

KROGER CO  
Form 4  
October 06, 2009

**FORM 4**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

**STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES**

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person \*  
MCGEORGE DON W

(Last) (First) (Middle)  
1014 VINE STREET  
(Street)

CINCINNATI, OH 45202

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol  
KROGER CO [KR]

3. Date of Earliest Transaction (Month/Day/Year)  
10/05/2009

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director  10% Owner  
 Officer (give title below)  Other (specify below)  
Special Advisor to the CEO

6. Individual or Joint/Group Filing(Check Applicable Line)  
 Form filed by One Reporting Person  
 Form filed by More than One Reporting Person

**Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned**

| 1. Title of Security (Instr. 3) | 2. Transaction Date (Month/Day/Year) | 2A. Deemed Execution Date, if any (Month/Day/Year) | 3. Transaction Code (Instr. 8) | 4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5) | 5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Indirect Beneficial Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|---|
|                                 |                                      |  | Code                           | V   | Amount  | (A) or (D)   | Price   |
| Common Stock                    | 10/05/2009                           |  | M                              |   | 90,000  | A  | \$ 16.5938  |
| Common Stock                    | 10/05/2009                           |  | S                              |   | 4,950   | D  | \$ 20.96  |
| Common Stock                    | 10/05/2009                           |  | S                              |   | 500   | D  | \$ 20.961   |
| Common Stock                    | 10/05/2009                           |  | S                              |   | 200   | D  | \$ 20.965   |
| Common Stock                    | 10/05/2009                           |  | S                              |   | 10,300  | D  | \$ 20.97  |

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|              |            |   |        |   |           |         |   |           |
|--------------|------------|---|--------|---|-----------|---------|---|-----------|
| Common Stock | 10/05/2009 | S | 500    | D | \$ 20.971 | 371,651 | D |           |
| Common Stock | 10/05/2009 | S | 15,800 | D | \$ 20.99  | 355,851 | D |           |
| Common Stock | 10/05/2009 | S | 42,750 | D | \$ 21     | 313,101 | D |           |
| Common Stock | 10/05/2009 | S | 9,500  | D | \$ 21.01  | 303,601 | D |           |
| Common Stock | 10/05/2009 | S | 5,300  | D | \$ 21.03  | 298,301 | D |           |
| Common Stock | 10/05/2009 | S | 200    | D | \$ 21.035 | 298,101 | D |           |
| Common Stock |            |   |        |   |           | 10,115  | I | by Spouse |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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(9-02)

**Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned**  
(e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security (Instr. 3) | 2. Conversion or Exercise Price of Derivative Security | 3. Transaction Date (Month/Day/Year) | 3A. Deemed Execution Date, if any (Month/Day/Year) | 4. Transaction Code (Instr. 8) | 5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5) | 6. Date Exercisable and Expiration Date (Month/Day/Year) | 7. Title and Amount of Underlying Security (Instr. 3 and 4) | 8. Amount or Number of Shares |
|--|--|--------------------------------------|--|--------------------------------|---|--|---|-------------------------------|
| Non-Qualified Performance Stock Option     | \$ 16.5938   | 10/05/2009                           |  | M                              | 25,000  | <u>(1)</u> 02/11/2010                                    | Common Stock  | 25,000                        |
| Non-Qualified Stock Option                 | \$ 16.5938   | 10/05/2009                           |  | M                              | 65,000  | <u>(2)</u> 02/11/2010                                    | Common Stock  | 65,000                        |

## Reporting Owners

| Reporting Owner Name / Address | Relationships |           |         |       |
|--------------------------------|---------------|-----------|---------|-------|
|                                | Director      | 10% Owner | Officer | Other |

MCGEORGE DON W  
1014 VINE STREET  
CINCINNATI, OH 45202

X

Special Advisor to the CEO

## Signatures

/s/ Don W. McGeorge, by Bruce M. Gack,  
Attorney-in-Fact

10/06/2009

\_\_Signature of Reporting Person

Date

## Explanation of Responses:

\* If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

\*\* Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) These options will vest during the first four years from the date of the grant only if the Company's stock price has achieved an 81% appreciation from the option price. Thereafter, the options vest only if the Company's stock price has achieved a minimum 16% appreciation per annum from the date of grant or 280% appreciation, whichever is less. The options vest nine years and six months after grant, if not sooner vested.

(2) These options were granted under a long-term incentive plan of The Kroger Co. and vest in equal annual installments in whole amounts over a five-year period, at the rate of 20% per year commencing one year from the date of the grant.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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