

KROGER CO  
Form 4  
December 11, 2008

**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 \*  
**HENDERSON SCOTT M**

(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)  
**12/10/2008**

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)  
**Vice President & Treasurer**

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 Ownership (Instr. 4) |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|-----------------------------------|
|                                 |                                      |  | Code                           | V   | Amount (A) or (D) Price   |  |                                   |
| Common Stock                    | 12/10/2008                           |  | M                              |   | 9,600 A \$ 17.31  | D  | 29,971.9388                       |
| Common Stock                    | 12/10/2008                           |  | M                              |   | 7,200 A \$ 16.385   | D  | 37,171.9388                       |
| Common Stock                    | 12/10/2008                           |  | S                              |   | 900 D \$ 25.735   | D  | 36,271.9388                       |
| Common Stock                    | 12/10/2008                           |  | S                              |   | 500 D \$ 25.74  | D  | 35,771.9388                       |
| Common Stock                    | 12/10/2008                           |  | S                              |   | 8,300 D \$ 25.745   | D  | 27,471.9388                       |

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|              |            |   |       |   |           |                    |   |
|--------------|------------|---|-------|---|-----------|--------------------|---|
| Common Stock | 12/10/2008 | S | 2,800 | D | \$ 25.75  | 24,671.9388        | D |
| Common Stock | 12/10/2008 | S | 300   | D | \$ 25.76  | 24,371.9388        | D |
| Common Stock | 12/10/2008 | S | 1,800 | D | \$ 25.77  | 22,571.9388        | D |
| Common Stock | 12/10/2008 | S | 2,100 | D | \$ 25.78  | 20,471.9388        | D |
| Common Stock | 12/10/2008 | S | 100   | D | \$ 25.785 | 20,371.9388<br>(1) | D |

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

**Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

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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 (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) | Amount or Number of Shares |
|--|--|--------------------------------------|--|--------------------------------|--|--|---|----------------------------|
| Non-Qualified Stock Option                 | \$ 17.31   | 12/10/2008                           |  | M                              | 9,600  | (2) 05/06/2014   | Common Stock  | 9,600                      |
| Non-Qualified Stock Option                 | \$ 16.385  | 12/10/2008                           |  | M                              | 7,200  | (2) 05/05/2015   | Common Stock  | 7,200                      |

## Reporting Owners

| Reporting Owner Name / Address                                | Relationships |           |                            |       |
|---|---------------|-----------|----------------------------|-------|
|   | Director      | 10% Owner | Officer                    | Other |
| HENDERSON SCOTT M<br>1014 VINE STREET<br>CINCINNATI, OH 45202 |               |           | Vice President & Treasurer |       |

## Signatures

/s/ Scott M. Henderson, by Bruce M. Gack,  
Attorney-in-Fact

12/11/2008

\_\_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) 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.
- (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.

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