CENTRAL STATES
PENSION FUND

April 15, 2015

Mr. Steven Vairma
Western Region International
Vice President and Warehouse
Division Director
10 Lakeside Lane
Denver, CO 02127

Mr. Jon K. McPherson
Vice President, Labor Relations
The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

Re: **Kroger Co.**

Gentlemen:

I am in receipt of your letter dated April 10, 2015. In that letter you propose that the Central States Pension Fund agree to an arrangement whereby Kroger Co. and its affiliates ("Kroger") (1) would withdraw from the Pension Fund effective June 30, 2016, and (2) would then resolve its withdrawal liability obligations to the Fund by means of a transfer of benefits accrued by the currently active Kroger employees, and former Kroger employees who are currently retired, to a new "IBT Consolidated Pension Fund."

I have discussed your proposal with the Pension Fund's Trustees and they instructed me to reject it for the following reasons:

1. The withdrawal liability statute (the Multiemployer Pension Plan Amendment Act, MPPAA) requires cash payment of the pension withdrawal liability obligations incurred by employers. The Pension Fund is not authorized to accept the non-cash consideration offered by Kroger, especially in the absence of evidence that Kroger lacks the financial resources to make the required cash payments of withdrawal liability.

2. Further, the Pension Fund's net asset balance would be negatively affected by Kroger's proposed method of settling its withdrawal liability obligations, when compared to the cash payments that MPPAA requires.

3. MPPAA requires that each employer that contributes to a multiemployer pension plan bear a proportional share of the underfunding of the plan as whole. Kroger's proposal undermines that concept and shifts Kroger's funding responsibility to the other employers participating in the Pension Fund. This is so because a large part of the total underfunding is attributable to the Fund's "orphan" participants, i.e.,

participants whose employers withdrew due to bankruptcy or other insolvency and failed to pay their withdrawal liability. But Kroger's proposal ignores the underfunding attributable to the orphans and offers only to pick up the funding responsibility attributable to Kroger's own currently active employees and the former Kroger employees who are currently retired.

4. Thus Kroger's proposal ignores the multiemployer nature of the Pension Fund and the risk pooling that the multiemployer concept entails. Instead, upon its withdrawal from the Fund Kroger seeks to be treated as if it had participated in a single employer plan in which it was responsible only for the pension benefits of its own employees. But Kroger's proposal does not even meet the requirements that would be expected of a sponsor of a single employer plan, because Kroger offers only to provide funding for its current employees and former employees who are currently retired. Thus Kroger provides no funding for its former employees who have vested benefits with the Pension Fund but are not yet retired. In addition, there is the issue of the benefits accrued by the employees of Kroger's "outsourced" companies, such as Atlas Cold Storage and Zenith Logistics. The Pension Fund believes that Kroger will also be responsible for the withdrawal liability of these companies.

5. Kroger's proposal will obviously reduce the Fund's revenues and exacerbate the decline in the Fund's population of active participants in comparison to retirees. As you know, this has been a systemic problem with the Pension Fund over the years as retirees now outnumber actives 3 to 1. The withdrawal of Kroger will cause the Fund to be even more highly leveraged to its assets. The net result of this further weakening of the Fund's financial condition will be that the participants remaining in the Fund after Kroger's exit would be exposed to the risk of more deep and painful benefit suspensions, pursuant to the Multiemployer Pension Reform Act of 2014 ("MPRA"), that the Trustees may decide are necessary in order to rescue the Fund.

6. Of course, the Pension Fund cannot prevent an employer from withdrawing from the Fund if the employer and the union are determined to do so. But the Fund has a firm policy against facilitating employer withdrawals in any way, and the Fund has rules in its Trust Agreement and Plan Document prohibiting mid-contract terminations of the obligation to contribute to the Fund and requiring employers to contribute during the full term of any contract submitted for participation in the Fund. Kroger's proposal asks the Fund to disregard these rules. That is, most of the Kroger entities that currently contribute to the Fund have collective bargaining agreements that expired in September 2014. Kroger's proposal asks the Fund to accept new collective bargaining agreements – presumably of five years in duration – that would contain clauses

permitting Kroger to terminate its pension contribution obligation in June 2016, while the new contract requiring contributions is still in effect. This would be a violation of the Fund's long standing rules against mid-contract terminations of the contribution obligations – rules that are vital to the prevention of adverse selection and employer manipulation of withdrawal dates.

7. Finally, it should be noted that Kroger is a large and significant contributor to the Fund and has been openly supportive of the legislative proposals that ultimately led to the passage of MPRA. A withdrawal by Kroger from the Fund in the immediate wake of the passage of MPRA is likely to be viewed by many other contributing employers as indicative of Kroger's belief that the MPRA procedures established for the assistance of troubled pension funds, as ultimately enacted, will not be of assistance to the Central States Pension Fund. This could result in a rush by certain other employers to withdraw from the Fund, which would only add to the Fund's financial difficulties. The Trustees believe that employer exits from the Fund at this time would in fact be unwarranted and against the employers' best interest, but the Trustees are concerned that there is a serious risk that perceptions or inferences drawn from a withdrawal by Kroger could overtake this reality.

Please feel free to contact me with any questions.

Very truly yours,

Thomas C. Nyhan
Executive Director

TCN:mbh