

KROGER CO
Form 11-K
June 24, 2004
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 11-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2003.

OR

TRANSITION REPORT PURSUANT TO SECTION 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-303

The Kroger Co. Savings Plan For Bargaining Unit Associates

1014 Vine Street

Cincinnati, OH 45202

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

The Kroger Co.

1014 Vine Street

Cincinnati, OH 45202

**(Name of issuer of the securities held pursuant to the
plan and the address of its principal executive office)**

Table of Contents

REQUIRED INFORMATION

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

The Kroger Co. Savings Plan For Bargaining Unit Associates

Financial Statements and Supplemental Schedules

For the Years Ended December 31, 2003 and 2002

Independent Auditors Report

**THE KROGER CO. SAVINGS PLAN
FOR BARGAINING UNIT ASSOCIATES**

Financial Statements

And

Supplemental Schedule

December 31, 2003 and 2002

With

Independent Auditors Report

Table of Contents

THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

Table of Contents

| | Page |
|---|-------------|
| <u>Independent Auditors Report</u> | 1 |
| Financial Statements: | |
| <u>Net Assets Available for Benefits</u> | 2 |
| <u>Changes in Net Assets Available for Benefits</u> | 3 |
| <u>Notes to Financial Statements</u> | 4 - 7 |
| Supplemental Schedule: | |
| <u>Assets (Held at End of Year)</u> | 8 |

Table of Contents

INDEPENDENT AUDITORS REPORT

The Administrative Committee of

The Kroger Co. Savings Plan for Bargaining Unit Associates:

We have audited the accompanying statement of net assets available for benefits of The Kroger Co. Savings Plan for Bargaining Unit Associates as of December 31, 2003, and the related statement of changes in net assets available for benefits for the year then ended. These financial statements are the responsibility of the Plan's management. Our responsibility is to express an opinion on these financial statements based on our audit. The 2002 financial statements of the Plan were audited by other auditors whose report dated June 27, 2003, expressed an unqualified opinion on those statements.

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

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2003, and the changes in net assets available for benefits for the year then ended, on the basis of accounting described in Note 2.

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

/s/ Clark, Schaefer, Hackett & Co.

Cincinnati, Ohio

June 1, 2004

Table of Contents**THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES**

Statements of Net Assets Available for Benefits

December 31, 2003 and 2002

| | <u>2003</u> | <u>2002</u> |
|---|----------------------|-------------------|
| Assets: | | |
| Cash | \$ 7,908 | 18,929 |
| Investments, at fair value except as shown otherwise: | | |
| Common stocks | 2,278,081 | 1,304,032 |
| Mutual funds | 18,268,026 | 7,371,871 |
| Stable value funds (at contract value) | 14,714,389 | 11,868,513 |
| Collective trusts | 12,013,464 | 11,707,929 |
| Participant loans | 1,452,276 | 1,131,578 |
| | <u>48,726,236</u> | <u>33,383,923</u> |
| Net assets available for benefits | <u>\$ 48,734,144</u> | <u>33,402,852</u> |

See accompanying notes to financial statements.

Table of Contents**THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES**

Statements of Changes in Net Assets Available for Benefits

Years Ended December 31, 2003 and 2002

| | <u>2003</u> | <u>2002</u> |
|---|----------------------|-------------------|
| Additions: | | |
| Interest and dividends | \$ 789,127 | 791,504 |
| Net appreciation in fair value of investments | 7,292,796 | |
| Participant contributions | 9,755,478 | 11,042,783 |
| | <u>17,837,401</u> | <u>11,834,287</u> |
| Deductions: | | |
| Net depreciation in fair value of investments | | 6,165,662 |
| Benefits paid to participants | 2,405,935 | 2,273,915 |
| Administrative expenses | 90,167 | 48,323 |
| | <u>2,496,102</u> | <u>8,487,900</u> |
| Transfers: | | |
| Transfer to The Kroger Co. Savings Plan | (10,007) | |
| | <u>15,331,292</u> | <u>3,346,387</u> |
| Net increase | 15,331,292 | 3,346,387 |
| Net assets available for benefits: | | |
| Beginning of year | <u>33,402,852</u> | <u>30,056,465</u> |
| End of Year | <u>\$ 48,734,144</u> | <u>33,402,852</u> |

See accompanying notes to financial statements.

Table of Contents

THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES

Notes to Financial Statements

1. Description of Plan:

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

General

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

Contributions

Subject to certain limits, participants may contribute up to 25% (6% if the participant is a highly compensated employee as defined by the Internal Revenue Service) of annual compensation to the Plan. Participants are also permitted to deposit into the Plan distributions from other qualified plans.

Participant accounts

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

Vesting

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

Benefits

Payment of benefits can be made under various methods, depending upon the reason for the distribution, such as termination of service, death, or retirement, as well as other factors. At termination, participants whose accounts have never exceeded \$5,000 will receive a single lump sum distribution. Those with balances greater than \$5,000 may elect to leave their funds in the Plan or choose other options. Participants are entitled to benefits beginning at normal retirement age (generally age 65). Benefits are recorded when paid. Unclaimed benefits are forfeited and are applied to pay Plan expenses.

Table of Contents

Loans

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

2. Summary of Significant Accounting Policies:

Basis of accounting

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

Investment valuation and income recognition

Investments in common stocks, mutual funds, and collective trusts are valued at fair value based on quoted market prices. Investment contracts are valued at contract value (cost plus accrued interest), based upon information received from a financially responsible third party.

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

Estimates

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

Administrative expenses

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

Table of Contents3. Investments:

The Plan provides for participant directed investment into common stock of The Kroger Co., mutual funds, collective trusts, and stable value funds. Investments that represent 5 percent or more of the Plan's net assets as of December 31, 2003 and 2002 are as follows:

| | <u>2003</u> | <u>2002</u> |
|---------------------------------------|--------------|-------------|
| Merrill Lynch Equity Index Fund | \$ 5,038,820 | 3,062,437 |
| Stable Value Funds | 14,714,389 | 11,868,513 |
| Merrill Lynch Fundamental Growth Fund | 8,803,678 | 5,965,041 |
| Van Kampen Emerging Growth Fund | 4,710,480 | 3,257,271 |

During the year ended December 31, 2003, Plan investments (including investments bought, sold and held during the year) appreciated (depreciated) by \$7,292,796 and \$(6,165,662) as follows:

| | <u>2003</u> | <u>2002</u> |
|-----------------------------|---------------------|--------------------|
| The Kroger Co. common stock | \$ 538,090 | (340,175) |
| Collective trusts | 2,862,928 | (1,651,010) |
| Mutual funds | 3,891,778 | (4,174,477) |
| | <u>\$ 7,292,796</u> | <u>(6,165,662)</u> |

4. Investments Contracts:

The Stable Value Funds contain an allocation of various investment contracts that are fully benefit responsive. A fully benefit-responsive investment provides a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations, transfers, loans, or withdrawals initiated by Plan participants under the terms of the ongoing Plan. Certain employer-initiated events (i.e. layoffs, mergers, bankruptcy, Plan termination) are not eligible for the liquidity guarantee.

The following information is presented in the aggregate for the investment contracts:

| | <u>2003</u> | <u>2002</u> |
|-------------------------|---------------|--------------|
| Contract value | \$ 14,714,389 | 11,868,513 |
| Fair value | \$ 15,069,130 | 12,309,711 |
| Crediting interest rate | .9% to 5.9% | 1.3% to 7.5% |
| Average Yield | 5.0% | 5.5% |

Table of Contents

The crediting interest rates for the investment contracts are based upon the contract rate or a predetermined formula that factors in duration, market value, and book value of the investment. Certain of the crediting rates are adjusted quarterly. The minimum crediting interest rate for these investments is zero.

The fair value of the fixed income investments is calculated as the aggregate present value of the underlying cash flows using interest rates quoted for securities with similar duration and credit risk.

5. Income Tax Status:

The Plan obtained its latest determination letter on January 8, 2002, in which the Internal Revenue Service stated that the Plan, as then designed, complied with the applicable requirements of the Internal Revenue Service Code (IRC). The plan administrator believes that the Plan is designed and is currently being operated in compliance with the applicable requirements of the IRC, including changes related to recent tax law changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Therefore, no provision for income taxes has been included in the Plan's financial statements.

6. Plan Termination:

Although it has not expressed any intent to do so, the Company has the right under the Plan to terminate the Plan at any time subject to the provisions of ERISA. In the event of any total or partial termination or discontinuance, the accounts of all affected participants shall remain fully vested and non-forfeitable.

7. Related-party and Party-in-interest Transactions:

The Plan held, at fair value, \$2,278,081 and \$1,304,032 of The Kroger Co. common shares at December 31, 2003 and 2002, respectively.

The Plan purchased 78,129 and 56,905 shares of The Kroger Co. common shares at a cost of \$1,090,359 and \$1,039,771 in 2003 and 2002, respectively.

The Plan sold 38,944 and 13,730 shares of The Kroger Co. common shares for \$646,632 and \$256,326 with a realized loss of \$26,473 and \$38,127 in 2003 and 2002, respectively.

Merrill Lynch Trust Company, FSB and Merrill Lynch provide recordkeeping and investment management services to the Plan. Therefore, transactions with Merrill Lynch Trust Company, FSB and Merrill Lynch qualify as party-in-interest transactions.

8. Transfers from Other Trusts:

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During 2003, participant balances of \$10,007 were transferred to The Kroger Co. Savings Plan.

- 7 -

Table of Contents**THE KROGER CO. SAVINGS PLAN FOR BARGAINING UNIT ASSOCIATES**

EIN: 31-0345740 Plan Number: 005

Schedule of Assets (Held at End of Year)

December 31, 2003

| (a) | (b),(c) <u>Investment description</u> | (d) <u>Cost</u> | (e) <u>Current value</u> |
|-----|---|--------------------|-----------------------------|
| | Stable Value Funds, .9% to 5.9% | ** | \$ 14,714,389 |
| * | The Kroger Co. common stock | ** | 2,278,081 |
| | Collective trusts: | | |
| * | Merrill Lynch International Index Fund | ** | 2,137,052 |
| * | Merrill Lynch International Index Fund GM | ** | 658,879 |
| * | Merrill Lynch Small Cap Index Fund | ** | 2,071,987 |
| * | Merrill Lynch Small Cap Index Fund GM | ** | 164,340 |
| * | Merrill Lynch Equity Index Trust | ** | 5,038,820 |
| * | Merrill Lynch Equity Index Trust GM | ** | 1,942,386 |
| | | | <u>12,013,464</u> |
| | Mutual funds: | | |
| * | Merrill Lynch Mid Cap Index Trust | ** | 246,613 |
| * | Merrill Lynch Mid Cap Index Trust GM | ** | 326,794 |
| | AXA Rosenberg U.S. Small Cap Fund | ** | 451,832 |
| * | Merrill Lynch Fundamental Growth Fund | ** | 8,803,768 |
| | Van Kampen Emerging Markets Fund | ** | 316,999 |
| | Van Kampen Emerging Markets Fund GM | ** | 210,326 |
| | Van Kampen Emerging Growth Fund | ** | 4,710,480 |
| * | Merrill Lynch Global Allocation | ** | 624,928 |
| | Templeton Foreign | ** | 223,510 |
| * | Merrill Lynch Basic Value Fund | ** | 2,338,875 |
| | Temporary Investment Fund | ** | 13,901 |
| | | | <u>18,268,026</u> |
| * | Participant loans, 5.5% to 11.0%, 1-6 year maturities | \$ | 1,452,276 |
| | | | <u>\$ 48,726,236</u> |

* Indicates party-in-interest to the Plan.

** Cost of assets is not required to be disclosed as investment is participant directed.

Table of Contents

Pursuant to the requirements of the Securities and Exchange Act of 1934, the trustees (or other persons who administer the employee benefit plan) have duly caused this annual report to be signed on its behalf by the undersigned hereunto duly authorized.

THE KROGER CO. SAVINGS PLAN FOR

BARGAINING UNIT ASSOCIATES

Date: June 24, 2004

By: /s/ Paul Heldman

Chairman of the Administrative Committee

Table of Contents

EXHIBIT INDEX

Exhibit No.

23

Consent of Independent Accountants