In connection with the covenant termination, Kroger may elect to provide guarantees of the applicable series of ACI Notes. Furthermore, if Kroger determines to guarantee any series of ACI Notes following the closing of the Merger,

Kroger may cause the obligors with respect to any such series of ACI Notes to guarantee Kroger's existing and future senior indebtedness, including the Kroger Notes, any of Kroger's existing notes, the Term Loan Facilities and the revolving credit facility, and, thus, any such ACI Notes would effectively rank equal in right of payment with the new Kroger Notes and Kroger's existing and future senior indebtedness, with respect to the assets of Kroger and the obligors under such ACI Notes.

From time to time after the Expiration Date, Kroger or its affiliates may acquire any ACI Notes of any series that are not tendered and accepted in the corresponding Exchange Offer and Consent Solicitation through open market purchases, privately negotiated transactions, tender offers, exchange offers, redemption or otherwise, upon such terms and at such prices as Kroger may determine (or as may be provided for in the ACI Indenture governing the applicable series of ACI Notes), which with respect to the applicable series of ACI Notes may be more or less than the consideration to be received by participating Eligible Holders in the Exchange Offers and Consent Solicitations and, in any case, could be for cash or other consideration. There can be no assurance as to which, if any, of these alternatives or combinations thereof Kroger or its affiliates may choose to pursue in the future. See "Risk Factors."

### **Effect of Tender**

Any tender of an ACI Note by an Eligible Holder that is not validly withdrawn prior to the Expiration Date, with respect to the Exchange Offers, and Early Participation Date, with respect to the Consent Solicitation, will constitute a binding agreement between that holder and Kroger and a consent to the Proposed Amendments, upon the terms and subject to the conditions of the relevant Exchange Offer. The acceptance of the Exchange Offers by a tendering holder of ACI Notes will constitute the agreement by that holder to deliver good and marketable title to the tendered ACI Notes, free and clear of all liens, charges, claims, encumbrances, interests and restrictions of any kind.

If the Proposed Amendments become operative with respect to a particular series of ACI Notes, the amendments will apply to such series of ACI Notes that are not acquired in the applicable Exchange Offer, even though the holders of those ACI Notes did not consent to the Proposed Amendments.

Thereafter, all such ACI Notes will be governed by the relevant ACI Indenture as amended by the Proposed Amendments, which will have less restrictive terms and afford reduced protections to the holders of those securities compared to those currently in the ACI Indentures or those applicable to the Kroger Notes. In particular, holders of the ACI Notes will no longer be entitled to the benefits of various covenants and other provisions in such Indentures. See "Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—The Proposed Amendments to the ACI Indentures will afford reduced protection to remaining holders of ACI Notes."

The tendered ACI Notes that are accepted for exchange are expected to be cancelled in connection with the Exchange Offers following the consummation of the Exchange Offers. All ACI Notes that remain outstanding will be governed by the relevant ACI Indenture as amended by the Proposed Amendments.

### **Representations, Warranties and Covenants of Eligible Holders of ACI Notes**

By tendering ACI Notes in accordance with the terms and subject to the conditions set forth in this offering memorandum and consent solicitation statement, an Eligible Holder, or the beneficial holder of ACI Notes on behalf of which the holder has tendered, will, subject to that holder withdrawing its tender, and subject to the terms and conditions of the applicable Exchange Offer and Consent Solicitation generally, be deemed, among other things, to:

- irrevocably sell, assign and transfer to or upon Kroger's order or the order of Kroger's nominee all right, title and interest in and to, and any and all claims in respect of or arising or having arisen as a result of the holder's status as a holder of, all ACI Notes tendered thereby, such that thereafter the holder shall have no contractual or other rights or claims in law or equity against ACI or any fiduciary, trustee, fiscal agent or other person connected with the ACI Notes arising under, from or in connection with those ACI Notes;

- consent to the adoption of the Proposed Amendments to the corresponding ACI Indenture, as described under “The Proposed Amendments” and empowers, authorizes and directs the ACI Trustee, the Safeway Trustee, the ASC Trustee and the NALP Trustee, as applicable, to do all such things as may be necessary or expedient to carry out and give effect to the Proposed Amendments, including executing the supplemental indentures to each ACI Indenture, or to facilitate and consummate the Exchange Offers and acknowledges that in facilitating, executing, implementing and consummating the Consent Solicitations, including the Proposed Amendments, and the Exchange Offers, the Trustee may rely on the advice of legal counsel as to what actions or inactions are required, necessary, desirable or expedient to give effect thereof;
- waive any and all rights with respect to the ACI Notes tendered thereby, including, without limitation, any existing or past defaults and their consequences in respect of those ACI Notes; and
- release, forever discharge and hold harmless ACI and the ACI Trustee, the Safeway Trustee, the ASC Trustee and the NALP Trustee (each, insofar as applicable) from any and all, and irrevocably and unconditionally waives any right of, claims, suits, debts, covenants, contracts, agreements or demands whatsoever that the holder may have, now or in the future, arising out of or related to the (i) ACI Notes tendered thereby, including, without limitation, any claims that the holder is entitled to receive additional principal or interest payments with respect to the ACI Notes tendered thereby, (ii) the execution by all applicable parties of the supplement indentures giving effect to the Proposed Amendments or (iii) any transaction or actions contemplated in connection with, or related to, the Exchange Offers or Consent Solicitations, other than as expressly provided in this offering memorandum and consent solicitation statement.

In addition, each holder of ACI Notes tendered in an Exchange Offer and Consent Solicitation upon the submission of such tender will be deemed to represent, warrant and agree that:

- it has received this offering memorandum and consent solicitation statement;
- it is the beneficial owner (as defined herein) of, or a duly authorized representative of one or more beneficial owners of, the ACI Notes tendered thereby, and it has full power and authority to tender such ACI Notes;
- the ACI Notes being tendered thereby were owned as of the date of tender, free and clear of any liens, charges, claims, encumbrances, interests and restrictions of any kind, and Kroger will acquire good, indefeasible and unencumbered title to those ACI Notes, free and clear of all liens, charges, claims, encumbrances, interests and restrictions of any kind, when Kroger accepts the same;
- it will not sell, pledge, hypothecate or otherwise encumber or transfer ACI Notes tendered thereby from the date of such tender, and any purported sale, pledge, hypothecation or other encumbrance or transfer will be void and of no effect;
- it has observed (and will observe) the laws of all relevant jurisdictions, obtained all requisite governmental, exchange control or other required consents, complied with all requisite formalities including, without limitation, any verifications and registration and paid (or will pay) any issue, transfer or other taxes or requisite payments due from it (and not otherwise required to be paid by Kroger) in each respect in connection with any offer or acceptance in any jurisdiction, and that it has not taken or omitted to take any action in breach of the terms of the Exchange Offers or which will or may result in us or any other person acting in breach of the legal or regulatory requirements of any jurisdiction in connection with the Exchange Offers and the Consent Solicitations;
- (A) (i) it is, or, in the event that it is acting on behalf of a beneficial owner of the ACI Notes tendered hereby, it has received a written certification from that beneficial owner, dated as of a specific date on or since the close of that beneficial owner’s most recent fiscal year, to the effect that such beneficial owner is a QIB and is acquiring Kroger Notes for its own account or for a discretionary account or

accounts on behalf of one or more QIBs as to which it has been instructed and has the authority to make the statements required by this offering memorandum and consent solicitation statement or (ii) it is, or, in the event that it is acting on behalf of a beneficial owner of the ACI Notes tendered hereby, it has received a written certification from that beneficial owner, dated as of a specific date on or since the close of that beneficial owner's most recent fiscal year, to the effect that such beneficial owner is, (x) not a "U.S. person" and (y) outside of the United States within the meaning of Regulation S, and is acquiring Kroger Notes for its own account or for a discretionary account or accounts on behalf of one or more persons who are not "U.S. persons" and are outside of the United States within the meaning of Regulation S, as to which it has been instructed and has the authority to make the statements required by this offering memorandum and consent solicitation statement and (B) if it is located or resident in Canada, such holder is an accredited investor, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), is a permitted client as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations of the Canadian Securities Administrators, is acquiring or deemed to be acquiring the Kroger Notes as principal, is not an individual and has completed, signed and submitted to the Exchange Agent a Canadian eligibility certification (the form of which is included in the accompanying instructions for the eligibility certification);

- if resident and/or located in the European Economic Area ("EEA"), it is not a "retail investor." For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, "MiFID II"); or (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the "Insurance Distribution Directive"), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the "Prospectus Regulation");
- if resident or located in the United Kingdom, it is not a "retail investor." For these purposes, a retail investor means a person who is one (or more) of: (i) a "retail client" as defined in point MiFID II as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (the "EUWA"); (ii) a "customer" within the meaning of the provisions of the United Kingdom Financial Services and Markets Act 2000 (the "FSMA") and any rules or regulations made under the FSMA to implement the Insurance Distribution Directive, where that customer would not qualify as a "professional client" as defined in point (8) of Article 2(1) of Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA; or (iii) not a "qualified investor" as defined in the Prospectus Regulation as it forms part of domestic law by virtue of the EUWA (the "UK Prospectus Regulation");
- it is otherwise a person to whom it is lawful to make available this offering memorandum and consent solicitation statement or to make the Exchange Offers and Consent Solicitations in accordance with applicable laws (including the transfer restrictions set out in this offering memorandum and consent solicitation statement);
- it has had access to such financial and other information and has been afforded the opportunity to ask such questions of representatives of Kroger and ACI and receive answers thereto, as it deems necessary in connection with its decision to participate in the Exchange Offers and Consent Solicitations;
- it acknowledges that the Albertsons Issuing Entities, Kroger, the Dealer Managers and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and agrees that if any of the acknowledgements, representations and warranties made by its tendering such ACI Notes are, at any time prior to the consummation of the applicable Exchange Offer and Consent Solicitation, no longer accurate, it shall promptly notify Kroger and the Dealer Managers. If it is acquiring the Kroger Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing acknowledgements, representations and agreements on behalf of such account;

- it has undertaken all the appropriate analyses of the implications of the Exchange Offers and Consent Solicitations without reliance on any of Kroger, the Albertsons Issuing Entities, the Dealer Managers, the Exchange Agent, the Information Agent, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee and the Kroger Trustee, as applicable, or any of their respective affiliates;
- it acknowledges that none of Kroger, the Albertsons Issuing Entities, the Dealer Managers, the trustees with respect to the ACI Notes or the Kroger Notes, as applicable, the Exchange Agent or the Information Agent, or any of their respective affiliates, has made any recommendation or given any advice, legal, financial or otherwise, in connection with the Exchange Offers or Consent Solicitations or given any assurance, guarantee or representation as to projected success, profitability, return, performance, result, effect, consequence or benefit of the Exchange Offers and Consent Solicitations, and represents that it has made its own decision with regard to the Exchange Offers and Consent Solicitations;
- in evaluating the applicable Exchange Offer and Consent Solicitation and in making its decision whether to participate in the applicable Exchange Offer and Consent Solicitation by the tender of ACI Notes, it has made its own independent appraisal of the matters referred to in this offering memorandum and consent solicitation statement and in any related communications;
- the tender of ACI Notes shall constitute an undertaking to execute any further documents and give any further assurances that may be required in connection with any of the foregoing, in each case on and subject to the terms and conditions described or referred to in this offering memorandum and consent solicitation statement;
- either (1) no portion of the assets used by such holder to exchange the ACI Notes for the Kroger Notes constitutes assets of any (a) “employee benefit plan” within the meaning of Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”) that is subject to Title I of ERISA, (b) plan, individual retirement account or other arrangement that is described in and subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”) or provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “Similar Laws”), or (c) entity whose underlying assets are considered to include any of the foregoing described in clauses (a) and (b) above, or (2) the tender of the ACI Notes and the acquisition and holding of the Kroger Notes by such holder will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation under any applicable Similar Laws;
- the tender of ACI Notes shall, subject to a holder’s ability to withdraw its tender prior to the Expiration Date or Early Participation Date, as applicable, and subject to the terms and conditions of the applicable Exchange Offer and Consent Solicitation, constitute (i) the irrevocable appointment of the Exchange Agent as its true and lawful attorney and agent with respect to any tendered ACI Notes (with full knowledge that the Exchange Agent also acts as the agent of Kroger), with full powers of substitution and revocation (such power of attorney being deemed to be an irrevocable power coupled with an interest) to cause the ACI Notes tendered to be assigned, transferred and exchanged in the Exchange Offers and (ii) an irrevocable instruction to that attorney and agent to complete and execute all or any forms of transfer and other documents at the discretion of that attorney and agent in relation to the ACI Notes tendered thereby in favor of Kroger or any other person or persons as Kroger may direct and to deliver those forms of transfer and other documents in the attorney’s and agent’s discretion and the certificates and other documents of title relating to the registration of ACI Notes and to execute all other documents and to do all other acts and things as may be in the opinion of that attorney or agent necessary or expedient for the purpose of, or in connection with, the acceptance of the applicable Exchange Offer and Consent Solicitation, including evidencing the consents to the Proposed Amendments, and to vest in Kroger or its nominees those ACI Notes;
- if it has acquired the ACI Notes during the Exchange Offers, neither it, nor any person acting on its behalf, has purchased such securities by any form of general solicitation or general advertising; and

- if it has sold the ACI Notes during the Exchange Offers, neither it, nor any person acting on its behalf, has offered or sold such securities by any form of general solicitation or general advertising.

Each holder of ACI Notes that tenders such ACI Notes will also be deemed to represent, warrant and agree to the terms described under “Transfer Restrictions.”

The representations, warranties and agreements of a holder tendering ACI Notes will be deemed to be repeated and reconfirmed on and as of the Expiration Date and the Settlement Date. For purposes of this offering memorandum and consent solicitation statement, the “beneficial owner” of any ACI Notes means any holder that exercises investment discretion with respect to those ACI Notes.

### **Absence of Appraisal and Dissenters’ Rights**

Holders of the ACI Notes do not have any appraisal or dissenters’ rights under New York law, the law governing the ACI Indentures and the ACI Notes, or under the terms of the ACI Indentures in connection with the Exchange Offers and Consent Solicitations.

### **Acceptance of ACI Notes for Exchange and Delivery of Kroger Notes**

On the Settlement Date, upon instruction from Kroger and the Exchange Agent, the Kroger Notes will be exchanged for the ACI Notes tendered and accepted in the Exchange Offers and Consent Solicitations. Any cash amounts will be made by deposit of funds on the Settlement Date with DTC, Clearstream or Euroclear, as applicable, which will transmit those payments to tendering holders.

Kroger will be deemed to accept ACI Notes that have been validly tendered by Eligible Holders and that have not been validly withdrawn as provided in this offering memorandum and consent solicitation statement when, and if, Kroger gives oral or written notice of acceptance to the Exchange Agent. Following receipt of that notice by the Exchange Agent and subject to the terms and conditions of the Exchange Offers and Consent Solicitations, delivery of the Kroger Notes and any cash amounts will be made by the Exchange Agent on the Settlement Date. The Exchange Agent will act as agent for tendering holders of ACI Notes for the purpose of receiving ACI Notes and transmitting Kroger Notes and cash as of the Settlement Date. If any tendered ACI Notes are not accepted for any reason described in the terms and conditions of the Exchange Offers and Consent Solicitations, such unaccepted ACI Notes will be returned without expense to the tendering holders promptly after the expiration or termination of the Exchange Offers and Consent Solicitations, and no consent to the Proposed Amendments will be deemed to be given with respect to such unaccepted ACI Notes.

If, for any reason, acceptance for exchange of tendered ACI Notes, or issuance of Kroger Notes in exchange for validly tendered ACI Notes, pursuant to the applicable Exchange Offer, is delayed, or Kroger is unable to accept tendered ACI Notes for exchange or to exchange Kroger Notes for validly tendered ACI Notes pursuant to the Exchange Offers, then the Exchange Agent may, nevertheless, on behalf of Kroger, retain the tendered ACI Notes, without prejudice to the rights of Kroger described under “—Early Participation Date; Expiration Date; Extensions; Amendments; Termination,” and “—Conditions to the Exchange Offers and Consent Solicitations” above and “—Withdrawal of Tenders and Revocation of Consents” below, but subject to Rule 14e-1 under the Exchange Act, which requires that Kroger pay the consideration offered or return the ACI Notes tendered promptly after the termination or withdrawal of any exchange offer, and the tendered ACI Notes may not be withdrawn.

Under no circumstances will any interest be payable because of any delay by the Exchange Agent or DTC in the transmission of funds to the holders of accepted ACI Notes or otherwise.

### **Procedures for Tendering**

If you wish to participate in the Exchange Offers and Consent Solicitations and your ACI Notes are held by a custodial entity such as a commercial bank, broker, dealer, trust company or other nominee, you must instruct that custodial entity to tender your ACI Notes on your behalf pursuant to the procedures of that custodial entity. Please ensure you contact your custodial entity as soon as possible to give them sufficient time to meet your requested

deadline. Eligible Holders are urged to appropriately instruct their commercial bank, broker, dealer, trust company or other nominee at least five business days prior to the Early Participation Date or the Expiration Date, as applicable, in order to allow adequate processing time for their instruction.

To participate in the Exchange Offers and Consent Solicitations, you must comply with the ATOP procedures for book-entry transfer described below at or prior to the Expiration Date or, in order to receive the Total Consideration (including the Consent Payment and the Early Participation Premium), at or prior to the Early Participation Date.

**Additionally, in order to participate in the Exchange Offers and Consent Solicitations, Eligible Holders located or resident in Canada must complete, sign and submit to the Exchange Agent a Canadian eligibility certification (the form of which is included in the accompanying instructions for the eligibility certification). See “Transfer Restrictions—Notice to Prospective Investors in Canada.” Each person tendering any ACI Notes to the Exchange Offers without submitting a Canadian eligibility certification to the Exchange Agent will, by doing so, be deemed to be representing and warranting to ACI and the Exchange Agent that such person is not located or resident in Canada.**

The Exchange Agent and DTC have confirmed that the Exchange Offers and Consent Solicitations are eligible for ATOP with respect to book-entry notes held through DTC. ACI Notes will not be deemed to have been tendered until the agent's message and any other required documents, are received by the Exchange Agent. There are no guaranteed delivery procedures applicable to the Exchange Offers and Consent Solicitations under the terms of this offering memorandum and consent solicitation statement or other materials provided herewith.

The method of delivery of ACI Notes and all other required documents to the Exchange Agent is at the election and risk of the Eligible Holder. Eligible Holders should use an overnight or hand delivery service, properly insured. In all cases, sufficient time should be allowed to assure delivery to and receipt by the Exchange Agent at or prior to the Expiration Date or, in order to receive the Total Consideration (including the Consent Payment and the Early Participation Premium), at or prior to the Early Participation Date. **Do not send any ACI Notes to anyone other than the Exchange Agent via an agent's message.**

All questions as to the validity, form, eligibility, including time of receipt, and acceptance and withdrawal of tendered ACI Notes, including any such questions relating to VOI numbers, will be determined by Kroger in its absolute discretion, which determination will be final and binding. Kroger reserves the right to reject any and all tendered ACI Notes determined by Kroger not to be in proper form or not to be tendered properly or any tendered ACI Notes Kroger's acceptance of which would, in the opinion of Kroger's counsel, be unlawful. Kroger also reserves the right to waive any defects, irregularities or conditions of tender as to particular ACI Notes, whether or not waived in the case of other ACI Notes. Kroger's interpretation of the terms and conditions of the Exchange Offers and Consent Solicitations will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of ACI Notes must be cured within the time Kroger determines. Although Kroger intends to notify holders of defects or irregularities with respect to tenders of ACI Notes, none of Kroger, the Exchange Agent, the Information Agent, the Dealer Managers, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee, the Kroger Trustee or any other person will be under any duty to give that notification or shall incur any liability for failure to give that notification. Tenders of ACI Notes and consents to the Proposed Amendments with respect to such ACI Notes will not be deemed to have been made until any defects or irregularities therein have been cured or waived.

### **Procedures for Re-Tendering and VOI Numbers**

Kroger is allowing for Eligible Holders who (i) validly tender ACI Notes at or prior to the Early Participation Date, (ii) validly withdraw such ACI Notes following the Early Participation Date and (iii) validly re-tender such ACI Notes at or prior to the Expiration Date with an Early Participation VOI Number corresponding to such ACI Notes to receive the Early Participation Premium and Exchange Consideration. To effect the foregoing, each Eligible Holder that validly tenders and does not validly withdraw ACI Notes at or prior to the Early Participation Date will receive a unique VOI number corresponding to the principal amount of such ACI Notes validly tendered (and not validly withdrawn) at or prior to the Early Participation Date (referred to herein as the Early Participation VOI Number). The Early Participation VOI Number is transferable with corresponding ACI

Notes validly withdrawn and transferred to a new Eligible Holder after the Early Participation Date. An Eligible Holder who validly tenders ACI Notes following the Early Participation, but at or prior to the Expiration Date, must submit the Early Participation VOI Number corresponding to such principal amount of ACI Notes to be eligible to receive both the Exchange Consideration and the Early Participation Premium. To the extent an Eligible Holder validly tenders or re-tenders ACI Notes with an Early Participation VOI Number at or prior to the Expiration Date and the Early Participation VOI Number submitted with such tenders corresponds to an aggregate principal amount of ACI Notes that does not match the aggregate principal amount of ACI Notes validly tendered, the tender may be rejected or the consideration received by such Eligible Holder may be modified.

An Eligible Holder that validly tenders ACI Notes at or prior to the Early Participation Date, but who does not validly withdraw such ACI Notes prior to the Expiration Date, need not take any further action to receive the Total Consideration. To the extent an Eligible Holder validly tenders and did not validly withdraw ACI Notes at or prior to the Early Participation Date and subsequently withdraws such ACI Notes following the Early Participation Date, but prior to the Expiration Date, and such Eligible Holder (i) validly re-tenders, and does not validly withdraw, such ACI Notes at or prior to the Expiration Date and (ii) submits an Early Participation VOI Number, and the principal amount of the re-tendered ACI Notes is greater than the aggregate principal amount represented by the Early Participation VOI Number, such tender may be rejected and the Eligible Holder may not be eligible to receive either of the Exchange Consideration or the Early Participation Premium with respect to any amount of such tender unless such ACI Notes are properly re-tendered in accordance with the procedures described herein. If you intend to tender a principal amount of ACI Notes in excess of the principal amount represented by the applicable Early Participation VOI Number, you must make separate tenders of (i) the principal amount of ACI Notes that corresponds to the principal amount represented by the Early Participation VOI Number and (ii) any excess principal amount of ACI Notes, to avoid such tender being rejected.

For example, an Eligible Holder that validly tenders (and does not validly withdraw) \$10.0 million principal amount of ACI Notes at or prior to the Early Participation Date will receive an Early Participation VOI Number corresponding to \$10.0 million principal amount of ACI Notes. If such Holder validly withdraws all \$10.0 million aggregate principal amount of ACI Notes following the Early Participation Date, but only validly re-tenders \$8.0 million of principal amount of ACI Notes at or prior to the Expiration Date with the Early Participation VOI Number, such Holder will receive the following (subject to the other terms and conditions of the Exchange Offers and Consent Solicitations): (1) the Consent Payment with respect to \$10.0 million principal amount of ACI Notes and (2) the Early Participation Premium and Exchange Consideration with respect to \$8.0 million principal amount of ACI Notes.

As an additional example, an Eligible Holder that validly tenders (and does not validly withdraw) \$10.0 million principal amount of ACI Notes at or prior to the Early Participation Date will receive an Early Participation VOI Number corresponding to \$10.0 million principal amount of ACI Notes. If such Holder validly withdraws all \$10.0 million aggregate principal amount of ACI Notes following the Early Participation Date, acquires an additional \$2.0 million aggregate principal amount of ACI Notes prior to the Expiration Date without any corresponding Early Participation VOI Number for such ACI Notes and validly re-tenders in two separate tenders (i) \$10.0 million of principal amount of ACI Notes with the Early Participation VOI Number for \$10.0 million of principal amount of ACI Notes and (ii) the remaining \$2.0 million of principal amount of ACI Notes without an Early Participation VOI Number, in each case at or prior to the Expiration Date, such Holder will receive the following (subject to the other terms and conditions of the Exchange Offers and Consent Solicitations): (1) the Consent Payment with respect to \$10.0 million principal amount of ACI Notes, (2) the Early Participation Premium and Exchange Consideration with respect to \$10.0 million principal amount of ACI Notes and (3) the Exchange Consideration with respect to \$2.0 million principal amount of ACI Notes. Note that, in the foregoing example and in all cases where an Eligible Holder is tendering an aggregate principal amount of ACI Notes in excess of what was initially tendered with an Early Participation VOI Number, such Eligible Holder must make two separate elections, one that matches the Early Participation VOI Number, and one with the remainder, to avoid the tender being rejected.

Each Early Participation VOI Number will only be valid for up to the aggregate principal amount of ACI Notes to which it corresponds and will be applied on a first-use basis up to such amount in the case that multiple Eligible Holders validly tender ACI Notes along with the same Early Participation VOI Number, and in all cases, acceptance of an Early Participation VOI Number is subject to the discretion of the Company in all respects.

Note the Consent Payment will be paid on the Settlement Date to the Eligible Holder who is the holder of the ACI Notes as of 5:00 p.m., New York City time, on the Early Participation Date, even if such Eligible Holder is no longer the beneficial owner of such ACI Notes on the Expiration Date. Eligible Holders who acquire ACI Notes following the Early Participation Date will not be eligible to receive the Consent Payment with respect to such ACI Notes.

### **Book-Entry Delivery Procedures for Tendering ACI Notes Held with DTC**

If you wish to tender ACI Notes held on your behalf by a nominee with DTC, you must:

- inform your nominee of your interest in tendering your ACI Notes pursuant to the Exchange Offers and Consent Solicitations; and
- instruct your nominee to tender all ACI Notes you wish to be tendered in the Exchange Offers and Consent Solicitations into the Exchange Agent's account at DTC at or prior to the Expiration Date or, in order to be eligible to receive the Total Consideration (including the Consent Payment and the Early Participation Premium), at or prior to the Early Participation Date.

Any financial institution that is a nominee of DTC, including Euroclear and Clearstream, must tender the ACI Notes by effecting a book-entry transfer of ACI Notes to be tendered in the Exchange Offers and Consent Solicitations into the account of the Exchange Agent at DTC by electronically transmitting its acceptance of the Exchange Offers and Consent Solicitations through the ATOP procedures for transfer. Such instruction should be completed by such financial institution on behalf of each beneficial owner. DTC will then verify the acceptance, execute a book-entry delivery to the Exchange Agent's account at DTC and send an agent's message to the Exchange Agent. An "agent's message" is a message, transmitted by DTC to, and received by, the Exchange Agent and forming part of a book-entry confirmation, which states that DTC has received an express acknowledgement from an organization that participates in DTC (a "participant") tendering ACI Notes that the participant has received and agrees to be bound by the terms of the offering memorandum and consent solicitation and that Kroger may enforce the agreement against the participant. **No letter of transmittal is required for tenders effected through ATOP.**

### **Withdrawal of Tenders and Revocation of Consents**

Tenders of any particular series of ACI Notes in the Exchange Offers may be validly withdrawn at any time prior to the applicable Expiration Date and tenders of consents in the Consent Solicitations may be validly revoked at any time prior to the applicable Consent Revocation Deadline, but thereafter will be irrevocable and such consents will continue to be deemed delivered. A valid withdrawal of tendered ACI Notes prior to the Consent Revocation Deadline will also constitute the revocation of the related consent to the Proposed Amendments to the ACI Indentures.

For a withdrawal of a tender to be effective, a written or facsimile transmission notice of withdrawal must be received by the Exchange Agent prior to the Expiration Date or Consent Revocation Deadline, as applicable, at its address listed on the back cover page of this offering memorandum and consent solicitation statement. The withdrawal notice must:

- specify the name of the tendering holder of ACI Notes;
- bear a description of the ACI Notes to be withdrawn;
- specify the aggregate principal amount represented by those ACI Notes;
- specify the name and number of the account at DTC to be credited with the withdrawn ACI Notes; and

- be signed by the holder of those ACI Notes, including any required signature guarantees, or be accompanied by evidence satisfactory to Kroger that the person withdrawing the tender has succeeded to the beneficial ownership of those ACI Notes.

The signature on any notice of withdrawal must be guaranteed by an eligible guarantor institution, unless the ACI Notes have been tendered for the account of an eligible guarantor institution.

Withdrawal of tenders of ACI Notes may not be rescinded, and any ACI Notes validly withdrawn will thereafter be deemed not to have been validly tendered for purposes of the Exchange Offers and Consent Solicitations. Validly withdrawn ACI Notes may, however, be re-tendered by again following one of the procedures described in “—Procedures for Tendering” above at or prior to the Expiration Date or, in order to receive the Total Consideration (including the Consent Payment and the Early Participation Premium), at or prior to the Early Participation Date. Tendered ACI Notes may be withdrawn at any time before the Expiration Date; however, a valid withdrawal of the tendered ACI Notes after the Consent Revocation Deadline will not be deemed a revocation of the related consents and such consents will continue to be deemed delivered. None of Kroger, the Exchange Agent, the Information Agent, the Dealer Managers, the ACI Trustee, the Safeway Trustee, the ASC Trustee, the NALP Trustee, the Kroger Trustee, or any other person will be under any duty to give notification of any defects or irregularities in any notice of withdrawal of tenders or revocation of Consents, or incur any liability for failure to give any such notification.

### **Exchange Agent; Information Agent**

Global Bondholder Services Corporation has been appointed as the Exchange and Information Agent for the Exchange Offers and Consent Solicitations. All correspondence in connection with the Exchange Offers and Consent Solicitations should be sent or delivered by each Eligible Holder of ACI Notes, or a beneficial owner’s commercial bank, broker, dealer, trust company or other nominee, to the Exchange Agent at the address listed on the back cover page of this offering memorandum and consent solicitation statement. Questions concerning tender procedures and requests for additional copies of this offering memorandum and consent solicitation statement should be directed to the Information Agent at the address and telephone numbers listed on the back cover page of this offering memorandum and consent solicitation statement. Eligible Holders of ACI Notes may also contact their commercial bank, broker, dealer, trust company or other nominee for assistance concerning the Exchange Offers and Consent Solicitations. Kroger will pay the Exchange Agent and the Information Agent reasonable and customary fees for its services and will reimburse it for its reasonable out-of-pocket expenses.

### **Dealer Managers**

In connection with the Exchange Offers and Consent Solicitations, Kroger has retained Citigroup Global Markets Inc. and Wells Fargo Securities, LLC as the Dealer Managers and Consent Solicitation Agents for the Exchange Offers and Consent Solicitations. Kroger will pay a customary fee to the Dealer Managers for soliciting acceptances of the Exchange Offers and Consent Solicitations. That fee will be payable promptly following completion of the Exchange Offers and Consent Solicitations.

The obligations of the Dealer Managers to perform their functions are subject to various conditions. Kroger has agreed to indemnify the Dealer Managers against various liabilities, including various liabilities under the federal securities laws. The Dealer Managers and Consent Solicitation Agents may contact Eligible Holders of ACI Notes by mail, telephone, facsimile transmission, personal interviews and otherwise may request broker dealers and the other nominee holders to forward materials relating to the Exchange Offers and Consent Solicitations to beneficial holders. Questions regarding the terms of the Exchange Offers and Consent Solicitations may be directed to Citigroup Global Markets Inc. and Wells Fargo Securities, LLC at their respective addresses and telephone numbers listed on the back cover page of this offering memorandum and consent solicitation statement. At any given time, the Dealer Managers may trade the ACI Notes for their own respective accounts or for the accounts of their respective customers and, accordingly, may hold a long or short position in the ACI Notes.

Some of the Dealer Managers have, from time to time, provided and/or are currently providing investment banking and financial advisory services to Kroger, ACI and their respective affiliates, including as lenders under

certain credit facilities of Kroger and ACI. The Dealer Managers may in the future provide various investment banking and other services to Kroger, ACI and their respective affiliates, for which they would receive customary compensation from Kroger and ACI. In connection with the Merger, Citigroup Global Markets Inc. and Wells Fargo Securities, LLC are serving as financial advisors to Kroger and have provided commitments under the bridge facility.

In the ordinary course of their businesses, the Dealer Managers or their respective affiliates may at any time hold long or short positions, and may trade for their own accounts or the accounts of customers, in debt or equity securities issued by Kroger, the Albertsons Issuing Entities and their respective subsidiaries and affiliates, including any of the ACI Notes or the Kroger Notes. To the extent that the Dealer Managers or their respective affiliates own ACI Notes during the Exchange Offers and Consent Solicitations, they may tender such ACI Notes pursuant to the terms of the Exchange Offers and Consent Solicitations. The Dealer Managers and their respective affiliates may from time to time in the future engage in transactions with Kroger, ACI and their respective subsidiaries and affiliates and provide services to them in the ordinary course of their respective businesses.

In connection with the Exchange Offers and Consent Solicitations or otherwise, the Dealer Managers may purchase and sell ACI Notes or Kroger Notes in the open market. These transactions may include covering transactions and stabilizing transactions. Any of these transactions may have the effect of preventing or retarding a decline in the market prices of the ACI Notes and/or the Kroger Notes. They may also cause the prices of the ACI Notes and/or the Kroger Notes to be higher than the prices that otherwise would exist in the open market in the absence of these transactions. The Dealer Managers may conduct these transactions in the over-the-counter market or otherwise. If the Dealer Managers commence any of these transactions, they may discontinue them at any time.

### **Other Fees and Expenses**

Kroger will bear the expenses of soliciting tenders of the ACI Notes. Solicitations of Eligible Holders may be made by mail, e-mail, facsimile transmission, telephone or in person by the Dealer Managers, Information Agent, Exchange Agent as well as by Kroger officers and other employees and those of Kroger affiliates. No additional compensation will be paid to any officers or employees who engage in soliciting exchanges and consents.

Tendering Eligible Holders of ACI Notes accepted in the Exchange Offers and Consent Solicitations will not be obligated to pay brokerage commissions or fees to Kroger, the Dealer Managers, the Exchange Agent or the Information Agent or, except as set forth below, to pay transfer taxes with respect to the exchange of their ACI Notes. If, however, a tendering Eligible Holder handles the transaction through its broker, dealer, commercial bank, trust company or other institution that Eligible Holder may be required to pay brokerage fees or commissions.

### **Transfer Taxes**

You will not be obligated to pay any transfer taxes in connection with the tender of ACI Notes in the Exchange Offers and Consent Solicitations unless you instruct Kroger to deliver Kroger Notes, or request that ACI Notes not tendered or accepted in the Exchange Offers and Consent Solicitations be returned, to a person other than the tendering Eligible Holder. In those cases, you will be responsible for the payment of any applicable transfer taxes.

**NONE OF KROGER, THE ALBERTSONS ISSUING ENTITIES, THE DEALER MANAGERS, THE ACI TRUSTEE, THE SAFEWAY TRUSTEE, THE ASC TRUSTEE, THE NALP TRUSTEE, THE KROGER TRUSTEE, THE EXCHANGE AGENT OR THE INFORMATION AGENT, OR ANY AFFILIATE OF ANY OF THEM, MAKES ANY RECOMMENDATION AS TO WHETHER ELIGIBLE HOLDERS OF ACI NOTES SHOULD EXCHANGE ACI NOTES FOR KROGER NOTES AND CASH OR DELIVER CONSENTS TO THE PROPOSED AMENDMENTS IN RESPONSE TO THE EXCHANGE OFFERS AND CONSENT SOLICITATIONS AND NO ONE HAS BEEN AUTHORIZED BY ANY OF THEM TO MAKE SUCH A RECOMMENDATION.**

**IN ACCORDANCE WITH NORMAL AND ACCEPTED MARKET PRACTICE, NONE OF THE ACI TRUSTEE, THE SAFEWAY TRUSTEE, THE ASC TRUSTEE, THE NALP TRUSTEE OR THE**

**KROGER TRUSTEE NOR ANY OF THEIR RESPECTIVE AGENTS AND AFFILIATES, EXPRESSES ANY VIEWS OR OPINIONS AS TO THE MERITS OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS. NONE OF THE TRUSTEES HAVE BEEN INVOLVED IN THE NEGOTIATION OR FORMULATION OF THE TERMS OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS AND MAKE NO REPRESENTATION THAT ALL RELEVANT INFORMATION HAS BEEN DISCLOSED TO ELIGIBLE HOLDERS IN, OR PURSUANT TO, THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS. ACCORDINGLY, ELIGIBLE HOLDERS WHO ARE IN ANY DOUBT AS TO THE IMPACT OF THE EXCHANGE OFFERS OR CONSENT SOLICITATIONS ON THEIR INVESTMENT OR THE NOTES SHOULD SEEK THEIR OWN INDEPENDENT ADVICE.**

## THE PROPOSED AMENDMENTS

Kroger is soliciting the consent of Eligible Holders of ACI Notes to, among other things, eliminate from each ACI Indenture: (i) substantially all of the restrictive covenants; (ii) certain of the events which may lead to an “Event of Default”; (iii) the reporting covenant; (iv) the restrictions on each of the Albertsons Issuing Entities consolidating with or merging into another person or conveying, transferring or leasing all or any of its properties and assets to any person; (v) the covenant requiring certain of the ACI subsidiaries to guarantee certain of the ACI Notes; and (vi) the obligation to offer to repurchase certain of the ACI Notes upon certain change of control transactions. If the Proposed Amendments described below are adopted with respect to any ACI Indenture, the amendments will apply to all ACI Notes issued pursuant to such indenture not acquired in the applicable Exchange Offer. Thereafter, all such ACI Notes will be governed by the relevant ACI Indenture as amended by the Proposed Amendments, which will have less restrictive terms and afford reduced protections to the holders of those securities compared to those currently in the ACI Indentures or those applicable to the Kroger Notes. In particular, holders of the ACI Notes under the amended ACI Indentures will no longer be entitled to the benefits of various covenants and other provisions. See “Risk Factors—Risks Related to the Exchange Offers and Consent Solicitations—The Proposed Amendments to the ACI Indentures will afford reduced protection to remaining holders of ACI Notes.”

The descriptions below of the provisions of the ACI Indentures to be eliminated or modified do not purport to be complete, and conforming amendments may be required or necessary to correctly effect the modifications described below, which are qualified in their entirety by reference to the ACI Indentures and the form of supplemental indenture to the ACI Indentures that contains the Proposed Amendments. Copies of the form supplemental indentures will be available upon the closing of the Exchange Offers as provided under the section captioned “Where You Can Find More Information and Incorporation By Reference.”

The Proposed Amendments with respect to each series of ACI Notes constitute a single proposal with respect to such series, and a consenting Eligible Holder must consent to the Proposed Amendments with respect to a series of ACI Notes in their entirety and may not consent selectively with respect to certain of the Proposed Amendments as they relate to such series.

Pursuant to the ACI Indentures, the Proposed Amendments with respect to each series of the ACI Notes under the ACI Indentures require the consent of the holders of not less than a majority in principal amount of such series of the ACI Notes outstanding, except for the NALP Indenture Notes issued under the NALP Indenture, which requires the consent of holders of not less than 66 2/3% in principal amount of such series of such NALP Indenture Notes outstanding.

As of the date of this offering memorandum and consent solicitation statement, the aggregate principal amount outstanding with respect to each series of ACI Notes is:

	<b>Principal Amount Outstanding</b>
<b><u>ACI 2026 Indenture Notes</u></b> 3.250% Senior Notes due 2026 .....	\$750,000,000
<b><u>ACI March 2026 Indenture Notes</u></b> 7.500% Senior Notes due 2026 .....	\$600,000,000
<b><u>ACI 2027 Indenture Notes</u></b> 4.625% Senior Notes due 2027 .....	\$1,350,000,000

	<b>Principal Amount Outstanding</b>
<b><u>ACI 2028 Indenture Notes</u></b>	
5.875% Senior Notes due 2028 .....	\$750,000,000
<b><u>ACI February 2028 Indenture Notes</u></b>	
6.500% Senior Notes due 2028 .....	\$750,000,000
<b><u>ACI 2029 Indenture Notes</u></b>	
3.500% Senior Notes due 2029 .....	\$1,350,000,000
<b><u>ACI 2030 Indenture Notes</u></b>	
4.875% Senior Notes due 2030 .....	\$1,000,000,000
<b><u>Safeway Indenture Notes</u></b>	
7.450% Senior Debentures due 2027 .....	\$120,078,000
7.250% Senior Debentures due 2031 .....	\$261,099,000
<b><u>ASC Indenture Notes</u></b>	
8.000% Debentures due 2026 .....	\$2,902,000
7.100% Medium-Term Notes, Series B due 2028 .....	\$756,000
7.500% Debentures due 2037 .....	\$143,000
<b><u>NALP Indenture Notes</u></b>	
7.110% Medium-Term Notes, Series B due 2027 .....	\$11,045,000
7.150% Medium-Term Notes, Series B due 2027 .....	\$310,000
6.560% Medium-Term Notes, Series B due 2027 .....	\$210,000
6.570% Medium-Term Notes, Series C due 2028 .....	\$24,278,000
6.520% Medium-Term Notes, Series C due 2028 .....	\$5,170,000
6.530% Medium-Term Notes, Series C due 2028 .....	\$12,000,000
6.625% Medium-Term Notes, Series C due 2028 .....	\$19,898,000
6.630% Medium-Term Notes, Series C due 2028 .....	\$6,000,000
7.750% Debentures due 2026 .....	\$56,536,000
7.450% Senior Debentures due 2029 .....	\$127,206,000
8.700% Senior Debentures due 2030 .....	\$135,098,000
8.000% Senior Debentures due 2031 .....	\$108,879,000

The valid tender of an Eligible Holder's ACI Notes will constitute the consent of the tendering holder to the Proposed Amendments in their entirety.

If the requisite consents with respect to a particular series of ACI Notes under an ACI Indenture have been received, the Albertsons Issuing Entities may, and the ACI Trustee, Safeway Trustee, ASC Trustee or NALP Trustee, as applicable, may execute and deliver a supplemental indenture relating to the Proposed Amendments to

the applicable series of ACI Notes that will be effective upon execution but will only become operative upon the Settlement Date of the applicable Exchange Offer. If said requisite consents are received, all of the sections or provisions listed below under the applicable ACI Indenture will be deleted or modified as indicated.

- Section 4.02 of the ACI 2026 Indenture—Reports; Section 4.02 of the ACI March 2026 Indenture—Reports; Section 4.02 of the ACI 2027 Indenture—Reports; Section 4.02 of the ACI 2028 Indenture—Reports; Section 4.02 of the ACI February 2028 Indenture—Reports; Section 4.02 of the ACI 2029 Indenture—Reports; Section 4.02 of the ACI 2030 Indenture—Reports; Section 4.2 of the Safeway Indenture—SEC Reports; Section 3.9 of the ASC Indenture—Reports by the Issuer; Section 704 of the NALP Indenture—Reports by Company (deleted in their entirety);
- Section 4.03 of the ACI 2026 Indenture—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI March 2026 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI 2027 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI 2028 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI February 2028 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI 2029 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock; Section 4.03 of the ACI 2030 Indenture— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock (deleted in their entirety);
- Section 4.04 of the ACI 2026 Indenture—Limitation on Restricted Payments; Section 4.04 of the ACI March 2026 Indenture—Limitation on Restricted Payments; Section 4.04 of the ACI 2027 Indenture— Limitation on Restricted Payments; Section 4.04 of the ACI 2028 Indenture—Limitation on Restricted Payments; Section 4.04 of the ACI February 2028 Indenture—Limitation on Restricted Payments; Section 4.04 of the ACI 2029 Indenture—Limitation on Restricted Payments; Section 4.04 of the ACI 2030 Indenture—Limitation on Restricted Payments (deleted in their entirety);
- Section 4.06 of the ACI 2026 Indenture—Asset Sales; Section 4.06 of the ACI March 2026 Indenture—Asset Sales; Section 4.06 of the ACI 2027 Indenture—Asset Sales; Section 4.06 of the ACI 2028 Indenture—Asset Sales; Section 4.06 of the ACI February 2028 Indenture—Asset Sales; Section 4.06 of the ACI 2029 Indenture—Asset Sales; Section 4.06 of the ACI 2030 Indenture—Asset Sales (deleted in their entirety);
- Section 4.07 of the ACI 2026 Indenture—Transactions with Affiliates; Section 4.07 of the ACI March 2026 Indenture—Transactions with Affiliates; Section 4.07 of the ACI 2027 Indenture—Transactions with Affiliates; Section 4.07 of the ACI 2028 Indenture—Transactions with Affiliates; Section 4.07 of the ACI February 2028 Indenture—Transactions with Affiliates; Section 4.07 of the ACI 2029 Indenture—Transactions with Affiliates; Section 4.07 of the ACI 2030 Indenture—Transactions with Affiliates (deleted in their entirety);
- Section 4.08 of the ACI 2026 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI March 2026 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI 2027 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI 2028 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI February 2028 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI 2029 Indenture—Change of Control Triggering Event; Section 4.08 of the ACI 2030 Indenture—Change of Control Triggering Event (deleted in their entirety);
- Section 4.09 of the ACI 2026 Indenture—Compliance Certificate; Section 4.09 of the ACI March 2026 Indenture—Compliance Certificate; Section 4.09 of the ACI 2027 Indenture—Compliance Certificate; Section 4.09 of the ACI 2028 Indenture—Compliance Certificate; Section 4.09 of the ACI February 2028 Indenture—Compliance Certificate; Section 4.09 of the ACI 2029 Indenture—Compliance

Certificate; Section 4.09 of the ACI 2030 Indenture—Compliance Certificate; Section 1004 of the NALP Indenture—Statement by Officers as to Default; Section 4.3 of the Safeway Indenture—Compliance Certificate; Section 3.5 of the ASC Indenture—Certificate of the Issuer (deleted in their entirety);

ACI 2030 Indenture—Events of Default; Sections 6.1 (d) and (g) of the Safeway Indenture—Events of Default; Sections 5.1(c), (f), (g) and (h) of the ASC Indenture—Event of Default Defined; Acceleration of Maturity; Waiver of Default; Sections 501(4), (5) and (8) of the NALP Indenture—Events of Default (deleted in their entirety);

- Section 4.4 of the Safeway Indenture—Stay, Extension and Usury Laws (deleted in its entirety);
- Section 4.6 of the Safeway Indenture—Taxes; Section 1007 of the NALP Indenture—Payment of Taxes and Other Claims (deleted in their entirety);
- Section 4.8 of the Safeway Indenture—Limitation on Sale and Lease-Back Transactions; Section 1009 of the NALP Indenture—Limitations on Sale and Leaseback Transactions; Section 3.8 of the ASC Indenture—Limitation on Sale and Lease-Back (deleted in their entirety);
- Section 1005 of the NALP Indenture—Existence; Section 4.5 of the Safeway Indenture—Corporate Existence (deleted in their entirety);
- Section 1006 of the NALP Indenture—Maintenance of Properties (deleted in its entirety);
- Section 1010 of the NALP Indenture—Waiver of Certain Covenants (deleted in its entirety);
- Section 3.6 of the ASC Indenture—Luxembourg Publications (deleted in its entirety);
- Section 3.10 of the ASC Indenture—Parent Guarantee (deleted in its entirety); and
- Section 3.11 of the ASC Indenture—Assignment of Parent Guarantee (deleted in its entirety).

*Conforming Changes, etc.* The Proposed Amendments would also amend the ACI Indentures and the applicable ACI Notes to make certain conforming or other similar changes to the ACI Indentures, including modification or deletion of certain definitions and cross-references.

By consenting to the Proposed Amendments to the applicable ACI Indenture, a holder will be deemed to have waived any default, event of default or other consequence under such indenture for failure to comply with the terms of the provisions identified above (whether before or after the date of the supplemental indenture effecting the amendments described above).

### **Effectiveness of Proposed Amendments**

At any time after the Launch Date, if ACI receives valid consents sufficient to effect the applicable Proposed Amendments with respect to an ACI Indenture, the ACI Issuers, ASL and ASC may, and the ACI Trustee, Safeway Trustee, ASC Trustee and NALP Trustee, each as applicable, may execute and deliver a supplemental indenture to implement the Proposed Amendments with respect to the applicable ACI Indenture that will be effective upon execution but will only become operative upon the Settlement Date of the applicable Exchange Offer.

## DESCRIPTION OF THE KROGER NOTES

*The following summary description sets forth certain terms and provisions of the Kroger Notes. Because this description is a summary, it does not describe every aspect of the Kroger Notes. This summary is subject to and qualified in its entirety by reference to the Kroger Indenture and the forms of notes.*

### General

Kroger will issue each of the Kroger 3.250% 2026 Notes, the Kroger 7.500% 2026 Notes, the Kroger 4.625% 2027 Notes, the Kroger 5.875% 2028 Notes, the Kroger 6.500% 2028 Notes, the Kroger 3.500% 2029 Notes, the Kroger 4.875% 2030 Notes, the Kroger 7.450% 2027 Notes, the Kroger 7.250% 2031 Notes, the Kroger 8.000% 2026 Notes, the Kroger 7.100% 2028 Notes, the Kroger 7.500% 2037 Notes, the Kroger 7.110% 2027 Notes, the Kroger 7.150% 2027 Notes, the Kroger 6.560% 2027 Notes, the Kroger 6.570% 2028 Notes, the Kroger 6.520% 2028 Notes, the Kroger 6.530% 2028 Notes, the Kroger 6.625% 2028 Notes, the Kroger 6.630% 2028 Notes, the Kroger 7.750% 2026 Notes, the Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes and the Kroger 8.000% 2031 Notes (collectively, the “Kroger Notes”), under the Kroger Base Indenture among Kroger and the Kroger Trustee, as supplemented by a supplemental indenture to be entered into concurrently with the delivery of the Kroger Notes (the “Kroger Fifty-First Supplemental Indenture” and, together with the Kroger Base Indenture, the “Kroger Indenture”), in connection with the Exchange Offers for the ACI Notes described elsewhere in this offering memorandum and consent solicitation statement.

Kroger will issue and exchange the Kroger Notes in book-entry form, only in denominations of \$1,000 and integral multiples of \$1,000 above that amount, through the facilities of DTC, and sales in book-entry form may be effected only through a participating member of DTC. See “Book-Entry Issuance” below. The Kroger Notes will not be listed on any securities exchange or included in any automated quotation system.

### Principal Amount of Notes

Each series of Kroger Notes will be issued in an initial aggregate principal amount set forth below.

### Maturity of Notes

Each series of Kroger Notes will mature on the applicable maturity date set forth below. If the scheduled maturity date is not a Business Day (as defined herein), Kroger will make the required payment on the following Business Day, and no interest will accrue as a result of such delay.

### Interest Rate on Notes

The interest rate on each series of Kroger Notes is set forth below. Interest on the Kroger Notes will be computed on the basis of a 360-day year of twelve 30-day months.

### Interest Accrual on Notes

The first interest payment on any Kroger Notes will include the accrued and unpaid interest on the ACI Notes tendered in exchange therefor so that a tendering Eligible Holder will receive the same interest payment it would have received had its ACI Notes not been tendered in the Exchange Offers and Consent Solicitations; *provided* that the amount of accrued and unpaid interest shall only be equal to the accrued and unpaid interest on the principal amount of ACI Notes equal to the aggregate principal amount of Kroger Notes an Eligible Holder receives, which may be less than the principal amount of corresponding ACI Notes tendered for exchange if (i) such holder validly tenders (and does not subsequently validly withdraw) its ACI Notes after the Early Participation Date or (ii) such holder initially tendered its ACI Notes at or prior to the Early Participation Date but does not timely deliver an Early Participation VOI Number evidencing the same along with its valid re-tender of such ACI Notes after the Early Participation Date and at or prior to the Expiration Date. For the avoidance of doubt, to the extent an interest payment date for a series of ACI Notes occurs prior to the Settlement Date, holders who validly tendered and did not

validly withdraw ACI Notes in the Exchange Offers and Consent Solicitations will receive accrued and unpaid interest on such interest payment date as required by the terms of the applicable ACI Indenture.

### **Interest Payment Dates**

Kroger will pay interest on each series of Kroger Notes semi-annually on the applicable interest payment dates set forth below (each an “Interest Payment Date”). If any Interest Payment Date falls on a day that is not a Business Day, Kroger will make the payment on the next Business Day, and no interest will accrue as a result of the delay in payment.

### **First Interest Payment Date**

The first Interest Payment Date on each series of the Kroger Notes will be the first applicable Interest Payment Date occurring following the Settlement Date.

### **Regular Record Date for Interest**

Kroger will pay interest payable on any Interest Payment Date to holders of record on the applicable regular record date set forth below immediately preceding the relevant Interest Payment Date.

#### ***Kroger 3.250% 2026 Notes***

- Title of the notes: 3.250% Senior Notes due 2026 (the “Kroger 3.250% 2026 Notes”)
- Total principal amount being issued: up to \$750,000,000
- Maturity date: March 15, 2026
- Interest rate: 3.250% per annum
- Interest Payment Dates: March 15 and September 15
- Regular record dates for interest: March 1 and September 1

#### ***Kroger 7.500% 2026 Notes***

- Title of the notes: 7.500% Senior Notes due 2026 (the “Kroger 7.500% 2026 Notes”)
- Total principal amount being issued: up to \$600,000,000
- Maturity date: March 15, 2026
- Interest rate: 7.500% per annum
- Interest Payment Dates: March 15 and September 15
- Regular record dates for interest: March 1 and September 1

#### ***Kroger 4.625% 2027 Notes***

- Title of the notes: 4.625% Senior Notes due 2027 (the “Kroger 4.625% 2027 Notes”)
- Total principal amount being issued: up to \$1,350,000,000

- Maturity date: January 15, 2027
- Interest rate: 4.625% per annum
- Interest Payment Dates: January 15 and July 15
- Regular record dates for interest: January 1 and July 1

***Kroger 5.875% 2028 Notes***

- Title of the notes: 5.875% Senior Notes due 2028 (the “Kroger 5.875% 2028 Notes”)
- Total principal amount being issued: up to \$750,000,000
- Maturity date: February 15, 2028
- Interest rate: 5.875% per annum
- Interest Payment Dates: February 15 and August 15
- Regular record dates for interest: February 1 and August 1

***Kroger 6.500% 2028 Notes***

- Title of the notes: 6.500% Senior Notes due 2028 (the “Kroger 6.500% 2028 Notes”)
- Total principal amount being issued: up to \$750,000,000
- Maturity date: February 15, 2028
- Interest rate: 6.500% per annum
- Interest Payment Dates: February 15 and August 15
- Regular record dates for interest: February 1 and August 1

***Kroger 3.500% 2029 Notes***

- Title of the notes: 3.500% Senior Notes due 2029 (the “Kroger 3.500% 2029 Notes”)
- Total principal amount being issued: up to \$1,350,000,000
- Maturity date: March 15, 2029
- Interest rate: 3.500% per annum
- Interest Payment Dates: March 15 and September 15
- Regular record dates for interest: March 1 and September 1

***Kroger 4.875% 2030 Notes***

- Title of the notes: 4.875% Senior Notes due 2030 (the “Kroger 4.875% 2030 Notes”)

- Total principal amount being issued: up to \$1,000,000,000
- Maturity date: February 15, 2030
- Interest rate: 4.875% per annum
- Interest Payment Dates: February 15 and August 15
- Regular record dates for interest: February 1 and August 1

***Kroger 7.450% 2027 Notes***

- Title of the notes: 7.450% Senior Notes due 2027 (the “Kroger 7.450% 2027 Notes”)
- Total principal amount being issued: up to \$120,078,000
- Maturity date: September 15, 2027
- Interest rate: 7.450% per annum
- Interest Payment Dates: March 15 and September 15
- Regular record dates for interest: March 1 and September 1

***Kroger 7.250% 2031 Notes***

- Title of the notes: 7.250% Senior Notes due 2031 (the “Kroger 7.250% 2031 Notes”)
- Total principal amount being issued: up to \$261,099,000
- Maturity date: February 1, 2031
- Interest rate: 7.250% per annum
- Interest Payment Dates: February 1 and August 1
- Regular record dates for interest: January 15 and July 15

***Kroger 8.000% 2026 Notes***

- Title of the notes: 8.000% Senior Notes due 2026 (the “Kroger 8.000% 2026 Notes”)
- Total principal amount being issued: up to \$2,902,000
- Maturity date: June 1, 2026
- Interest rate: 8.000% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

#### ***Kroger 7.100% 2028 Notes***

- Title of the notes: 7.100% Senior Notes due 2028 (the “Kroger 7.100% 2028 Notes”)
- Total principal amount being issued: up to \$756,000
- Maturity date: March 20, 2028
- Interest rate: 7.100% per annum
- Interest Payment Dates: March 20 and September 20
- Regular record dates for interest: March 5 and September 5

#### ***Kroger 7.500% 2037 Notes***

- Title of the notes: 7.500% Senior Notes due 2037 (the “Kroger 7.500% 2037 Notes”)
- Total principal amount being issued: up to \$143,000
- Maturity date: May 1, 2037
- Interest rate: 7.500% per annum
- Interest Payment Dates: May 1 and November 1
- Regular record dates for interest: April 15 and October 15

#### ***Kroger 7.110% 2027 Notes***

- Title of the notes: 7.110% Senior Notes due 2027 (the “Kroger 7.110% 2027 Notes”)
- Total principal amount being issued: up to \$11,045,000
- Maturity date: July 22, 2027
- Interest rate: 7.110% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

#### ***Kroger 7.150% 2027 Notes***

- Title of the notes: 7.150% Senior Notes due 2027 (the “Kroger 7.150% 2027 Notes”)
- Total principal amount being issued: up to \$310,000
- Maturity date: July 23, 2027
- Interest rate: 7.150% per annum
- Interest Payment Dates: June 1 and December 1

- Regular record dates for interest: May 15 and November 15

***Kroger 6.560% 2027 Notes***

- Title of the notes: 6.560% Senior Notes due 2027 (the “Kroger 6.560% 2027 Notes”)
- Total principal amount being issued: up to \$210,000
- Maturity date: July 26, 2027
- Interest rate: 6.560% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

***Kroger 6.570% 2028 Notes***

- Title of the notes: 6.570% Senior Notes due 2028 (the “Kroger 6.570% 2028 Notes”)
- Total principal amount being issued: up to \$24,278,000
- Maturity date: February 23, 2028
- Interest rate: 6.570% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

***Kroger 6.520% 2028 Notes***

- Title of the notes: 6.520% Senior Notes due 2028 (the “Kroger 6.520% 2028 Notes”)
- Total principal amount being issued: up to \$5,170,000
- Maturity date: April 10, 2028
- Interest rate: 6.520% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

***Kroger 6.530% 2028 Notes***

- Title of the notes: 6.530% Senior Notes due 2028 (the “Kroger 6.530% 2028 Notes”)
- Total principal amount being issued: up to \$12,000,000
- Maturity date: April 10, 2028
- Interest rate: 6.530% per annum

- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

***Kroger 6.625% 2028 Notes***

- Title of the notes: 6.625% Senior Notes due 2028 (the “Kroger 6.625% 2028 Notes”)
- Total principal amount being issued: up to \$19,898,000
- Maturity date: June 1, 2028
- Interest rate: 6.625% per annum
- Interest Payment Dates: December 1 and June 1
- Regular record dates for interest: May 15 and November 15

***Kroger 6.630% 2028 Notes***

- Title of the notes: 6.630% Senior Notes due 2028 (the “Kroger 6.630% 2028 Notes”)
- Total principal amount being issued: up to \$6,000,000
- Maturity date: June 2, 2028
- Interest rate: 6.630% per annum
- Interest Payment Dates: June 1 and December 1
- Regular record dates for interest: May 15 and November 15

***Kroger 7.750% 2026 Notes***

- Title of the notes: 7.750% Senior Notes due 2026 (the “Kroger 7.750% 2026 Notes”)
- Total principal amount being issued: up to \$56,536,000
- Maturity date: June 15, 2026
- Interest rate: 7.750% per annum
- Interest Payment Dates: June 15 and December 15
- Regular record dates for interest: June 1 and December 1

***Kroger 7.450% 2029 Notes***

- Title of the notes: 7.450% Senior Notes due 2029 (the “Kroger 7.450% 2029 Notes”)
- Total principal amount being issued: up to \$127,206,000
- Maturity date: August 1, 2029

- Interest rate: 7.450% per annum
- Interest Payment Dates: February 1 and August 1
- Regular record dates for interest: January 15 and July 15

***Kroger 8.700% 2030 Notes***

- Title of the notes: 8.700% Senior Notes due 2030 (the “Kroger 8.700% 2030 Notes”)
- Total principal amount being issued: up to \$135,098,000
- Maturity date: May 1, 2030
- Interest rate: 8.700% per annum
- Interest Payment Dates: May 1 and November 1
- Regular record dates for interest: April 15 and October 15

***Kroger 8.000% 2031 Notes***

- Title of the notes: 8.000% Senior Notes due 2031 (the “Kroger 8.000% 2031 Notes”)
- Total principal amount being issued: up to \$108,879,000
- Maturity date: May 1, 2031
- Interest rate: 8.000% per annum
- Interest Payment Dates: May 1 and November 1
- Regular record dates for interest: April 15 and October 15

**Registration Rights**

The Kroger Notes have not been registered under the Securities Act and thus are subject to restrictions on transfer. Pursuant to the Registration Rights Agreement, Kroger will agree to file a registration statement with the SEC relating to an offer to exchange the Kroger Notes for new exchange notes that have substantially identical terms or, in certain circumstances, to register the resale of the Kroger Notes. See “Registration Rights” and “Transfer Restrictions.”

Additional Interest (as defined below) may accrue on the Kroger Notes in certain circumstances pursuant to the Registration Rights Agreement. All references in the Kroger Indenture to any interest or other amount payable on or with respect to the Kroger Notes will be deemed to include Additional Interest pursuant to the Registration Rights Agreement, if any.

“Registration Rights Agreement” means the registration rights agreement with respect to the Kroger Notes to be dated as of the issue date of the Kroger Notes between Kroger and the Dealer Managers.

“Additional Interest” means all additional interest then owing pursuant to the Registration Rights Agreement.

## Optional Redemption

**Kroger 8.000% 2026 Notes | Kroger 7.500% 2037 Notes | Kroger 7.110% 2027 Notes | Kroger 7.150% 2027 Notes | Kroger 6.560% 2027 Notes | Kroger 6.570% 2028 Notes | Kroger 6.520% 2028 Notes | Kroger 6.530% 2028 Notes | Kroger 6.625% 2028 Notes | Kroger 6.630% 2028 Notes | Kroger 7.750% 2026 Notes**

The Kroger 8.000% 2026 Notes, the Kroger 7.500% 2037 Notes, the Kroger 7.110% 2027 Notes, the Kroger 7.150% 2027 Notes, the Kroger 6.560% 2027 Notes, the Kroger 6.570% 2028 Notes, the Kroger 6.520% 2028 Notes, the Kroger 6.530% 2028 Notes, the Kroger 6.625% 2028 Notes, the Kroger 6.630% 2028 Notes and the Kroger 7.750% 2026 Notes will not be redeemable at any time at the option of the Company.

**Kroger 3.250% 2026 Notes | Kroger 7.500% 2026 Notes | Kroger 4.625% 2027 Notes | Kroger 5.875% 2028 Notes | Kroger 6.500% 2028 Notes | Kroger 3.500% 2029 Notes | Kroger 4.875% 2030 Notes**

At any time prior to February 15, 2025, the Company may redeem the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes at its option, in whole at any time or in part from time to time, upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each holder's registered address or otherwise in accordance with the procedures of DTC (except that notices of redemption may be sent more than 60 days prior to a redemption date if the notice is delivered in connection with a defeasance of the Kroger 4.875% 2030 Notes or Kroger 6.500% 2028 Notes, as applicable, or the satisfaction and discharge of the Kroger Indenture), at a redemption price equal to 100% of the principal amount of the Kroger 4.875% 2030 Notes or Kroger 6.500% 2028 Notes, as applicable, redeemed plus the Applicable Premium (as defined below) as of, and accrued and unpaid interest to, but not including, the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date).

“Applicable Premium” means, with respect to the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes on any applicable redemption date, the greater of:

(1) 1.0% of the then outstanding principal amount of the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes, as applicable, and

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes, as applicable, at February 15, 2025 as set forth herein plus (ii) all required interest payments due on such Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes, as applicable, through February 15, 2025 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points, over

(b) the then outstanding principal amount of the Security,

in each case, as calculated by the Company or on behalf of the Company by such Persons as the Company may designate. The Trustee shall not be responsible for calculating or verifying the calculation of the Applicable Premium.

“Treasury Rate” means, as of the applicable redemption date, the yield to maturity as of such redemption date of Treasury Securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two business days prior to such redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data selected by the Company in good faith)) most nearly equal to the period from such redemption date to February 15, 2025; provided, however, that if the period from such redemption date to February 15, 2025 is less than one year, the weekly average yield on actually traded Treasury Securities adjusted to a constant maturity of one year will be used.

“Treasury Securities” mean any obligations issued or guaranteed by the United States government or any agency thereof.

At any time and from time to time on or after February 15, 2025 in the case of the Kroger 4.875% 2030 Notes and Kroger 6.500% 2028 Notes, and at any time in the case of the Kroger 3.250% 2026 Notes, the Kroger 7.500% 2026 Notes, the Kroger 4.625% 2027 Notes, the Kroger 5.875% 2028 Notes and the Kroger 3.500% 2029 Notes (collectively with the Kroger 4.875% 2030 Notes and the Kroger 6.500% 2028 Notes, the “Kroger Redeemable Notes”), the Company may redeem, at its option, in whole at any time or in part from time to time, upon not less than 30 nor more than 60 days’ prior notice mailed by first-class mail to each holder’s registered address or otherwise in accordance with the procedures of the DTC (except that notices of redemption may be sent more than 60 days prior to a redemption date if the notice is delivered in connection with a defeasance of the Kroger Redeemable Notes or the satisfaction and discharge of the Kroger Indenture), at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest to, but not including, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date), if redeemed during the 12-month period commencing on the date set forth below of the years set forth below:

In the case of the Kroger 3.250% 2026 Notes, commencing on September 15:

Year	Redemption Price
2024 and thereafter	100.000%

In the case of the Kroger 7.500% 2026 Notes, commencing on March 15:

Year	Redemption Price
2024	101.875%
2025 and thereafter	100.000%

In the case of the Kroger 4.625% 2027 Notes, commencing on January 15:

Year	Redemption Price
2024	102.313%
2025	101.156%
2026 and thereafter	100.000%

In the case of the Kroger 5.875% 2028 Notes, commencing on August 15:

Year	Redemption Price
2024	101.469%
2025 and thereafter	100.000%

In the case of the Kroger 6.500% 2028 Notes, commencing on February 15:

Year	Redemption Price
2025	103.250%
2026	101.625%
2027 and thereafter	100.000%

In the case of the Kroger 3.500% 2029 Notes, commencing on September 15:

Year	Redemption Price
2024	100.875%
2025 and thereafter	100.000%

In the case of the Kroger 4.875% 2030 Notes, commencing on February 15:

Year	Redemption Price
2025	103.656%
2026	102.438%
2027	101.219%
2028 and thereafter	100.000%

Notwithstanding the foregoing, upon a Specified Change of Control (as defined below) that occurs on or before February 15, 2025, the Company, or any third-party in lieu of the Company, may redeem the Kroger 6.500% 2028 Notes on or within 120 days of the consummation of such Specified Change of Control (a “Specified Change of Control Redemption”), at their option, in whole at any time or in part from time to time, upon not less than 30 nor more than 60 days’ prior notice mailed by first-class mail to each holder’s registered address or otherwise in accordance with the procedures of the DTC (except that notices of redemption may be sent more than 60 days prior to a redemption date if the notice is delivered in connection with a defeasance of the Notes or the satisfaction and discharge of the Indenture and any notice of redemption with respect to a Specified Change of Control may be sent prior to the occurrence of a Specified Change of Control and may be conditioned upon one or more conditions precedent, including the occurrence of the Specified Change of Control), at the following redemption prices (expressed as a percentage of principal amount), plus accrued and unpaid interest to, but not including, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date), if redeemed during the 12-month period commencing on February 15 of the year set forth below:

Year	Redemption Price
2024	100.750%

Notwithstanding the foregoing, at any time and from time to time on or prior to February 15, 2025, the Company may redeem in the aggregate up to 40% of the original aggregate principal amount of the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes (calculated after giving effect to any issuance of Additional Notes (as defined below)) with the net cash proceeds of one or more Equity Offerings (as defined below) (1) by the Company or (2) by any direct or indirect parent of the Company, at a redemption price (expressed as a percentage of principal amount thereof) equal to 104.875% in the case of the Kroger 4.875% 2030 Notes or 106.500% in the case of the Kroger 6.500% 2028 Notes plus, in each case, accrued and unpaid interest to (but excluding) the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date); provided, however, that at least 50% of the original aggregate principal amount of the Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes (calculated after giving effect to any issuance of Additional Notes), as applicable, remain outstanding after each such redemption; and provided, further, that such redemption shall occur within 180 days after the date on which any such Equity Offering is consummated upon not less than 30 nor more than 60 days’ notice mailed to each holder of Kroger 4.875% 2030 Notes or the Kroger 6.500% 2028 Notes being redeemed or otherwise in accordance with DTC procedures and otherwise in accordance with the procedures set forth in the Kroger Indenture.

The following definitions are applicable only to the Kroger Redeemable Notes:

“Capital Stock” means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Equity Offering” means any public or private sale after the Settlement Date of Equity Interests of the Company or any direct or indirect parent company of the Company, as applicable, other than public offerings with respect to the Company’s or such direct or indirect parent company’s common stock registered on Form S-8.

“Specified Change of Control” means the consummation of the Merger.

#### ***Kroger 7.450% 2027 Notes***

The Kroger 7.450% 2027 Notes will be redeemable, in whole or in part, at the option of the Company at any time at a redemption price equal to the greater of (i) 100% of the principal amount of the Kroger 7.450% 2027 Notes then outstanding or (ii) as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest thereon (not including any portion of such payments of interest accrued as of the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus, in each case, accrued and unpaid interest thereon to the date of redemption.

The following definitions are applicable only to the Kroger 7.450% 2027 Notes:

“Adjusted Treasury Rate” means, with respect to any redemption date, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, plus 0.10%.

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Kroger 7.450% 2027 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities.

“Independent Investment Banker” means one of the Reference Treasury Dealers appointed by the Company.

“Comparable Treasury Price” means, with respect to any redemption date, (i) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third Business Day preceding such redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York and designated “Composite 3:30 p.m. Quotations for U.S. Government Securities” or (ii) if such release (or any successor release) is not published or does not contain such prices on such Business Day, (A) the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (B) if the Trustee obtains fewer than three such Reference Treasury Dealer Quotations, the average of all such Quotations.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m. (New York City time) on the third Business Day preceding such redemption date.

“Reference Treasury Dealer” means (a) each of Goldman, Sachs & Co., Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, Salomon Brothers Inc and Smith Barney Inc. and their respective successors; provided, however, that if any of the foregoing shall cease to be a

primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Company shall substitute therefor another Primary Treasury Dealer, and (b) any other Primary Treasury Dealer selected by the Company.

#### ***Kroger 7.250% 2031 Notes***

The Kroger 7.250% 2031 Notes will be redeemable, in whole or in part, at the option of the Company at any time at a redemption price equal to the greater of (i) 100% of the principal amount of the Kroger 7.250% 2031 Notes to be redeemed; or (ii) as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest thereon (not including any portion of such payments of interest accrued as of the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Adjusted Treasury Rate, plus 25 basis points, plus, in each case, accrued and unpaid interest thereon to the date of redemption.

The following definitions are applicable only to the Kroger 7.250% 2031 Notes:

“Adjusted Treasury Rate” means, with respect to any redemption date: (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Remaining Life of the Securities, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date. The Adjusted Treasury Rate shall be calculated on the third Business Day preceding the redemption date.

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Kroger 7.250% 2031 Notes that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities (“Remaining Life”).

“Comparable Treasury Price” means (1) the average of five Reference Treasury Dealer Quotations for the applicable redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.

“Independent Investment Banker” means one of the Reference Treasury Dealers appointed by the Company.

“Reference Treasury Dealer” means (i) each of Chase Securities Inc. and Salomon Smith Barney Inc. and their respective successors; provided, however, that if either of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Company shall substitute therefor another Primary Treasury Dealer and (ii) any other Primary Treasury Dealer selected by the Company.

“Reference Treasury Dealer Quotation” means, with respect to each Reference Treasury Dealer and any redemption date for the Kroger 7.250% 2031 Notes, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such redemption date.

### ***Kroger 7.100% 2028 Notes***

The Kroger 7.100% 2028 Notes will be redeemable, in whole or in part, at the option of the Company, upon not less than 30 nor more than 60 days prior written notice, at any time, at a redemption price equal to the greater of (i) 100% of the principal amount of the Kroger 7.100% 2028 Notes; or (ii) the sum of the present values of the remaining scheduled payments of principal and interest hereon discounted, on a semi-annual basis, at the Treasury Yield (as defined below) plus 20 basis points, together with the unpaid interest accrued to the date of redemption; provided, however, that interest payable on any Interest Payment Date which occurs on or prior to the date of redemption will be payable to the persons in whose names the Kroger 7.100% 2028 Notes are registered at the close of business on the Record Date immediately preceding such Interest Payment Date.

The following definitions are applicable only to the Kroger 7.100% 2028 Notes:

“Treasury Yield” means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price of the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

“Comparable Treasury Issue” means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the remaining term of the Kroger 7.100% 2028 Notes that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Kroger 7.100% 2028 Notes.

“Independent Investment Banker” means J.P. Morgan Securities Inc. or Merrill Lynch, Pierce, Fenner & Smith Incorporated or, if either such firm is unwilling or unable to select the Comparable Treasury Issue, an independent investment banking institution of national standing in the United States appointed by the Company.

“Comparable Treasury Price” means, with respect to any redemption date, (i) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such redemption date, as set forth in the daily statistical release (or any successor release) published by the Federal Reserve Bank of New York and designated “Composite 3:30 p.m. Quotations for US Government Securities” or (ii) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such redemption date.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day preceding such redemption date.

“Reference Treasury Dealer” means J.P. Morgan Securities Inc. and Merrill Lynch Government Securities, Inc. and their respective successors; provided, however, that if one of the foregoing ceases to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”) or otherwise fails to provide a Reference Treasury Dealer Quotation, the Company will substitute therefor another Primary Treasury Dealer.

### ***Kroger 7.450% 2029 Notes | Kroger 8.700% 2030 Notes | Kroger 8.000% 2031 Notes***

The Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes and the Kroger 8.000% 2031 Notes will be redeemable, in whole or in part, at the option of the Company upon not less than 30 nor more than 60 days prior written notice, at any time, at a price equal to the greater of: (i) 100% of the principal amount of the Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes or the Kroger 8.000% 2031 Notes, as applicable, to be redeemed, and an amount, as determined by the Quotation Agent, equal to the sum of the present values of the remaining scheduled payments of principal and interest on the Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes or the Kroger 8.000% 2031 Notes, as applicable, to be redeemed (not including any portion of payments of interest accrued as of the redemption date) discounted to the redemption date on a semi-annual basis (assuming a 360-day year composed

of twelve 30-day months) at the Adjusted Treasury Rate plus, in the case of the 7.450% Senior Notes due 2029: 20 basis points; in the case of the 8.700% Senior Notes due 2030: 20 basis points or in the case of the 8.000% Senior Notes due 2031: 30 basis points, plus, in each case, accrued and unpaid interest to, but not including, the redemption date.

The following definitions are applicable only to the Kroger 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes and the Kroger 8.000% 2031 Notes:

“Adjusted Treasury Rate” means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to maturity of the comparable treasury issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for that redemption date.

“Comparable Treasury Issue” means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes or the Kroger 8.000% 2031 Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the 7.450% 2029 Notes, the Kroger 8.700% 2030 Notes or the Kroger 8.000% 2031 Notes.

“Comparable Treasury Price” means, with respect to any redemption date, (1) the average of the Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Trustee obtains fewer than three Reference Treasury Dealer Quotations for that redemption date, the average of the Reference Treasury Dealer Quotations obtained, as determined by the Quotation Agent.

“Quotation Agent” means the Reference Treasury Dealer appointed by the Company.

“Reference Treasury Dealer” means (1) with respect to the 7.450% Senior Notes due 2029: Goldman, Sachs & Co.; with respect to the 8.700% Senior Notes due 2030: Goldman, Sachs & Co. and with respect to the 8.000% Senior Notes due 2031: Merrill Lynch, Pierce, Fenner & Smith Incorporated or each of their successors; provided, however, that if any of them ceases to be a primary U.S. government securities dealer in New York City, or a Primary Treasury Dealer, the Company will substitute for it another Primary Treasury Dealer, and (2) any other Primary Treasury Dealer(s) selected by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each reference treasury dealer and any redemption date, the average, as determined by the Quotation Agent, of the bid and asked prices for the comparable treasury issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by the Reference Treasury Dealer at 5:00 p.m. on the third business day preceding that redemption date.

## **Further Issuances**

Kroger may, from time to time, without notice to or the consent of the holders of the Kroger Notes, increase the principal amount of the Kroger Notes of any series under the Kroger Indenture and issue such increased principal amount (or any portion thereof), in which case any additional Kroger Notes of such series so issued will have the same form and terms (other than the date of issuance and, under certain circumstances, the date from which interest thereon will begin to accrue), and will carry the same right to receive accrued and unpaid interest, as the Kroger Notes of such series previously issued, and such additional Kroger Notes will form a single series with the Kroger Notes of such series offered hereby; provided that if such additional Kroger Notes of such series are not fungible for United States federal income tax purposes, such additional Kroger Notes will have a separate CUSIP number.

## Ranking

Each series of the Kroger Notes will be Kroger's unsecured and unsubordinated debt and will be:

- equal in right of payment with all of Kroger's other existing and future unsecured senior obligations (including each other series of the Kroger Notes and all existing notes issued by Kroger);
- effectively subordinated to any future secured indebtedness of Kroger, to the extent of the assets securing such indebtedness;
- senior to any future subordinated debt Kroger may issue; and
- structurally subordinated to all existing and any future obligations of Kroger's subsidiaries that do not guarantee the Kroger Notes.

As of May 25, 2024, after giving pro forma effect to the Transactions (assuming all of the outstanding ACI Notes are tendered and accepted in the Exchange Offer for \$1,000 principal amount of new Kroger Notes for each \$1,000 principal amount of ACI Notes), Kroger would have had approximately \$32.4 billion of outstanding indebtedness, including finance leases and the current portion thereof. As of May 25, 2024, Kroger maintained a \$2.75 billion (with the ability to increase by up to \$1.25 billion) unsecured revolving credit facility that terminates, unless extended, on July 6, 2026. Outstanding borrowings under the existing revolving credit facility and commercial paper borrowings, and certain outstanding letters of credit, reduce funds available under the existing revolving credit facility. As of May 25, 2024, Kroger had no outstanding commercial paper and no borrowings under the existing revolving credit facility. The outstanding letters of credit that reduce the funds available under Kroger's existing revolving credit facility totaled \$2.0 million as of May 25, 2024. In August 2024, Kroger announced that it intends to enter into a new \$5.0 billion unsecured revolving credit facility, which would replace its existing revolving credit facility. See "Summary—Transactions" for more information.

Following consummation of the Exchange Offers, the ACI Notes that are not tendered in the Exchange Offers are expected to continue to remain outstanding, and none of Kroger nor Kroger's subsidiaries are expected to guarantee or be an obligor with respect to such ACI Notes. Such ACI Notes may continue to be guaranteed by certain of the subsidiaries of ACI, to the extent required by the relevant ACI Indenture, and as a result, such ACI Notes will remain the obligations of the applicable ACI obligors and may be structurally senior in right of payment to the Kroger Notes and the other indebtedness of Kroger with respect to the assets of ACI and certain of its subsidiaries. As of June 15, 2024, ACI and its subsidiaries had approximately \$26.1 billion in assets. Additionally, holders of the ACI Notes will have no claims against the assets of Kroger and its subsidiaries, other than the applicable ACI obligors. Notwithstanding the foregoing, if Kroger elects to implement the Cross-Guarantee Scenario with respect to any series of ACI Notes, then any such ACI Notes not tendered in the Exchange Offer will be effectively equal in right of payment with the new Kroger Notes and Kroger's other existing and future indebtedness, including Kroger's existing notes, the Term Loan Facilities and the revolving credit facility, with respect to the assets of Kroger and the applicable obligors under such ACI Notes. See "Description of the Exchange Offers and Consent Solicitations—Treatment of ACI Notes Not Tendered in the Exchange Offers and Consent Solicitations."

## Change of Control Triggering Event

If a Change of Control Triggering Event occurs, unless Kroger has exercised its right to redeem the Kroger Notes as described above, holders of Kroger Notes will have the right to require Kroger to repurchase all or any part (equal to \$1,000 or an integral multiple of \$1,000 in excess thereof) of their Kroger Notes pursuant to the offer described below (the "Change of Control Offer") on the terms set forth in the notes. In the Change of Control Offer, Kroger will be required to offer payment in cash equal to 101% of the aggregate principal amount of Kroger Notes repurchased plus accrued and unpaid interest, if any, on the Kroger Notes repurchased, to the date of purchase (the "Change of Control Payment"). Within 30 days following any Change of Control Triggering Event, or, at Kroger's option, prior to any Change of Control, but after the public announcement of the Change of Control, Kroger will be required to mail a notice to holders of Kroger Notes describing the transaction or transactions that constitute or may

constitute the Change of Control Triggering Event and offering to repurchase the Kroger Notes on the date specified in the notice, which date will be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the “Change of Control Payment Date”), pursuant to the procedures required by the notes and described in such notice. The notice shall, if mailed prior to the date of consummation of the Change of Control, state that the offer to purchase is conditioned on the Change of Control Triggering Event occurring on or prior to the payment date specified in the notice. Kroger must comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Kroger Notes, Kroger will be required to comply with the applicable securities laws and regulations and will not be deemed to have breached Kroger’s obligations under the Change of Control provisions of the notes by virtue of such conflicts.

On the Change of Control Payment Date, Kroger will be required, to the extent lawful, to:

- accept for payment all notes or portions of Kroger Notes properly tendered pursuant to the Change of Control Offer;
- deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of Kroger Notes properly tendered; and
- deliver or cause to be delivered to the Trustee the Kroger Notes properly accepted together with an officers’ certificate stating the aggregate principal amount of notes or portions of Kroger Notes being purchased.

The definition of Change of Control includes a phrase relating to the direct or indirect sale, lease, transfer, conveyance or other disposition of “all or substantially all” of the properties or assets of Kroger and its subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase “substantially all,” there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of Kroger Notes to require Kroger to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the assets of Kroger and its subsidiaries taken as a whole to another Person or group may be uncertain.

For purposes of the foregoing discussion of a repurchase at the option of holders, the following definitions are applicable:

“Below Investment Grade Rating Event” means the Kroger Notes are rated below an Investment Grade Rating by each of the Rating Agencies (as defined below) on any date from the date of the public notice of an arrangement that could result in a Change of Control until the end of the 60-day period following public notice of the occurrence of the Change of Control (which 60-day period shall be extended so long as the rating of the notes is under publicly announced consideration for possible downgrade below investment grade by any of the Rating Agencies); provided that a Below Investment Grade Rating Event otherwise arising by virtue of a particular reduction in rating shall not be deemed to have occurred in respect of a particular Change of Control (and thus shall not be deemed a Below Investment Grade Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the trustee in writing at Kroger’s request that the reduction was the result, in whole or in part, of any event or circumstance composed of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control shall have occurred at the time of the Below Investment Grade Rating Event).

“Change of Control” means the occurrence of any of the following: (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of Kroger and its subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than Kroger or one of its subsidiaries; (2) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than 50% of the then outstanding number of shares of Kroger’s

voting stock; or (3) the first day on which a majority of the members of Kroger's Board of Directors are not Continuing Directors. Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (1) Kroger becomes a wholly owned subsidiary of a holding company that has agreed to be bound by the terms of the Kroger Notes and (2) the holders of the voting stock of such holding company immediately following that transaction are substantially the same as the holders of Kroger's voting stock immediately prior to that transaction.

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Below Investment Grade Rating Event.

“Continuing Directors” means, as of any date of determination, members of the Board of Directors of Kroger who (1) were members of such Board of Directors on the date of the issuance of the Kroger Notes; or (2) were nominated for election or elected to such Board of Directors with the approval of a majority of the continuing directors under clause (1) or (2) of this definition who were members of such Board of Directors at the time of such nomination or election (either by a specific vote or by approval of Kroger's proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, and the equivalent investment grade credit rating from any replacement rating agency or rating agencies selected by Kroger.

“Moody's” means Moody's Investors Service, Inc.

“Person” means any individual, partnership, corporation, limited liability company, joint stock company, business trust, trust, unincorporated association, joint venture or other entity, or a government or political subdivision or agency thereof.

“Rating Agencies” means (1) each of Moody's and S&P; and (2) if Moody's or S&P ceases to rate the notes or fails to make a rating of the notes publicly available for reasons outside of Kroger's control, a “nationally recognized statistical rating organization” as defined in Section 3(a)(62) of the Exchange Act, selected by Kroger (as certified by a resolution of Kroger's Board of Directors) as a replacement agency for Moody's or S&P, or any of them, as the case may be.

“S&P” means S&P Global Ratings, a segment of S&P Global Inc.

## **Certain Covenants**

The Kroger Indenture contains the following covenants in respect of the Kroger Notes offered hereby.

### **Limitation on Liens**

Kroger covenants that, so long as any Kroger Notes remain outstanding, neither Kroger nor any of its restricted subsidiaries will issue, assume or guarantee any secured debt or other agreement comparable to secured debt upon any material real property or operating asset unless these notes and other debt ranking equally to these notes also is so secured on an equal basis. This restriction will not apply to the following:

- (1) liens on any property or assets of any corporation existing at the same time such corporation becomes a restricted subsidiary, provided that the lien does not extend to any of Kroger's other property or that of any other restricted subsidiaries;
- (2) liens existing on assets acquired by Kroger, to secure the purchase price of assets, or to obtain a release of liens from any of Kroger's other property, incurred no later than 18 months after the acquisition, assumption, guarantee, or, in the case of real estate, completion of construction and commencement of operations;

- (3) liens securing indebtedness owing by any restricted subsidiary to Kroger or another restricted subsidiary;
- (4) liens on any assets existing upon acquisition of a corporation through merger or by acquisition of all or substantially all of the assets by Kroger or a restricted subsidiary;
- (5) liens in favor of the U.S., a foreign country, or any political subdivision to secure payments of debt incurred to finance the purchase of assets;
- (6) liens existing on Kroger's or any of Kroger's restricted subsidiaries' properties or assets existing on the date of the supplemental indenture; provided that the liens secure only those obligations which they secure on the date of the supplemental indenture or any extension, renewal or replacement thereof;
- (7) any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part, of any lien referred to in clauses (1) through (6);
- (8) some statutory liens or other similar liens arising in the ordinary course of Kroger's or any of Kroger's restricted subsidiaries' business, or some liens arising out of governmental contracts;
- (9) some pledges, deposits or liens made or arising under worker's compensation or similar legislation or in some other circumstances;
- (10) some liens in connection with legal proceedings, including some liens arising out of judgments or awards;
- (11) liens for some taxes or assessments, landlord's liens, mechanic's liens and liens and charges incidental to the conduct of the business, or the ownership of Kroger's or any of Kroger's restricted subsidiaries' property or assets that were not incurred in connection with the borrowing of money and that do not, in Kroger's opinion, materially impair the use of the property or assets in the operation of Kroger's business or that of a restricted subsidiary or the value of the property or assets for its purposes; or
- (12) any other liens not included above, which together with amounts included in clause (1) of the next section do not exceed 10% of Kroger's consolidated net tangible assets.

#### **Limitation on Sale and Lease-Back Transactions**

Kroger and its restricted subsidiaries will not sell and leaseback for a term greater than three years under a capital lease any material real property or operating assets unless:

- (1) Kroger could incur secured debt on that property equal to the present value of rentals under the lease without having to equally secure the note; or
- (2) the sale proceeds equal or exceed the fair market value of the property and the net proceeds are used within 180 days to acquire material real property or operating assets or to purchase or redeem notes offered hereby or long term debt, including capital leases, that are senior to or rank on parity with these notes.

This restriction does not apply to sale and lease-back transactions of material property or operating assets acquired or constructed after 18 months prior to the date of the Kroger Indenture as long as a commitment for the sale and lease-back is made within 18 months of acquisition, in the case of operating assets, and of completion of construction and commencement of operations, in the case of material real property.

For purposes of these covenants, a “subsidiary” is an entity that Kroger directly or indirectly controls, including partnerships in which Kroger or its subsidiaries own a greater than 50% interest. Restricted subsidiaries are all of Kroger’s subsidiaries other than those Kroger’s Board of Directors has determined are not material.

The covenants applicable to the notes would not necessarily afford holders protection in the event of a highly leveraged or other transaction involving Kroger or in the event of a material adverse change in Kroger’s financial condition or results of operation, and the notes do not contain any other provisions that are designed to afford protection in the event of a highly leveraged transaction involving Kroger.

### **Merger and Consolidation**

The Kroger Indenture provides that Kroger will not merge or consolidate with any corporation, partnership or other entity and will not sell, lease or convey all or substantially all of its assets to any entity, unless:

- Kroger is the surviving entity, or the surviving or successor entity is a corporation or partnership organized under the laws of the United States or a State thereof or the District of Columbia and expressly assumes all of Kroger’s obligations under the Kroger Indenture and the Kroger Notes; and
- immediately after the merger, consolidation, sale, lease or conveyance, Kroger or the successor entity are not in default in the performance of the covenants and conditions of the Kroger Indenture.

Subject to the foregoing, the Kroger Indenture and the Kroger Notes do not contain any covenants or other provisions designed to afford holders of Kroger Notes protection in the event of a recapitalization or highly leveraged transaction involving Kroger.

### **Events of Default**

The following are examples of an “Event of Default” as used in the Kroger Indenture:

- Kroger fails to pay the principal or any premium on any debt security when due;
- Kroger fails to deposit any sinking fund payment when due;
- Kroger fails to pay interest when due on any security for 30 days;
- Kroger fails to comply with any other covenant in the debt securities and this failure continues for 60 days after Kroger receives written notice of it;
- Kroger defaults in any of its other indebtedness in excess of \$50,000,000, and that results in an acceleration of maturity; or
- Kroger takes specified actions relating to its bankruptcy, insolvency or reorganization.

The supplemental indenture or the form of security for a particular series of Kroger Notes may include additional Events of Default or changes to the Events of Default described above. A default under one series of Kroger Notes will not necessarily be a default under another series.

If an Event of Default for Kroger Notes of any series occurs and is continuing, the Kroger Trustee or the holders of at least 25% in principal amount of all of the Kroger Notes of that series outstanding may require Kroger to immediately repay all of the principal and interest due on the Kroger Notes of that series. The holders of a majority in principal amount of all of the Kroger Notes 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 Kroger Trustee may pursue any remedy available to it to collect payment or to enforce the performance of any provision of the Kroger Notes or the Kroger Indenture.

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

## **Modification and Waiver**

The Kroger Indenture may be amended without the consent of any holder of Kroger Notes:

- to cure any ambiguity, defect or inconsistency;
- to permit a successor to assume Kroger's obligations under the Kroger 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 Kroger Indenture may be amended with the written consent of the holders of at least 50% in principal amount of the Kroger Notes of the series affected by the amendment. Holders of at least 50% in principal amount of the Kroger Notes may waive Kroger's compliance with any provision of the Kroger Indenture or the Kroger Notes by giving notice to the Kroger 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 Kroger Notes 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 Kroger Indenture;

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

## **Discharge, Defeasance and Covenant Defeasance**

Under terms satisfactory to the Kroger Trustee, Kroger may discharge some obligations to holders of the Kroger Notes which have not already been delivered to the Kroger Trustee for cancellation and which have either become due and payable or are by their terms due and payable within one year (or are scheduled for redemption within one year) by irrevocably depositing with the Kroger Trustee cash or U.S. Government Obligations (as defined in the Kroger Indenture) as trust funds in an amount certified to be sufficient to pay at maturity (or upon redemption) the principal of and interest on the Kroger Notes.

Kroger may also discharge any and all of its obligations to holders of the notes at any time ("defeasance") or omit to comply with certain of the covenants contained in the Kroger Indenture ("covenant defeasance"), but Kroger may not avoid its duty to register the transfer or exchange of the notes, to replace any temporary, mutilated, destroyed, lost, or stolen notes or to maintain an office or agency for the notes. Defeasance or covenant defeasance may be effected only if, among other things:

- (1) Kroger irrevocably deposits with the trustee cash or U.S. Government Obligations as trust funds in an amount certified to be sufficient to pay at maturity the principal of and interest on all outstanding notes; and
- (2) Kroger delivers to the Kroger Trustee an opinion of counsel to the effect that the holders of the notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of

the defeasance or covenant defeasance and that defeasance or covenant defeasance will not otherwise alter the holders' U.S. federal income tax treatment of principal and interest payments on the notes. In the case of defeasance, the opinion must be based on a ruling of the IRS (as defined herein) or a change in U.S. federal income tax law occurring after the date of the Kroger Indenture, since that result would not occur under current tax law.

#### **Concerning Our Relationship with the Trustee**

U.S. Bank Trust Company, National Association, as successor in interest to U.S. Bank National Association, formerly known as Firstar Bank, National Association, is the Kroger Trustee under the Kroger Indenture. In the performance of its duties, the Kroger Trustee is entitled to indemnification for any act which would involve it in expense or liability and will not be liable as a result of any action taken in connection with the performance of its duties except for its own gross negligence or default. The Kroger Trustee is protected in acting upon any direction or document reasonably believed by it to be genuine and to be signed by the proper party or parties or upon the opinion or advice of counsel. The Kroger Trustee may resign upon written notice to Kroger as provided in the Kroger Indenture. The Kroger Trustee may acquire Kroger's obligations for its own account. The Kroger Trustee performs banking and other services for Kroger, and is a lender under Kroger's credit facility.

#### **Governing Law**

The laws of the State of New York shall govern the Kroger Indenture and the Kroger Notes, without regard to conflicts of law principles thereof.

## BOOK-ENTRY ISSUANCE

DTC will act as securities depository for the notes. The Kroger Notes will be registered in the name of Cede & Co., which is DTC's nominee. Global notes will be issued with respect to each of the Kroger Notes.

Ownership of beneficial interests in a global note will be limited to DTC participants and to persons that may hold interests through institutions that have accounts with DTC, including Euroclear and Clearstream ("participants"). Beneficial interests in a global note will be shown on, and transfers of those ownership interests will be effected only through, records maintained by DTC and its participants for the global note. The conveyance of notices and other communications by DTC to its participants and by its participants to owners of beneficial interests in the notes will be governed by arrangements among them, subject to any statutory or regulatory requirements in effect.

Principal and interest payments on the global notes represented by a global security will be made to DTC or its nominee, as the case may be, as the sole registered owner and the sole holder of the global notes represented by the global security for all purposes under the Kroger Indenture. Accordingly, Kroger, the Kroger Trustee and the paying agent under the Kroger Indenture will have no responsibility or liability for:

- any aspect of DTC's records relating to, or payments made on account of, beneficial ownership interests in a global note represented by a global security;
- any other aspect of the relationship between DTC and its participants or the relationship between the participants and the owners of beneficial interests in a global note held through the participants; or
- the maintenance, supervision or review of any of DTC's records relating to the beneficial ownership interests.

DTC has advised Kroger that upon receipt of any payment of principal or interest on a global note, DTC will immediately credit, on its book-entry registration and transfer system, the accounts of participants with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global note as shown on DTC's records. The Dealer Managers will initially designate the accounts to be credited. Payments by participants to owners of beneficial interests in a global note will be governed by standing instructions and customary practices, as is the case with securities held for customer accounts in bearer form or registered in "street name," and will be the sole responsibility of those participants.

A global note can only be transferred:

- as a whole by DTC to one of its nominees;
- as a whole by a nominee of DTC to DTC or another nominee of DTC; or
- as a whole by DTC or a nominee of DTC to a successor of DTC or a nominee of the successor.

Global notes represented by a global security can be exchanged for certificated notes in registered form only if:

- DTC notifies Kroger that it is unwilling or unable to continue as depository for the global note and Kroger does not appoint a successor depository within 90 days after receiving the notice;
- at any time DTC ceases to be a clearing agency registered under the Exchange Act and Kroger does not appoint a successor depository within 90 days after becoming aware that DTC has ceased to be so registered as a clearing agency;
- Kroger, in its sole discretion, determines that a global note will be exchangeable for certificated notes in registered form and notifies the Kroger Trustee of its decision; or

- an Event of Default with respect to the Kroger Notes represented by a global note has occurred and is continuing.

A global note that can be exchanged under the previous paragraph will be exchanged for certificated notes that are issued in authorized denominations in registered form for the same aggregate amount. Those certificated notes will be registered in the names of the owners of the beneficial interests in the global note as directed by DTC.

Except as provided above, owners of beneficial interests in a Kroger Note will not be entitled to receive physical delivery of Kroger Notes in certificated form and will not be considered the holders of the Kroger Notes for any purpose under the Kroger Indenture and no global notes represented by a global security will be exchangeable. Each person owning a beneficial interest in a global note must rely on the procedures of DTC (and if the person is not a participant, on the procedures of the participant through which the person owns its interest) to exercise any rights of a holder under the Kroger Indenture or the global note. The laws of some jurisdictions require that purchasers of securities take physical delivery of the securities in certificated form. Those laws may impair the ability to transfer beneficial interests in a global note.

DTC advises that it is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among participants of securities transactions, including transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants’ accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, including the Dealer Managers, banks, trust companies, clearing corporations and certain other organizations. DTC is owned by a number of its direct participants and by the NYSE Euronext and the Financial Industry Regulatory Authority. Access to DTC’s system is also available to others, including securities brokers and dealers, banks and trust companies that clear transactions through or maintain a direct or indirect custodial relationship with a direct participant either directly, or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Redemption notices will be sent to DTC. If less than all of the Kroger Notes within a particular series are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each direct participant in the series to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to the Kroger Notes. Under its usual procedures, DTC mails an omnibus proxy to Kroger as soon as possible after the record date. The omnibus proxy assigns Cede & Co.’s consenting or voting rights to those direct participants to whose accounts the Kroger Notes are credited on the record date, which are identified in a listing attached to the omnibus proxy.

Kroger may, at any time, decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates representing the Kroger Notes will be printed and delivered.

Beneficial interests in the global note will be represented through book-entry accounts of financial institutions acting on behalf of beneficial owners as direct and indirect participants in DTC. Investors may elect to hold interests in the global note through DTC either directly if they are participants in DTC or indirectly through organizations that are participants in DTC.

*Clearstream.* Clearstream is incorporated under the laws of Luxembourg as a professional depositary. Clearstream holds securities for its participating organizations (“Clearstream Participants”) and facilitates the clearance and settlement of securities transactions between Clearstream Participants through electronic book-entry changes in accounts of Clearstream Participants, thereby eliminating the need for physical movement of certificates. Clearstream provides Clearstream Participants with, among other things, services for safekeeping, administration, clearance and establishment of internationally traded securities and securities lending and borrowing. Clearstream interfaces with domestic markets in several countries. As a professional depositary, Clearstream is subject to

regulation by the Luxembourg Monetary Institute. Clearstream Participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, and may include the Dealer Managers. Indirect access to Clearstream is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Clearstream Participant either directly or indirectly.

Distributions with respect to Kroger Notes held beneficially through Clearstream will be credited to cash accounts of Clearstream Participants in accordance with its rules and procedures to the extent received by DTC for Clearstream.

*Euroclear.* Euroclear was created in 1968 to hold securities for participants of Euroclear ("Euroclear Participants") and to clear and settle transactions between Euroclear Participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. Euroclear includes various other services, including securities lending and borrowing and interfaces with domestic markets in several markets in several countries. Euroclear is operated by Euroclear Bank SA/NV (the "Euroclear Operator"), under contract with Euroclear Clearance System S.C., a Belgian cooperative corporation (the "Cooperative"). All operations are conducted by the Euroclear Operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear Operator, not the Cooperative. The Cooperative establishes a policy for Euroclear on behalf of Euroclear Participants. Euroclear Participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include the Dealer Managers. Indirect access to Euroclear is also available to other firms that clear through or maintain a custodial relationship with a Euroclear Participant, either directly or indirectly.

The Euroclear Operation is regulated and examined by the Belgian Banking Commission.

Links have been established among DTC, Clearstream and Euroclear to facilitate the initial issuance of the notes sold outside of the United States and cross-market transfers of the notes associated with secondary market trading.

Although DTC, Clearstream and Euroclear have agreed to the procedures provided below in order to facilitate transfers, they are under no obligation to perform these procedures, and these procedures may be modified or discontinued at any time.

Clearstream and Euroclear will record the ownership interests of their participants in much the same way as DTC, and DTC will record the total ownership of each of the U.S. agents of Clearstream and Euroclear, as participants in DTC. When notes are to be transferred from the account of a DTC participant to the account of a Clearstream participant or a Euroclear participant, the purchaser must send instructions to Clearstream or Euroclear through a participant at least one day prior to settlement. Clearstream or Euroclear, as the case may be, will instruct its U.S. agent to receive notes against payment. After settlement, Clearstream or Euroclear will credit its participant's account. Credit for the notes will appear on the next day (European time).

Because settlement is taking place during New York business hours, DTC participants will be able to employ their usual procedures for sending notes to the relevant U.S. agent acting for the benefit of Clearstream or Euroclear participants. The sale proceeds will be available to the DTC seller on the settlement date. As a result, to the DTC participant, a cross-market transaction will settle no differently than a trade between two DTC participants.

When a Clearstream or Euroclear participant wishes to transfer notes to a DTC participant, the seller will be required to send instructions to Clearstream or Euroclear through a participant at least one business day prior to settlement. In these cases, Clearstream or Euroclear will instruct its U.S. agent to transfer these notes against payment for them. The payment will then be reflected in the account of the Clearstream or Euroclear participant the following day, with the proceeds back valued to the value date, which would be the preceding day, when settlement occurs in New York, if settlement is not completed on the intended value date, that is, if the trade fails, proceeds credited to the Clearstream or Euroclear participant's account will instead be valued as of the actual settlement date.

You should be aware that you will only be able to make and receive deliveries, payments and other communications involving the notes through Clearstream and Euroclear on the days when clearing systems are open for business. Those systems may not be open for business on days when banks, brokers and other institutions are open for business in the United States. In addition, because of time zone differences there may be problems with completing transactions involving Clearstream and Euroclear on the same business day as the United States.

The information in this section concerning DTC, its book-entry system, Clearstream and Euroclear and their respective systems has been obtained from sources that we believe to be reliable, but we have not attempted to verify the accuracy of this information.

## REGISTRATION RIGHTS

The following description of the Registration Rights Agreement is a summary and does not describe every aspect of the Registration Rights Agreement. This summary is subject to and is qualified in its entirety by reference to all the provisions of the Registration Rights Agreement, copies of which will be available as set forth in the section of the offering memorandum and consent solicitation statement entitled “Where You Can Find More Information and Incorporation By Reference.”

Kroger and the Dealer Managers will enter into the Registration Rights Agreement with respect to the Kroger Notes on the closing date of this offering. In the Registration Rights Agreement, Kroger will agree for the benefit of the holders of the applicable series of the Kroger Notes to use commercially reasonable efforts to (i) file a registration statement on an appropriate registration form with respect to a registered offer to exchange the Kroger Notes for notes with terms substantially identical in all material respects to the Kroger Notes and any guarantees of the Kroger Notes, as applicable (except that the exchange notes will not contain terms with respect to transfer restrictions or any increase in annual interest rate) and (ii) cause the registration statement to be declared effective under the Securities Act.

After the SEC declares the exchange offer registration statement related to the exchange notes effective, Kroger will offer the exchange notes and any related guarantee in return for the Kroger Notes. The exchange offers will remain open for at least 20 business days (or longer if required by applicable law) after the date Kroger sends or makes available notice of the exchange offers to the holders of the Kroger Notes. For each Kroger Note surrendered to Kroger under the exchange offers, the holders of such Kroger Note will receive an exchange note of the applicable series of equal principal amount. Interest on each exchange note will accrue (i) from the last interest payment date on which interest was paid on the Kroger Note surrendered in exchange therefor or (ii) if no interest has been paid on the Kroger Note, from the last interest payment date on which interest was paid on the applicable ACI Note that was exchanged for a Kroger Note in connection with the exchange offers. A holder of the Kroger Notes that participates in an exchange offer will be required to make certain representations to Kroger (as described in the Registration Rights Agreement). Kroger will use commercially reasonable efforts to complete the exchange offers for the Kroger Notes not later than 60 days after the exchange offer registration statement becomes effective. Under existing interpretations of the SEC contained in several no-action letters to third parties, the exchange notes will generally be freely transferable after the exchange offers without further registration under the Securities Act, except that any broker-dealer that participates in the exchange must deliver a prospectus meeting the requirements of the Securities Act when it resells the exchange notes. In addition, under applicable interpretations of the staff of the SEC, Kroger’s affiliates will not be permitted to exchange their Kroger Notes for registered notes in the registered exchange offers.

Kroger will agree to make available, during the period required by the Securities Act, a prospectus meeting the requirements of the Securities Act for use by participating broker-dealers and other persons, if any, with similar prospectus delivery requirements for use in connection with any resale of exchange notes. Kroger Notes of any series not tendered in the exchange offers will bear interest at the rate set forth on the cover page of this offering memorandum and consent solicitation statement with respect to such series of Kroger Notes and be subject to all the terms and conditions specified in the Kroger Indenture, including transfer restrictions, but will not retain any rights under the Registration Rights Agreement (including with respect to increases in annual interest rate described below) after the completion of the exchange offers. If (i) for any reason the exchange offers are not completed within 365 days after the issue date of the Kroger Notes, or (ii), in certain circumstances, any Dealer Manager so requests in connection with any offer or sale of Kroger Notes (a “Shelf Request”), in each case unless Kroger has previously done so, Kroger will use commercially reasonable efforts to file and to have become effective a shelf registration statement relating to resales of such series of Kroger Notes and to keep that shelf registration statement continuously effective until all such notes cease to be “registerable securities” (as defined in the Registration Rights Agreement), including when all notes covered by the shelf registration statement have been sold pursuant to the shelf registration statement.

Kroger will, in the event of such a shelf registration, provide to each participating holder of Kroger Notes copies of a prospectus, notify each participating holder of the Kroger Notes when the shelf registration statement has become effective and take certain other actions to permit resales of the Kroger Notes. A holder of registerable securities that sells notes under the shelf registration statement generally will be (i) required to make certain

representations to Kroger (as described in the Registration Rights Agreement), (ii) required to be named as a selling security holder in the related prospectus and to deliver a prospectus to purchasers, (iii) subject to certain of the civil liability provisions under the Securities Act in connection with those sales and (iv) bound by the provisions of the Registration Rights Agreement that are applicable to such a holder of registrable securities (including certain indemnification obligations). Holders of registrable securities will also be required to suspend their use of the prospectus included in the shelf registration statement under specified circumstances upon receipt of notice from Kroger.

If a “registration default” (as defined in the Registration Rights Agreement) occurs with respect to Kroger Notes of a particular series that are registrable securities, then additional interest shall accrue on the principal amount of the notes of such series that are registrable securities at a rate of 0.25% per annum for the first 90-day period beginning on the day immediately following such registration default (which rate will be increased by an additional 0.25% per annum for each subsequent 90-day period that such additional interest continues to accrue, provided that the rate at which such additional interest accrues may in no event exceed 0.50% per annum). The additional interest will cease to accrue when the registration default is cured. The foregoing amounts shall not increase, even if more than one registration default has occurred and is continuing. Notwithstanding the foregoing, a holder of Kroger Notes who is not entitled to the benefits of the shelf registration statement shall not be entitled to any increase in the interest rate borne by the Kroger Notes as a result of a registration default that pertains to the shelf registration statement.

A “registration default” occurs with respect to a series of the Kroger Notes if (1) Kroger has not exchanged exchange notes for all Kroger Notes validly tendered in accordance with the terms of the exchange offers on or prior to the 180th day after the issuance of the Kroger Notes or, if a shelf registration statement is required and has not become effective, on or prior to the 180th day after the later of (i) the 365th day after the issuance of the Kroger Notes and (ii) the date on which Kroger receives a Shelf Request or (2) if applicable, a shelf registration statement covering resales of the Kroger Notes has become effective and such shelf registration statement ceases to be effective or the prospectus contained therein ceases to be usable for resales of registrable securities at any time in any 12-month period during the required effectiveness period and such failure to remain effective or be usable exists for more than 90 days (whether or not consecutive) in any 12-month period. A registration default is cured with respect to a series of Kroger Notes, and additional interest ceases to accrue on any registrable securities of such series of Kroger Notes, when the exchange offers are completed or the shelf registration statement becomes effective, or when the shelf registration statement again becomes effective or the prospectus again becomes usable, as applicable, or when the notes of such series cease to be “registrable securities.”

The Registration Rights Agreement defines “registrable securities” initially to mean the Kroger Notes (and any guarantees thereof). Each series of the Kroger Notes will cease to be registrable securities upon the earliest to occur of (i) when a registration statement with respect to such notes has become effective under the Securities Act and such notes have been exchanged or disposed of pursuant to such registration statement; (ii) when such notes cease to be outstanding; (iii) except in the case of such notes that otherwise remain registrable securities and that are held by a holder and that are ineligible to be exchanged in an exchange offer, when such exchange offer is consummated; or (iv) when such Kroger Notes have been resold pursuant to Rule 144 under the Securities Act (but not Rule 144A) without regard to volume restrictions, provided that Kroger shall have removed or caused to be removed any restrictive legend on the Kroger Notes.

Any amounts of additional interest due will be payable in cash on the same original interest payment dates as interest on the Kroger Notes is payable.

Any ACI Notes not tendered in the exchange offers will not be available for tender in any exchange offer contemplated by the Registration Rights Agreement. The Proposed Amendments do not contain terms providing for the registration of any ACI Notes under the Securities Act. Only holders of Kroger Notes may participate in any exchange offer contemplated by the Registration Rights Agreement and any exchange offer contemplated thereunder will be commenced, if at all, after the consummation of the Merger.

This summary of the provisions of the Registration Rights Agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Registration Rights Agreement, copies of which are available from Kroger upon request.

## TRANSFER RESTRICTIONS

The Kroger Notes have not been registered under the Securities Act or any state or foreign securities laws, and they may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state and foreign securities laws. Accordingly, the Exchange Offers are being made and the Kroger Notes are being offered and issued only to (i) QIBs and (ii) outside the United States, to persons other than “U.S. persons” as defined in Rule 902 under the Securities Act in compliance with Regulation S. In addition, if a prospective participant in the Exchange Offers is located or resident in Canada, such prospective participant is an accredited investor, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), is a permitted client as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, and is not an individual.

Each holder of ACI Notes that tenders its ACI Notes will be deemed to have represented and agreed as follows (terms used in this paragraph that are defined in Rule 144A or Regulation S under the Securities Act are used herein as defined therein):

- (1) The holder (A) (i) is a QIB, (ii) is aware that the sale to it is being made in reliance on Rule 144A and (iii) is acquiring the Kroger Notes for its own account or for the account of one or more QIBs or (B) is outside the United States, is not a U.S. person and is purchasing the Kroger Notes in an offshore transaction pursuant to Regulation S. In addition, if a prospective participant in the Exchange Offers is located or resident in Canada, such prospective participant is an accredited investor, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), is a permitted client as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, and is not an individual.
- (2) The holder understands that the Kroger Notes are being offered in a transaction not involving any public offering in the United States within the meaning of the Securities Act, that the Kroger Notes offered hereby have not been and, except as described in this offering memorandum and consent solicitation statement, will not be registered under the Securities Act and that (A) if in the future it decides to offer, resell, pledge or otherwise transfer any of the Kroger Notes, such Kroger Notes may be offered, resold, pledged or otherwise transferred only (i) to Kroger, (ii) pursuant to an effective registration statement under the Securities Act, (iii) to a QIB in compliance with Rule 144A, (iv) outside the U.S. in compliance with Rule 904 under the Securities Act or (v) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (if available) or any other available exemption from registration under the Securities Act, and (B) the holder or purchaser will, and each subsequent holder is required to, notify any subsequent purchaser of the Kroger Notes from it of the resale restrictions referred to in (A) above. The holder further understands that resale of the Kroger Notes may also be subject to applicable securities laws in other jurisdictions. See “—Selling Restrictions” below.
- (3) The holder understands that the Kroger Notes (other than those issued to foreign purchasers after expiration of the applicable period and presentation of appropriate certification) will, until the expiration of the applicable holding period with respect to the Kroger Notes set forth in Rule 144 of the Securities Act, unless otherwise agreed by Kroger and the holder thereof, bear a legend substantially to the following effect:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER

- (1) REPRESENTS THAT

- (A) (x) IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE

SECURITIES ACT) AND IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, OR

- (y) IT IS NOT A “U.S. PERSON” AND IS OUTSIDE OF THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND
- (B) IF IT IS IN CANADA, SUCH ACQUIRER IS AN ACCREDITED INVESTOR, AS DEFINED IN NATIONAL INSTRUMENT 45-106 PROSPECTUS EXEMPTIONS OR SUBSECTION 73.3(1) OF THE SECURITIES ACT (ONTARIO), IS A PERMITTED CLIENT AS DEFINED IN NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS, IS NOT AN INDIVIDUAL, AND HAS COMPLETED, SIGNED AND SUBMITTED TO THE EXCHANGE AGENT A CANADIAN ELIGIBILITY CERTIFICATION IN THE FORM PROVIDED BY KROGER; AND

(2) AGREES FOR THE BENEFIT OF KROGER THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT IN ACCORDANCE WITH THE SECURITIES ACT AND ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ONLY

- (A) TO KROGER,
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT,
- (D) IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

(3) PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(C) ABOVE OR (2)(D) ABOVE, A DULY COMPLETED AND SIGNED CERTIFICATE MUST BE DELIVERED TO THE KROGER TRUSTEE. PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (E) ABOVE, KROGER RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY RULE 144 EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

(4) The holder acknowledges that (a) none of Kroger, the Albertsons Issuing Entities, the Dealer Managers, the Exchange Agent, the Information Agent or any person acting on behalf of any of the foregoing has made any statement, representation or warranty, express or implied, to it with respect to Kroger, ACI or the offer or sale of any Kroger Notes, other than the information included in this offering memorandum and consent solicitation statement (as supplemented to the Expiration Date), and (b) any information it desires concerning Kroger, the ACI Notes and the Kroger Notes or any other matter relevant to its decision to acquire the Kroger Notes (including a

copy of this offering memorandum and consent solicitation statement) is or has been made available to it.

- (5) The holder represents and warrants that it (a) is able to act on its own behalf in the transactions contemplated by this offering memorandum and consent solicitation statement, (b) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Kroger Notes, and (c) (or the account for which it is acting) has the ability to bear the economic risks of its prospective investment in the Kroger Notes and can afford the complete loss of such investment.
- (6) The holder understands that Kroger, ACI, the Dealer Managers, their respective counsel and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and agrees that if any of the acknowledgements, representations and warranties made by its tendering of its ACI Notes are, at any time prior to the consummation of the Exchange Offers, no longer accurate, it shall promptly notify Kroger and the Dealer Managers. If it is acquiring the Kroger Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing acknowledgements, representations and agreements on behalf of such account.
- (7) The holder understands that no action has been or will be taken in any jurisdiction that would permit a public offering of the Kroger Notes, or the possession, circulation or distribution of this offering memorandum and consent solicitation statement or any material relating to Kroger, the ACI Notes or the Kroger Notes in any jurisdiction where action for that purpose is required. Accordingly, the Kroger Notes included in the Exchange Offers may not be offered, sold or exchanged, directly or indirectly, and neither this offering memorandum and consent solicitation statement nor any other offering material or advertisements in connection with the Exchange Offers may be distributed or published, in or from any such country or jurisdiction, except in compliance with any applicable rules or regulations of any such country or jurisdiction.

## **Selling Restrictions**

### ***Notice to Prospective Investors in Canada***

The Kroger Notes may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the Kroger Notes must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this offering memorandum and consent solicitation statement (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the Dealer Managers are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

### ***Notice to Prospective Investors in the Dubai International Financial Centre***

The offering memorandum and consent solicitation statement relate to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority (the "DFSA"). The offering memorandum

and consent solicitation statement are intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. They must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved the offering memorandum or consent solicitation statement, nor taken steps to verify the information set forth herein and has no responsibility for the offering memorandum or consent solicitation statement. The Kroger Notes to which the offering memorandum and consent solicitation statement relates may be illiquid or subject to restrictions on its resale. Prospective purchasers of the Kroger Notes offered should conduct their own due diligence on the shares. If you do not understand the contents of the offering memorandum or consent solicitation statement, then you should consult an authorized financial advisor.

#### ***Notice to Prospective Investors in the European Economic Area***

The Kroger Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the EEA. For these purposes, (a) a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended or superseded, “MiFID II”); or (ii) a customer within the meaning of Directive (EU) 2016/97 (the “Insurance Distribution Directive”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended or superseded, the “Prospectus Regulation”), and (b) the expression “offer” includes 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 for the notes. Consequently, no key information document required by Regulation (EU) No 1286/2014 (as amended, the “PRIIPs Regulation”) for offering or selling the Kroger Notes or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the Kroger Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation. This offering memorandum and consent solicitation statement have been prepared on the basis that any offer of the Kroger Notes in any Member State of the EEA will be made pursuant to an exemption under the Prospectus Regulation from the requirement to publish a prospectus for offers of the Kroger Notes. This offering memorandum and consent solicitation statement are not a prospectus for the purposes of the Prospectus Regulation.

#### ***Notice to Prospective Investors in the United Arab Emirates***

The Kroger Notes have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, the offering memorandum and consent solicitation statement do not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. The offering memorandum and consent solicitation statement have not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

#### ***Notice to Prospective Investors in the United Kingdom***

The Kroger Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the United Kingdom (the “UK”). For these purposes, (a) a retail investor in the UK means a person who is one (or more) of: (i) a retail client as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020 (“EUWA”); or (ii) a customer within the meaning of the provisions of the Financial Services and Markets Act 2000 (as amended, “FSMA”) and any rules or regulations made under the FSMA to implement the Insurance Distribution Directive, where that customer would not qualify as a professional client, as defined in point (8) of Article 2(1) of Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA; or (iii) not a qualified investor as defined in Article 2 of the Prospectus Regulation as it forms part of domestic law by virtue of the EUWA (the “UK Prospectus Regulation”), and (b) the expression “offer” includes 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 for the notes. Consequently no key information document required by PRIIPs Regulation as it forms part of domestic law by virtue of the EUWA (the “UK PRIIPs Regulation”) for offering or selling the Kroger Notes or otherwise making them available to retail investors in the UK has been prepared and therefore offering or selling the Kroger Notes or otherwise making them available to any retail investor in the UK may be unlawful under the UK PRIIPs Regulation.

This offering memorandum and consent solicitation statement has been prepared on the basis that any offer of Kroger Notes in the UK will be made pursuant to an exemption under the UK Prospectus Regulation from the requirement to publish a prospectus for offers of Kroger Notes. This offering memorandum and consent solicitation statement is not a prospectus for the purposes of the UK Prospectus Regulation.

In addition, in the United Kingdom, this offering memorandum and consent solicitation statement are only being distributed to, and are only directed at, persons who are “qualified investors” (as defined in the UK Prospectus Regulation) who are (i) persons having professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the “Order”), (ii) high net worth entities falling within Article 49(2)(a) to (d) of the Order and (iii) such other persons to whom they may lawfully be communicated (each such person being referred to as a “relevant person”). The Kroger Notes are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire the Kroger Notes will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this offering memorandum and consent solicitation statement or any of their contents.

#### ***Notice to Prospective Investors in Hong Kong***

The Kroger 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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong, or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571) 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 (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong, and no advertisement, invitation or document relating to the Kroger 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 Kroger 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) of Hong Kong and any rules made thereunder.

#### ***Notice to Prospective Investors in Japan***

The Kroger Notes have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and none of the Kroger Notes nor any interests therein may be offered or sold, 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 or for the benefit of 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 in effect at the relevant time.

#### ***Notice to Prospective Investors in Singapore***

This offering memorandum and consent solicitation statement has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this offering memorandum and consent solicitation statement and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Kroger Notes may not be circulated or distributed, nor may the Kroger 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 (as defined in the SFA) pursuant to Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, 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 Kroger Notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is: (a) a corporation (which is not an “accredited investor” (as defined in the SFA)) 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, securities (as defined in Section 2(1) of the SFA) or securities-based derivatives contracts (as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest in that trust (howsoever described) shall not be transferable for 6 months after that corporation or that trust has acquired the Kroger Notes under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA; (2) where no consideration is given for the transfer; (3) where the transfer is by operation of law; (4) as specified in Section 276(7) of the SFA; or (5) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 of Singapore.

Singapore Securities and Futures Act Product Classification — Solely for the purposes of its obligations pursuant to sections 309B(1)(a) and 309B(1)(c) of the SFA, the Company has determined, and hereby notifies all persons that the notes are “prescribed capital markets products” (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018 of Singapore) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Any reference to the SFA is a reference to the Securities and Futures Act, Chapter 289 of Singapore and a reference to any term as defined in the SFA or any provision in the SFA is a reference to that term as modified or amended from time to time including by such of its subsidiary legislation as may be applicable at the relevant time.

#### ***Notice to Prospective Investors in South Korea***

The Kroger Notes may not be offered, sold and delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in South Korea or to any resident of South Korea except pursuant to the applicable laws and regulations of South Korea, including the Financial Investment Services and Capital Markets Act and the Foreign Exchange Transaction Law and the decrees and regulations thereunder. The Kroger Notes have not been registered with the Financial Services Commission of South Korea for public offering in South Korea. Furthermore, the Kroger Notes may not be re-sold to South Korean residents unless the purchaser of the Kroger Notes complies with all applicable regulatory requirements (including but not limited to government approval requirements under the Foreign Exchange Transaction Law and its subordinate decrees and regulations) in connection with their purchase.

#### ***Notice to Prospective Investors in Switzerland***

The offering memorandum and consent solicitation statement are not intended to constitute an offer or solicitation to purchase or invest in the Kroger Notes. The Kroger Notes may not be publicly offered, directly or indirectly, in Switzerland within the meaning of the Swiss Financial Services Act (“FinSA”) and will not be listed on the SIX Swiss Exchange (“SIX”) or on any other stock exchange or regulated trading venue (exchange or multilateral trading facility) in Switzerland. This document does not constitute an offering memorandum or consent solicitation statement within the meaning of, and has been prepared without regard to, the disclosure standards for issuance offering memorandums or consent solicitation statements under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing offering memorandums or consent solicitation statements under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading venue (exchange or multilateral trading facility) in Switzerland. Neither this document nor any other offering or marketing

material relating to the shares of Kroger Notes constitutes an offering memorandum or consent solicitation statement pursuant to the FinSA, and neither this document nor any other offering or marketing material relating to the Kroger Notes or this offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to this offering, us or the Kroger Notes have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of Kroger Notes will not be supervised by, the Swiss Financial Market Supervisory Authority (FINMA), and the offer of Kroger Notes has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes (“CISA”). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of Kroger Notes.

***Notice to Prospective Investors in Taiwan***

The Kroger Notes have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the Kroger Notes in Taiwan.

## CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with participation in the Exchange Offers by (i) “employee benefit plans” within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) that are subject to Title I of ERISA, (ii) plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any other U.S. or non-U.S. federal, state, local or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “Similar Laws”), and (iii) entities whose underlying assets are considered to constitute the assets of any of the foregoing described in clauses (i) and (ii), pursuant to ERISA or otherwise (each of the foregoing described in clauses (i), (ii) and (iii) referred to herein as a “Plan”).

### ***General Fiduciary Matters***

ERISA and the Code impose certain duties on Plans that are subject to Title I of ERISA and/or Section 4975 of the Code (each, a “Covered Plan”), and on those persons who are “fiduciaries” as defined in Section 3(21) of ERISA and Section 4975 of the Code with respect to Covered Plans and prohibit certain transaction involving the assets of a Covered Plan and its fiduciaries or other interested parties. Under ERISA and Section 4975 of the Code, any person who exercises any discretionary authority or control over the administration of a Covered Plan, or who renders investment advice for a fee or other compensation to such a Covered Plan is generally considered to be a fiduciary of the Covered Plan.

In considering whether to participate in the Exchange Offers and invest the assets of a Plan in the Kroger Notes, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Laws relating to a fiduciary’s duties to the Plan including, without limitation, the indicia of ownership, prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, Section 4975 of the Code and any other applicable Similar Laws.

### ***Prohibited Transaction Issues***

An investor who is considering exchanging the ACI Notes for the Kroger Notes with the assets of a Covered Plan must consider whether such an exchange would constitute or result in a non-exempt prohibited transaction. ERISA and Section 4975 of the Code prohibit certain transactions that involve a Covered Plan and a “party in interest” as defined in Section 3(14) of ERISA or a “disqualified person” as defined in Section 4975(e)(2) of the Code with respect to such Covered Plan. Examples of such prohibited transactions include, but are not limited to, sales or exchanges of property (such as the ACI Notes or the Kroger Notes) or extensions of credit between a Covered Plan and a party in interest or disqualified person. In addition, ERISA and Section 4975 of the Code generally prohibit a fiduciary with respect to a Covered Plan from dealing with the assets of the Covered Plan for its own benefit (for example when a fiduciary of a Covered Plan uses its position to cause the Covered Plan to make investments in connection with which the fiduciary (or a party related to the fiduciary) receives a fee or other consideration).

ERISA and the Code contain certain exemptions from the prohibited transactions described above, and the U.S. Department of Labor has issued several exemptions, although certain exemptions do not provide relief from the prohibitions on fiduciary self-dealing discussed above. Exemptions include Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code pertaining to certain transactions with non-fiduciary service providers; Department of Labor Prohibited Transaction Class Exemption (“PTCE”) 95-60, applicable to transactions involving insurance company general accounts; PTCE 90-1, regarding investments by insurance company pooled separate accounts; PTCE 91-38, regarding investments by bank collective investment funds; PTCE 84-14, regarding investments effected by a qualified professional asset manager; and PTCE 96-23, regarding investments effected by an in-house asset manager. Fiduciaries of Covered Plans considering participating in the Exchange Offers in reliance on these or any other exemptions should carefully review the exemption to assure it is applicable. There can be no assurance that any of these or other exemptions will be available with respect to transactions involving the ACI Notes or Kroger Notes.

***Governmental, Certain Church and Non-U.S. Plans***

As a general rule, plans that are governmental plans, as defined in Section 3(32) of ERISA, church plans, as defined in Section 3(33) of ERISA, that have not made an election under Section 410(d) of the Code and plans maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens, as described in Section 4(b)(4) of ERISA, are not subject to Title I of ERISA or Section 4975 of the Code, but they may be subject to Similar Laws. A fiduciary of any such plan should consider whether an exchange of the ACI Notes for the Kroger Notes satisfies the requirements, if any, under any applicable Similar Laws.

***Representation***

Because of the foregoing, any Eligible Holder that participates in an Exchange Offer will be deemed to represent and warrant that either (i) it is not exchanging the ACI Notes for the Kroger Notes for or on behalf of or with the assets of any Plan or (ii) its exchange of the ACI Notes for the Kroger Notes and its acquisition and holding of the Kroger Notes will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a violation under any applicable Similar Law.

The decision to exchange the ACI Notes for the Kroger Notes under the Exchange Offers must be made on an arm's length basis and each Plan should consider that none of us, the Dealer Managers or our or their affiliates will act as a fiduciary to any Plan or with respect to such decision. The Exchange Offers are not a representation by us or any Dealer Manager that an exchange of the ACI Notes for the Kroger Notes meets any or all legal requirements applicable to investments by Plans, or that such an exchange is appropriate for any particular Plan.

## **CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following summary describes certain U.S. federal income tax considerations for U.S. Holders and Non-U.S. Holders (as defined below) of ACI Notes in connection with the Exchange Offers and Consent Solicitations, including considerations related to the acquisition, owning and disposition of the Kroger Notes and receipt of the Early Participation Premium and Consent Payment. The discussion does not address U.S. federal income tax considerations relating to the acquisition, owning and disposition of Kroger Notes other than pursuant to the Exchange Offers. This discussion only applies to Notes (as defined herein) held as capital assets within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the “Code”) (generally, property held for investment) and does not address all of the tax considerations that may be relevant to specific holders in light of their particular circumstances or to holders subject to special treatment under U.S. federal income tax laws, such as:

- dealers in securities or currencies;
- traders in securities;
- U.S. 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, real estate investment trusts, and regulated investment companies and shareholders of such corporations;
- entities that are tax-exempt for U.S. federal income tax purposes and retirement plans, individual retirement accounts and tax-deferred accounts;
- accrual method taxpayers that are required to recognize income for U.S. federal income tax purposes no later than when such income is taken into account as revenue in applicable financial statements;
- pass-through entities, including partnerships and entities and arrangements classified as partnerships for U.S. federal tax purposes, and beneficial owners of pass-through entities; and
- persons that acquire the Notes for a price other than the issue price of the Notes.

If a partnership (or an entity or arrangement classified as a partnership for U.S. federal income tax purposes), or a partner in such a partnership, is the beneficial owner of the Notes, the U.S. 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 such holders should consult their own tax advisor regarding the U.S. federal income tax consequences of acquiring, owning and disposing of the Notes.

This summary does not discuss U.S. federal estate and gift tax consequences, the Medicare tax on net investment income or any U.S. state or local income or non-U.S. income or other tax consequences. This summary is based on U.S. federal income tax law, including the provisions of the Code, Treasury Regulations promulgated thereunder (“Treasury Regulations”), administrative rulings and judicial authorities, all as in effect or in existence as of the date of this offering memorandum and consent solicitation statement. Subsequent developments in

U.S. federal income tax law, including changes in law or differing interpretations, which may be applied retroactively, could have a material effect on the U.S. federal income tax consequences of acquiring, owning and disposing of notes as set forth in this summary. No opinion of counsel or ruling from the U.S. Internal Revenue Service (“IRS”) has been or will be given with respect to any of the considerations discussed herein. No assurances can be given that the IRS would not assert, or that a court would not sustain, a position different from any of the tax considerations discussed below.

Each prospective participant in the Exchange Offers and Consent Solicitations should consult its own tax advisor with respect to the U.S. federal, state, local and non-U.S. tax consequences of participating or not participating in the Exchange Offers and Consent Solicitations, including the exchange of the Kroger Notes, receipt of the Early Participation Premium and Consent Payment, and of holding and disposing of the ACI Notes.

For purposes of this description, a “U.S. Holder” is a beneficial owner of the Notes who for U.S. federal income tax purposes is:

- 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 U.S. federal income taxation regardless of its source; 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 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.”

For purposes of this description, a “Non-U.S. Holder” is a beneficial owner of Notes that is not a U.S. Holder and that is not treated as a partnership for U.S. federal income tax purposes.

For purposes of this discussion, the term “Notes” means the Kroger Notes, the ACI Notes, and the Modified ACI Notes (as defined below), as the context requires.

## **Tax Considerations for U.S. Holders Participating in the Exchange Offers and Consent Solicitations**

### ***Consent Payment***

The tax treatment of the receipt of the Consent Payment is uncertain because no authorities directly address the treatment of such a payment, particularly, in this case, where the Exchange Offers are being made by Kroger and not the relevant issuer of the ACI Notes. Kroger intends to treat the Consent Payment as separate consideration for consenting to the Proposed Amendments. Assuming such treatment, the Consent Payment would be includible in gross income as ordinary income in accordance with a U.S. Holder’s usual method of accounting for U.S. federal income tax purposes. It is possible, however, that the IRS will successfully assert that the Consent Payment is instead additional consideration received upon the exchange of ACI Notes for Kroger Notes, in which case the Consent Payment would constitute part of the U.S. Holder’s amount realized in the exchange. The remainder of this discussion assumes that the Consent Payment will be treated as separate consideration for consenting to the Proposed Amendments. U.S. Holders should consult their own tax advisors regarding the tax consequences related to the receipt of the Consent Payment.

### ***Early Participation Premium***

Although the tax treatment of the receipt of the Early Participation Premium is not free from doubt, Kroger intends to treat the Early Participation Premium as additional consideration received upon the exchange of ACI Notes for Kroger Notes. Assuming such treatment, the Early Participation Premium would constitute part of the U.S. Holder’s amount realized in the exchange, as described below. The remainder of this discussion assumes that the

Early Participation Premium will be treated as additional consideration received upon the exchange of ACI Notes for Kroger Notes. U.S. Holders should consult their own tax advisors regarding the tax consequences related to the receipt of the Early Participation Premium.

### ***Taxable Exchange***

***In General.*** Kroger intends to treat the exchange of the ACI Notes for the Kroger Notes as a taxable transaction. Specifically, because Kroger is not the issuer of the ACI Notes and the Merger is not expected to qualify for nonrecognition treatment under the Code, the exchange of ACI Notes for Kroger Notes is not expected to qualify as a recapitalization or for other nonrecognition treatment under the Code. U.S. Holders should consult their tax advisors regarding the U.S. federal income tax treatment of the exchange of the ACI Notes for the Kroger Notes as a taxable exchange.

If the exchange is treated as a taxable transaction with respect to a U.S. Holder, then such U.S. Holder generally will recognize gain or (subject to the possible application of the wash-sale rules) loss equal to the difference, if any, between (1) the “issue price” of the Kroger Notes (determined after taking into account pre-issuance accrued interest as described below under “—Tax Considerations Related to U.S. Holders Holding and Disposing of ACI Notes—Pre-Issuance Accrued Interest”) and (2) the U.S. Holder’s adjusted tax basis in the ACI Notes on the date of the exchange.

A U.S. Holder’s adjusted tax basis in an ACI Note generally will be the amount paid therefor increased by the amount of any market discount included in the U.S. Holder’s income with respect to the ACI Note and decreased by any previously amortized bond premium. The issue price of a Kroger Note is determined as discussed below under “—Tax Considerations for U.S. Holders Participating in the Exchange Offers and Consent Solicitations—Issue Price.” A U.S. Holder will have an initial tax basis in a Kroger Note equal to its issue price and such U.S. Holder’s holding period with respect to a Kroger Note generally begins the day after the exchange. Except to the extent any gain is recharacterized as ordinary income pursuant to the market discount rules described below, gain or loss recognized on the exchange will be capital gain or loss and generally will be long-term capital gain or loss if, at the time of the exchange, the ACI Note has been held by the U.S. Holder for more than one year. Non-corporate U.S. Holders are eligible for reduced rates of taxation on long-term capital gains under current law. The deductibility of capital losses is subject to limitation.

***Accrued Interest.*** Accrued but unpaid interest on an ACI Note should be includable in gross income as interest income on the Settlement Date if such accrued interest had not been included previously in the holder’s gross income for U.S. federal income tax purposes.

***Market Discount.*** If a U.S. Holder acquired an ACI Note with market discount prior to the exchange, any gain recognized on the exchange of such ACI Note for a Kroger Note will be treated as ordinary income to the extent of the market discount accrued during the U.S. Holder’s period of ownership, unless such holder previously had elected to include market discount in income as it accrued for U.S. federal income tax purposes. An ACI Note generally will be considered to have been acquired with market discount if its stated redemption price at maturity exceeded its tax basis in the hands of a U.S. Holder immediately after its acquisition by the U.S. Holder by more than a statutory *de minimis* amount. Any gain in excess of accrued market discount will be subject to the capital gains rules described above. U.S. Holders who acquired their ACI Notes with market discount should consult their tax advisors regarding the possible application of the market discount rules of the Code to an exchange of the Notes pursuant to the Exchange Offers.

***Issue Price.*** Subject to the discussion below concerning pre-issuance accrued interest, the issue price of a Kroger Note will equal its fair market value on the Settlement Date if the Kroger Note is considered to be “publicly traded” for U.S. federal income tax purposes at any time during the thirty-one-day period ending fifteen (15) days after the Settlement Date. In general, an issue of debt instruments will be treated as publicly traded if there is a sale price or one or more firm or indicative quotes available for such debt instrument. Although no assurances can be given in this regard, Kroger believes that each series of the Kroger Notes is likely to be considered “publicly traded” for these purposes, and, accordingly, that the issue price of a Kroger Note will equal its fair market value on the Settlement Date, and intends to take this position for all relevant reporting and other purposes. The rules regarding

the determination of issue price are complex and highly detailed and each U.S. Holder should consult its tax advisor regarding the determination of the issue price of a Kroger Note.

### **Tax Considerations for Non-Participating U.S. Holders of Notes**

The U.S. federal income tax considerations to a non-participating U.S. Holder resulting from the adoption of the Proposed Amendments will depend upon whether the adoption of the Proposed Amendments results in a deemed exchange of the ACI Notes for “new,” modified notes (the “Modified ACI Notes”) with respect to which gain or loss may be recognized. Generally, the modification of a debt instrument will be treated as a deemed exchange of an old debt instrument for a new debt instrument if such modification is “significant” within the meaning of the applicable Treasury Regulations. Generally, a modification is “significant” if, based on all the facts and circumstances and taking into account all modifications of the debt instrument collectively, the legal rights and obligations that are altered and the degree to which they are altered are economically significant. The applicable Treasury Regulations also provide that a modification that adds, deletes, or alters customary accounting or financial covenants does not give rise to a “significant modification” of the debt instrument, but do not define “customary accounting or financial covenants.”

Although not free from doubt, Kroger intends to take the position that the adoption of the Proposed Amendments will not result in a “significant modification” to the terms of the ACI Notes under the applicable Treasury Regulations because the modifications to the terms of the ACI Notes are deletions of, or alterations to, customary accounting or financial covenants or are not “significant” under a facts and circumstances analysis or certain other exceptions apply. In such case, a U.S. Holder who does not consent to the Proposed Amendments and does not participate in the exchange would not recognize any gain or loss for U.S. federal income tax purposes as a result of the adoption of the Proposed Amendments, and such a U.S. Holder would continue to have the same adjusted tax basis and accrued market discount (if any) in, and holding period for, such U.S. Holder’s ACI Notes as it had immediately prior to the adoption of the Proposed Amendments.

It is possible that the IRS will successfully assert that the adoption of the Proposed Amendments will result in a “significant modification” to the terms of the ACI Notes under the applicable Treasury Regulations, resulting in a deemed exchange of ACI Notes for Modified ACI Notes for U.S. federal income tax purposes. In such a case, whether such deemed exchange would be taxable to a non-participating U.S. Holder would depend upon, among other things, whether the ACI Notes and Modified Notes qualify as “securities” for U.S. federal income tax purposes and whether such exchange otherwise qualifies as a tax-free recapitalization. If a deemed exchange does not qualify as a tax-free recapitalization, a non-exchanging U.S. Holder generally would recognize taxable gain or loss on the deemed exchange, measured by the difference between its adjusted tax basis in the ACI Notes and the deemed issue price of the Modified ACI Notes, and such U.S. Holder would have an initial tax basis in the Modified ACI Notes equal to their issue price, which should generally equal their fair market value on the date the Proposed Amendments become effective and such U.S. Holder’s holding period with respect to the Modified ACI Notes would begin the day after such date.

If such a deemed exchange does qualify as a tax-free recapitalization, a non-exchanging U.S. Holder generally would recognize no gain or loss on the deemed exchange of such ACI Notes, and the U.S. Holder’s initial tax basis in the Modified ACI Notes received would be equal to such U.S. Holder’s adjusted tax basis in the ACI Notes deemed exchanged therefor, and the holding period for the Modified ACI Notes would include the period during which the U.S. Holder held the ACI Notes.

The consequences to a U.S. Holder of holding and disposing of the Modified ACI Notes would be similar to the consequences described below under “—Tax Considerations Related to U.S. Holders Holding and Disposing of Kroger Notes.”

There can be no assurance that the IRS will not successfully challenge Kroger’s position described above. The rules regarding significant modifications are complex. Non-participating U.S. Holders are urged to consult their own tax advisors regarding the tax considerations of not participating in the Exchange Offers.

## Tax Considerations Related to U.S. Holders Holding and Disposing of Kroger Notes

**Possible Application of Rules Governing Contingent Payment Debt Instruments.** In certain circumstances, the terms of the Kroger Notes provide for payments in excess of stated interest and principal or for the redemption of the Kroger Notes in advance of their expected maturity. Under applicable Treasury Regulations, the possibility that certain payments in excess of stated interest and principal will be made or that the Kroger Notes will be redeemed in advance of their expected maturity will not cause the Kroger Notes to be treated as “contingent payment debt instruments” for U.S. federal income tax purposes if there is only a remote likelihood as of the issue date of the Kroger Notes that any of these payments will be made and/or such payments in the aggregate are considered incidental or certain other exceptions apply. Kroger intends to take the position that the Kroger Notes will not be considered contingent payment debt instruments. Kroger’s position is binding on a U.S. Holder unless such holder discloses that the holder is taking a contrary position in the manner required by applicable Treasury Regulations. Kroger’s position is not, however, binding on the IRS, and if the IRS were to successfully challenge Kroger’s position, the timing, amount and character of income recognized with respect to a Kroger Note may be different than described herein and a U.S. Holder may be required to recognize income in excess of stated interest and to treat as ordinary income rather than capital gain any income realized on the taxable disposition of a Kroger Note. The remainder of this discussion assumes that the Kroger Notes will not be considered contingent payment debt instruments.

**Pre-Issuance Accrued Interest.** A portion of the interest paid on a Kroger Note on the first interest payment date will be attributable to interest accrued from (and including) the most recent date on which interest has been paid on the corresponding series of ACI Notes exchanged therefor, which we refer to as “pre-issuance accrued interest.” In accordance with applicable Treasury Regulations, for U.S. federal income tax purposes, Kroger intends to treat the Kroger Notes as having been issued for a price that does not include any pre-issuance accrued interest, so that the “issue price” of (and a U.S. Holder’s initial tax basis in) a Kroger Note would be decreased by any applicable pre-issuance accrued interest. If the Kroger Notes are so treated, a portion of the first stated interest payment on a Kroger Note would be treated as a non-taxable return of the excluded pre-issuance accrued interest and accordingly, will not be taxable as interest on the Kroger Note.

**Stated Interest.** Subject to the discussion of pre-issuance accrued interest above, payments of stated interest on the Kroger Notes generally will be taxable to a U.S. Holder as ordinary income at the time that such payments are received or accrued, in accordance with the U.S. Holder’s method of accounting for U.S. federal income tax purposes.

**Original Issue Discount.** Because Kroger intends to determine the issue price of the Kroger Notes by reference to the fair market value of the Kroger Notes on the Settlement Date (as described above), we cannot know prior to such date whether any series of Kroger Notes will have original issue discount (“OID”).

If the stated redemption price at maturity of any Kroger Note exceeds the issue price of such Kroger Note by at least a statutorily specified *de minimis* amount, the difference will constitute OID for U.S. federal income tax purposes. In such case, in addition to the stated interest on a Kroger Note, a U.S. Holder will be required to include the OID on such Kroger Note in gross income (as ordinary income) as it accrues on a constant yield to maturity basis for U.S. federal income tax purposes, generally in advance of the receipt of the cash payments to which such OID is attributable and regardless of the U.S. Holder’s regular method of accounting for U.S. federal income tax purposes. Under these rules, a U.S. Holder generally will have to include in income increasingly greater amounts of OID in successive accrual periods. The rules regarding OID are complex and the rules described above may not apply in all cases. Accordingly, U.S. Holders should consult their own tax advisors regarding their application.

**Sale, Exchange, Retirement or Other Taxable Disposition.** Upon the sale, exchange, retirement or other taxable disposition of a Kroger Note, a U.S. Holder will recognize gain or loss equal to the difference between the amount realized upon the sale, exchange, retirement or other taxable disposition (other than any amounts attributable to accrued and unpaid interest not previously included in income, which will be taxed as ordinary income) and the U.S. Holder’s tax basis in the Kroger Note. Such gain or loss will be capital gain or loss and generally will be long-term capital gain or loss if, at the time of such sale, exchange, retirement or other taxable disposition, the Kroger Note has been held by the U.S. Holder for more than one year. Long-term capital gains of an individual taxpayer

may be taxed at a preferential rate under current law. The deductibility of any net capital loss realized by a U.S. Holder on the sale, exchange, retirement or other taxable disposition of a Kroger Note is subject to limitations.

A U.S. Holder's tax basis in a Kroger Note would generally be as described above under “—Tax Considerations for U.S. Holders Participating in the Exchange Offers and Consent Solicitations,” as adjusted for any OID previously included in income, any previously amortized bond premium and any payments from Kroger other than qualified stated interest.

***Amortizable Bond Premium.*** If a U.S. Holder's initial tax basis in a Kroger Note is greater than its stated principal amount, the U.S. Holder will be considered to have acquired the Kroger with “amortizable bond premium” in an amount equal to the excess. A U.S. Holder generally may elect to amortize such premium from the acquisition date of a Kroger Note to the maturity date of the Kroger Notes under a constant yield method based on the Kroger Note's payment period. A U.S. Holder that elected to amortize such premium as an offset to interest income must reduce its tax basis in the Kroger Note by the amount of the premium amortized during such holder's holding period of the Kroger Note. For a U.S. Holder that did not elect to amortize bond premium, the amount of such premium will be included in such holder's tax basis upon the sale of the Kroger Note. An election to amortize premium on a constant yield method, once made, generally applies to all debt obligations held or subsequently acquired by the U.S. Holder during the taxable year of the election and thereafter, and may not be revoked without the consent of the IRS. The bond premium rules are complicated, and U.S. Holders are urged to consult their own tax advisors regarding the tax considerations related to owning and disposing of the Kroger Notes with bond premium, including the availability of certain elections and the effects of certain options by Kroger.

### **U.S. Backup Withholding Tax and Information Reporting**

Information reporting requirements generally will apply to payments Kroger makes to a U.S. Holder and the proceeds from a sale of a Kroger Note paid to a U.S. Holder. Backup withholding taxes will be withheld from the Consent Payment and payments made within the United States, or by a U.S. payor or U.S. middleman or certain of their affiliates, on a Kroger Note to, or from gross proceeds of the sale or disposition of a Kroger Note paid to, a U.S. Holder if the U.S. Holder fails to furnish its correct taxpayer identification number or otherwise fails to comply with, or establish an exemption from, the backup withholding requirements.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a U.S. Holder's U.S. federal income tax liability. A holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for a refund with the IRS and furnishing any required information in a timely manner.

### **Tax Considerations for Non-U.S. Holders Participating in the Exchange Offers and Consent Solicitations**

The discussion above under “—Tax Considerations for U.S. Holders Participating in the Exchange Offers and Consent Solicitations” will apply to determine the treatment of a Non-U.S. Holder's receipt of the Kroger Notes and Consent Payment for U.S. federal income tax purposes. The discussion below describing consequences for Non-U.S. Holders of gain recognized upon a sale or exchange under “—Tax Considerations for Non-U.S. Holders Related to Holding and Disposing of the Kroger Notes” will also apply to determine the tax consequences of any gain resulting from the exchange to a Non-U.S. Holder.

***Consent Payment.*** As discussed above under “—Tax Considerations for U.S. Holders Participating in the Exchange Offers and Consent Solicitations—Consent Payment,” there is uncertainty as to the U.S. federal income tax treatment of the receipt of the Consent Payment, but Kroger intends to treat the Consent Payment as separate consideration for consenting to the Proposed Amendments. In addition, there is uncertainty regarding whether the receipt of the Consent Payment by a Non-U.S. Holder, if treated as separate consideration or a fee for consenting to the Proposed Amendments, is subject to U.S. federal withholding tax. Accordingly, it is possible that an applicable withholding agent may withhold U.S. federal withholding tax at a rate of 30% from such payment (unless such withholding is reduced or eliminated, for example, (1) under the “business profits” or “other income” provisions of an applicable tax treaty and the Non-U.S. Holder provides a properly executed IRS Form W-8BEN or W-8BEN-E (or other applicable IRS Form W-8), (2) because the payment is effectively connected with the Non-U.S. Holder's conduct of a U.S. trade or business and the Non-U.S. Holder provides a properly executed IRS Form W-8ECI, or (3)

because such fee is not U.S.-source income). Non-U.S. Holders should consult their tax advisors with respect to the treatment of the Consent Payment. If the Consent Payment is treated as a separate fee, the discussion below describing consequences for Non-U.S. Holders whose receipt of payments with respect to the Notes is effectively connected with a U.S. trade or business under “—Tax Considerations for Non-U.S. Holders Related to Holding and Disposing of the Kroger Notes” will also apply to determine the tax considerations for any Consent Payment received that is effectively connected with a Non-U.S. Holder’s conduct of a U.S. trade or business.

### **Tax Considerations for Non-Participating Non-U.S. Holders of Notes**

As discussed above under “—Tax Considerations for Non-Participating U.S. Holders of Notes,” the adoption of the Proposed Amendments is not expected to be taxable with respect to Non-U.S. Holders who do not participate in the Exchange Offers.

### **Tax Considerations for Non-U.S. Holders Related to Holding and Disposing of the Kroger Notes**

***Taxation of Interest.*** Subject to the discussion below concerning FATCA (as defined below) and backup withholding, a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax in respect of interest (which, for purposes of this discussion of Non-U.S. Holders includes OID, if any) paid or accrued on the Kroger Notes if the interest qualifies for the “portfolio interest exemption.” This generally will be the case if each of the following requirements is satisfied:

- the interest is not effectively connected with a U.S. trade or business;
- the Non-U.S. Holder does not actually or constructively own 10% or more of the capital or profits interest, each within the meaning of the Code and Treasury Regulations, of Kroger;
- the Non-U.S. Holder is not a controlled foreign corporation, within the meaning of the Code, that is actually or constructively related to Kroger within the meaning of Section 864(d)(4) of the Code;
- the Non-U.S. Holder is not a bank that received the Kroger Notes on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and
- the Non-U.S. Holder provides the withholding agent with the appropriate certification.

The certification requirement generally will be satisfied if the Non-U.S. Holder provides the withholding agent IRS Form W-8BEN or W-8BEN-E, as applicable (or suitable substitute or successor form), together with all appropriate attachments, signed under penalties of perjury, identifying the Non-U.S. Holder and stating, among other things, that the Non-U.S. Holder is not a U.S. person. Non-U.S. Holders who hold Kroger Notes through financial institutions or other intermediaries may be subject to different rules under applicable Treasury Regulations. Non-U.S. Holders should consult their tax advisors regarding alternative methods for satisfying the certification requirement.

If the portfolio interest exemption is not satisfied with respect to a Non-U.S. Holder, a 30% withholding tax will apply to interest payments on the Kroger Notes, unless another exemption is applicable. For example, an applicable income tax treaty may reduce or eliminate such tax, in which event a Non-U.S. Holder claiming the benefit of such treaty must provide the withholding agent with a properly executed IRS Form W-8BEN or W-8BEN-E, as applicable (or suitable substitute or successor form) establishing such Non-U.S. Holder’s eligibility for such treaty benefits. Alternatively, an exemption applies if the interest is effectively connected with the Non-U.S. Holder’s U.S. trade or business and the Non-U.S. Holder provides an appropriate statement to that effect on IRS Form W-8ECI (or suitable substitute or successor form). In the latter case, such Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to interest on the Kroger Notes in the same manner as U.S. Holders, as described above, unless an applicable income tax treaty provides otherwise. Additionally, Non-U.S. Holders that are corporations could be subject to a branch profits tax with respect to any U.S. trade or business income at a rate of 30% (or potentially at a reduced rate under an applicable income tax treaty).

**Possible Application of Rules Governing Contingent Payment Debt Instruments.** As discussed above, under “—Tax Considerations Related to U.S. Holders Holding and Disposing of Kroger Notes—Possible Application of Rules Governing Contingent Payment Debt Instruments,” in certain circumstances, the terms of the Kroger Notes provide for payments in excess of stated interest and principal or for the redemption of Kroger Notes in advance of their expected maturity. Non-U.S. Holders should consult their own tax advisors as to the tax considerations relating to debt instruments that provide for one or more contingent payments, in particular as to the availability of the portfolio interest exemption, and the ability of Non-U.S. Holders to claim the benefits of income tax treaty exemptions from U.S. withholding tax on interest, in respect of any such additional payments.

**Sale, Exchange, Retirement or Other Disposition of the Kroger Notes by a Non-U.S. Holder.** Generally, a Non-U.S. Holder will not be subject to U.S. federal income tax on gain realized upon the sale, exchange, retirement or other disposition of a Kroger Note, unless (i) such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of the sale, exchange, retirement or other disposition and certain other conditions are met or (ii) the gain is effectively connected with the conduct of a U.S. trade or business by the Non-U.S. Holder (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable). If the first exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30% (or at a reduced rate under an applicable income tax treaty) on the amount by which capital gains allocable to U.S. sources (including gains from the sale, exchange, retirement or other disposition of the Note) exceed capital losses allocable to U.S. sources. If the second exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such gain in the same manner as U.S. Holders, as described above, unless an applicable income tax treaty provides otherwise. Additionally, Non-U.S. Holders that are corporations could be subject to a branch profits tax with respect to such gain at a rate of 30% (or at a reduced rate under an applicable income tax treaty).

To the extent that the proceeds from the sale, exchange, retirement or other disposition of a Kroger Note is attributable to accrued and unpaid interest, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such proceeds in the same manner as described above under “—*Taxation of Interest*.”

**Information Reporting and Backup Withholding.** Under current Treasury Regulations, backup withholding and certain information reporting will not apply to payments made on the Kroger Notes if (i) a Non-U.S. Holder has provided to the applicable withholding agent the required certification that such Non-U.S. Holder is not a United States person and, (ii) the applicable withholding agent does not have actual knowledge or reason to know that such Non-U.S. Holder is a United States person. However, the applicable withholding agent may be required to report to the IRS payments of interest on the Kroger 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 such Non-U.S. Holder resides under the provisions of a treaty or agreement.

In general, a Non-U.S. Holder will not be subject to backup withholding with respect to interest payments (including any OID) that Kroger makes to such Non-U.S. Holder if such Non-U.S. Holder certifies that it is not a U.S. person under penalties of perjury or otherwise establishes an exemption, provided that the payor does not have actual knowledge or reason to know that such Non-U.S. Holder is a U.S. person or that any other conditions of the exemption are not, in fact, satisfied.

The gross proceeds from the disposition of the Kroger Notes may be subject to information reporting and backup withholding. If a Non-U.S. Holder sells Kroger Notes outside the United States through a non-U.S. office of a non-U.S. broker and the sales proceeds are paid to such Non-U.S. Holder 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 a Non-U.S. Holder sells its Notes through a non-U.S. office of a broker that:

- is a “United States person” (as defined in the 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 the Non-U.S. Holder is not a United States person and certain other conditions are met or the Non-U.S. Holder otherwise establishes an exemption.

If a Non-U.S. Holder receives payments of the proceeds of a sale of the 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 such Non-U.S. Holder provides a Form W-8BEN or W-8BEN-E (or other applicable form) certifying that such Non-U.S. Holder is not a United States person or otherwise establishes an exemption, provided that the broker does not have actual knowledge or reason to know that such Non-U.S. Holder is not a United States person or the conditions of any other exemption are not, in fact, satisfied.

Non-U.S. Holders should consult their own tax advisors regarding application of backup withholding in their 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 will be allowed as a refund or credit against a Non-U.S. Holder’s U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

## **FATCA**

Pursuant to Sections 1471 through 1474 of the Code, as modified by Treasury Regulations, guidance from the IRS and intergovernmental agreements and subject to further guidance (collectively, “FATCA”), Kroger may be required to withhold U.S. tax at the rate of 30% on the Consent Payment and payments of interest on the Kroger Notes made to non-U.S. financial institutions and certain other non-U.S. nonfinancial entities unless they satisfy certain due diligence and information reporting requirements. While withholding under FATCA may also apply to gross proceeds from the sale or other disposition (including a redemption or retirement) of the Kroger Notes, under proposed Treasury Regulations, withholding on payments of gross proceeds is not required. Although such regulations are not final, taxpayers may rely on the proposed regulations until final regulations are issued. An intergovernmental agreement between the U.S. and the Non-U.S. Holder’s jurisdiction may modify these requirements. Holders are encouraged to consult with their own tax advisors regarding the possible implications of this legislation on their investment.

## **LEGAL MATTERS**

Certain legal matters in connection with the Exchange Offers will be passed upon for Kroger by Weil, Gotshal & Manges LLP and will be passed upon for the Dealer Managers by Davis Polk & Wardwell LLP. Certain legal matters relating to the supplemental indentures effectuating the Proposed Amendments to the ACI Indentures will be passed upon by Jenner & Block LLP.

### **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The financial statements of The Kroger Co. incorporated in this offering memorandum and consent solicitation statement by reference to the Annual Report on Form 10-K of The Kroger Co. for the year ended February 3, 2024, and the effectiveness of internal control over financial reporting as of February 3, 2024 have been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report incorporated herein.

The consolidated financial statements of ACI as of February 24, 2024, and February 25, 2023, and for the three years in the period ended February 24, 2024, incorporated by reference in this offering memorandum and consent solicitation statement, and the effectiveness of ACI's internal control over financial reporting as of February 24, 2024, have been audited by Deloitte & Touche LLP, independent registered public accounting firm, as stated in their reports incorporated by reference herein.

## WHERE YOU CAN FIND MORE INFORMATION AND INCORPORATION BY REFERENCE

Kroger and ACI file annual, quarterly and current reports, proxy statements and other information with the SEC. The SEC filings of Kroger and ACI are available to the public at the SEC website at [www.sec.gov](http://www.sec.gov). In addition, you may obtain free copies of the documents Kroger files with the SEC by going to Kroger's website at <http://www.thekrogerco.com>. You may obtain free copies of the documents ACI files with the SEC by going to ACI's website at <http://www.albertsonscorporations.com>. The website addresses of Kroger and ACI are provided as inactive textual references only. The information provided on the websites of Kroger and ACI, other than copies of the documents listed below that have been filed with the SEC, is not part of this offering memorandum and consent solicitation statement and, therefore, is not incorporated herein by reference.

The SEC allows Kroger to "incorporate by reference" into this offering memorandum and consent solicitation statement the information it files with the SEC, including certain information required to be included in this offering memorandum and consent solicitation statement. This means that important information can be disclosed to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this offering memorandum and consent solicitation statement, except for any information superseded by information contained directly in this offering memorandum and consent solicitation statement or in later filed documents incorporated by reference into this offering memorandum and consent solicitation statement. This offering memorandum and consent solicitation statement incorporates by reference the documents set forth below that Kroger has previously filed with the SEC as well as (i) all future annual reports of Kroger on Form 10-K, (ii) all future Quarterly Reports of Kroger on Form 10-Q that Kroger files and (iii) all future current reports of Kroger on Form 8-K, in each case, with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, until the Exchange Offers and Consent Solicitations are completed (other than, in each case, those documents, or the portions of those documents or exhibits thereto, deemed to be furnished and not filed in accordance with SEC rules). This offering memorandum and consent solicitation statement also incorporates by reference the documents set forth below that ACI has previously filed with the SEC as well as (i) all future annual reports of ACI on Form 10-K, (ii) all future Quarterly Reports of ACI on Form 10-Q that ACI files and (iii) all future current reports of ACI on Form 8-K, in each case, with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, until the Exchange Offers and Consent Solicitations are completed (other than, in each case, those documents, or the portions of those documents or exhibits thereto, deemed to be furnished and not filed in accordance with SEC rules). These documents contain important information about Kroger and ACI and their respective financial performance that is not included in or delivered with this offering memorandum and consent solicitation statement.

<b>Kroger SEC Filing</b>	<b>Period / Filing Date</b>
Annual Report on Form 10-K.....	For the year ended February 3, 2024 filed on April 2, 2024 (the "Kroger 2024 Annual Report")
Quarterly Reports on Form 10-Q.....	For the quarterly period ended May 25, 2024 filed on June 28, 2024
The portions of the Definitive Proxy Statement on Schedule 14A deemed filed, to the extent incorporated by reference into Part III of the Kroger 2024 Annual Report	Filed on May 15, 2024
Current Reports on Form 8-K.....	Filed on February 5, 2024, April 22, 2024, June 28, 2024 and August 15, 2024 (both 8-Ks filed on such date)

<b>ACI SEC Filing</b>	<b>Period</b>
Annual Report on Form 10-K.....	For the year ended February 24, 2024 filed on April 22, 2024 (the “ACI 2024 Annual Report”)
Quarterly Report on Form 10-Q .....	For the quarterly period ended June 15, 2024 filed on July 23, 2024

Kroger has supplied all information contained in or incorporated by reference into this offering memorandum and consent solicitation statement relating to Kroger, as well as all pro forma financial information, and ACI has supplied all such information relating to ACI.

Documents incorporated by reference are available from Kroger or ACI, as the case may be, without charge, excluding any exhibits to those documents, unless the exhibit is specifically incorporated by reference into this offering memorandum and consent solicitation statement. You may obtain these documents incorporated by reference by requesting them in writing or by telephone from the appropriate party at the following addresses and telephone numbers:

The Kroger Co.  
1014 Vine Street,  
Cincinnati, Ohio 45202  
Telephone: (513) 762-4000

Albertsons Companies, Inc.  
250 Parkcenter Blvd.  
Boise, Idaho, 8370  
Telephone: (208) 395-6200

Neither Kroger nor ACI has authorized anyone to provide you with information that is different from what is contained in this offering memorandum and consent solicitation statement. The information contained in this offering memorandum and consent solicitation statement speaks only as of the date of this offering memorandum and consent solicitation statement unless the information specifically indicates that another date applies. You should not assume that the information in it is accurate as of any date other than that date.

*The Information Agent for the Exchange Offer is:*

**Global Bondholder Services Corporation**

65 Broadway – Suite 404  
New York, New York 10006  
Attn: Corporate Actions

Banks and Brokers: (212) 430-3774  
Toll Free (855) 654-2015  
Email: [contact@gbsc-usa.com](mailto:contact@gbsc-usa.com)

*The Exchange Agent for the Exchange Offer is:*

**Global Bondholder Services Corporation**

By Facsimile:  
(For Eligible Institutions only):  
(212) 430-3775/3779

Confirmation:  
(212) 430-3774

*By Mail:*  
65 Broadway – Suite 404  
New York, NY 10006

*By Overnight Courier:*  
65 Broadway – Suite 404  
New York, NY 10006

*By Hand:*  
65 Broadway – Suite 404  
New York, NY 10006

Any questions or requests for assistance may be directed to Citigroup Global Markets Inc. and Wells Fargo Securities LLC or the Information Agent at the addresses and telephone numbers set forth below. Requests for additional copies of this offering memorandum and consent solicitation statement may be directed to the Information Agent. Eligible Holders may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Exchange Offers and Consent Solicitations.

*The Dealer Managers for the Exchange Offers and  
the Consent Solicitation Agents for the Consent Solicitations are:*

Citigroup Global Markets Inc.  
388 Greenwich Street,  
Trading 4th Floor  
New York, New York 10013  
Attn: Liability Management  
Toll Free: (800) 558-3745  
Collect: (212) 723-6106  
Fax: (646) 291-1469

Wells Fargo Securities, LLC  
550 South Tryon Street,  
5th Floor  
Charlotte, North Carolina 28202  
Attention: Liability Management Group  
Toll Free: (866) 309-6316  
Collect: (704) 410-4759  
Email: liabilitymanagement@wellsfargo.com