**KROGER CO** 

Form 5

February 23, 2009

## FORM 5

#### **OMB APPROVAL**

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

3235-0362 Number: January 31, Expires:

1.0

no longer subject to Section 16. Form 4 or Form 5 obligations may continue.

Check this box if

2005 Estimated average

#### ANNUAL STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

burden hours per response...

**OMB** 

See Instruction Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, 1(b). Form 3 Holdings Section 17(a) of the Public Utility Holding Company Act of 1935 or Section

Reported Form 4

30(h) of the Investment Company Act of 1940

Transactions Reported

> 2. Issuer Name and Ticker or Trading 5. Relationship of Reporting Person(s) to Issuer

1. Name and Address of Reporting Person \* DILLON DAVID B

Symbol KROGER CO [KR]

(Check all applicable)

(Last) (First) (Middle)

3. Statement for Issuer's Fiscal Year Ended

\_X\_ Director 10% Owner

(Month/Day/Year) 01/31/2009

Other (specify \_X\_\_ Officer (give title below) below)

1014 VINE STREET

Chairman of the Board and CEO

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

6. Individual or Joint/Group Reporting

(check applicable line)

#### CINCINNATI, OHÂ 45202

\_X\_ Form Filed by One Reporting Person Form Filed by More than One Reporting Person

(City)	(State)	(Zip) 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. Securi Acquired Disposed (Instr. 3,	(A) of (D) 4 and (A) or	<b>)</b> )	5. Amount of Securities Beneficially Owned at end of Issuer's Fiscal Year (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)	
Common Stock	Â	Â	Â	Â	Â	Â	869,616.9882 (1) (2)	D	Â	
Common Stock	Â	Â	Â	Â	Â	Â	168,432	I	by Spouse	
Common Stock	Â	Â	Â	Â	Â	Â	18,008	I	by Trust/Children	

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

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**SEC 2270** (9-02)

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# $\label{thm:convergence} \begin{tabular}{ll} Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned \\ (\emph{e.g.}, puts, calls, warrants, options, convertible securities) \\ \end{tabular}$

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)				7. Title and Amount Underlying Securitie (Instr. 3 and 4)	
					(A)	(D)	Date Exercisable	Expiration Date	Title	Amour Numbe Shares
Non-Qualified Performance Stock Option	\$ 27.1719	Â	Â	Â	Â	Â	(3)	05/27/2009	Common Stock	50,0
Non-Qualified Performance Stock Option	\$ 16.5938	Â	Â	Â	Â	Â	(4)	02/11/2010	Common Stock	35,0
Non-Qualified Performance Stock Option	\$ 24.43	Â	Â	Â	Â	Â	(5)	05/10/2011	Common Stock	35,0
Non-Qualified Performance Stock Option	\$ 22.995	Â	Â	Â	Â	Â	(6)	05/09/2012	Common Stock	35,0
Non-Qualified Stock Option	\$ 27.1719	Â	Â	Â	Â	Â	(7)	05/27/2009	Common Stock	50,0
Non-Qualified Stock Option	\$ 16.5938	Â	Â	Â	Â	Â	(7)	02/11/2010	Common Stock	175,0
Non-Qualified Stock Option	\$ 24.43	Â	Â	Â	Â	Â	(7)	05/10/2011	Common Stock	35,0
Non-Qualified Stock Option	\$ 22.995	Â	Â	Â	Â	Â	(7)	05/09/2012	Common Stock	70,0
Non-Qualified Stock Option	\$ 14.925	Â	Â	Â	Â	Â	(7)	12/12/2012	Common Stock	210,0
Non-Qualified Stock Option	\$ 17.31	Â	Â	Â	Â	Â	(7)	05/06/2014	Common Stock	300,0
Non-Qualified Stock Option	\$ 16.385	Â	Â	Â	Â	Â	(7)	05/05/2015	Common Stock	300,0
Non-Qualified Stock Option	\$ 19.94	Â	Â	Â	Â	Â	(7)	05/04/2016	Common Stock	240,0
Non-Qualified Stock Option	\$ 28.27	Â	Â	Â	Â	Â	(7)	06/28/2017	Common Stock	220,0

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Non-Qualified Stock Option \$ 28.61  $\hat{A}$   $\hat{A}$ 

## **Reporting Owners**

Reporting Owner Name / Address Relationships

Director 10% Owner Officer Other

DILLON DAVID B

1014 VINE STREET  $\hat{A} \times \hat{A} = \hat{A} \times \hat{A} = \hat{A} \times \hat{A} = \hat{A} \times \hat{A} = \hat{A} \times \hat{A} \times \hat{A} = \hat{A} \times \hat{A} \times \hat{A} \times \hat{A} = \hat{A} \times \hat{A}$ 

CINCINNATI, OHÂ 45202

## **Signatures**

/s/ David B.
Dillon
02/21/2009

\*\*Signature of Date
Reporting Person

## **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).
- Between February 3, 2008 and January 31, 2009, the reporting person acquired 1,442.8639 shares of Kroger common stock in the Company's employee benefit plans that are deemed to be 'tax-conditioned plans' pursuant to Rule 16b-3,to the extent disclosed on reports received by plan trustees.
- (2) The total amount of securities directly owned by the reporting person includes shares in the Company's employee benefit plans that are deemed to be 'tax-conditioned plans' pursuant to Rule 16b-3, to the extent disclosed on reports received from plan trustees.
- These options will vest during the first four years from the date of the grant only if the Company's stock price has achieved a 75% appreciation from the option price. Thereafter, the options vest only if the Company's stock price has achieved a minimum 15% appreciation per annum from the date of grant or 252% appreciation, whichever is less. The options vest nine years and six months after grant, if not sooner vested.
- 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.
- These options will vest during the first four years from the date of the grant only if the Company's stock price has achieved a 78% appreciation from the option price. Thereafter, the options vest only if the Company's stock price has achieved a minimum 15% appreciation per annum from the date of grant or 208% appreciation, whichever is less. The options vest nine years and six months after grant, if not sooner vested.
- These options will vest during the first four years from the date of the grant only if the Company's stock price has achieved a 55% appreciation from the option price. Thereafter, the options vest only if the Company's stock price has achieved a minimum 13% appreciation per annum from the date of grant or 185% appreciation, whichever is less. The options vest nine years and six months after grant, if not sooner vested.
- (7) 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 provided is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

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