

ITA

Via Email

November 10, 2010

FASB Technical Director Financial Accounting Standards Board P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference No. 1860-100, Proposed Accounting Standards Update— Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80): Disclosure about an Employer's Participation in a Multiemployer Plan

Dear Director:

The Investors Technical Advisory Committee (ITAC) welcomes the opportunity to respond to the FASB Proposed ASU, *Compensation—Retirement Benefits—Multiemployer Plans (Subtopic 715-80): Disclosure about an Employer's Participation in a Multiemployer Plan.* ITAC believes the Proposed ASU will provide investors valuable insight on a company's multiemployer plan obligations and liabilities.

Currently, companies with multiemployer defined-benefit plan obligations are only required to provide investors with disclosure related to the expense recorded in their income statement when they make contributions. ITAC views this as a crude approximation of the pension service cost companies are required to report under existing GAAP accounting rules for corporate pension plans.

In contrast, GAAP requires a company to provide extensive disclosure for its single-employer defined benefit pension plans including funded status, plan assets, pension benefit obligation and the assumptions used to calculate the data. These disclosures are more appropriate and insightful than those for multiemployer plans.

ITAC believes that corporate multiemployer plans and single-employer pension plans, despite their differences, have obligations that are similar in nature. Namely, they

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¹ This letter represents the views of the Investors Technical Advisory Committee ("ITAC") and does not necessarily represent the views of its individual members or the organizations by which they are employed. ITAC views are developed by the members of the Committee independent of the views of the Financial Accounting Standards Board and its staff. For more information about the ITAC, including a listing of the current members and the organizations by which they are employed, see http://www.fasb.org/investors_technical_advisory_committee/itac_members.shtml.

represent obligations of the participating employers for benefits that have already been accrued by employees. In addition, the structure of multiemployer plans where one company may be responsible for the obligations of other companies increases the uncertainty around a participating employer's ongoing obligation with the plan. Greater transparency is needed in this area to help investors, creditors, and other users of financial information to understand a participating employer's near and longer-term obligations.

Accordingly, the disclosure requirements should provide investors with the necessary information to understand a plan's impact on a company's financial position, operating results and cash flows. The accounting disclosures for single-employer corporate pension plans satisfy this objective. In contrast, the current disclosures for multiemployer plans provide investors with limited information and investors can not estimate the potential obligation a company may have to the multiemployer plans it participates in or understand the risk multiemployer plan participation may create for a company.

A large industrial company is illustrative of the problem with the current accounting disclosure for multiemployer plans. In 2007, that company made a \$6 billion payment to settle its withdrawal liability from a multiemployer plan. Prior to 2007, investors understood this company had a significant off-balance sheet liability associated with its multiemployer plans but had no way to estimate this liability. That company was only required to disclose its annual contributions to its multiemployer plans in its financial statement footnotes.

Our response to the individual questions in the proposed standard follows.

Question 1: Do you agree that the proposed quantitative and qualitative disclosures will result in a more useful and transparent disclosure of an employer's obligations arising from its participation in a multiemployer plan? Why or why not? If not, what changes would you suggest to the proposed amendments?

Yes. The proposed disclosures required in Topic 715-80-50-1B would provide investors with better information to understand a company's multiemployer plans future obligations for a company.

Example 1: Multiemployer Plan Disclosures (715-80-55-6 to 715-80-55-12) illustration on pages 9-10 of the exposure draft would be a major improvement for investors compared to today's limited disclosure.

ITAC agrees with the Board's observation on page 7, "Quantitative information shall be provided separately for individually material plans." For example, assume a company contributes to five multiemployer plans and one plan is approximately 80% of their annual contributions or withdrawal liability. ITAC agrees that investors only need the separate disclosure information in 715-80-50-1B for the material multiemployer plan. For the remaining four plans, an estimate of the aggregate funded status and the company's percentage aggregate exposure to the plans is sufficient for investors to understand the company's overall multiemployer plan liability. However, we recommend that any information presented in a range should also include a weighted

average metric, as at times the ranges can be so wide as to provide little meaningful information.

ITAC understands the estimate for the withdrawal liability of a multiemployer plan may not be available for up to six months after the end of a multiemployer plan's fiscal year-end. Investors prefer information in a timely manner. ITAC, therefore, would recommend that FASB require companies to provide investors with estimated data in its annual report, such as: a) the aggregate funded status of the plans, b) the company's percentage aggregate exposure to the plans, and (c) any material changes from annual assumptions.

As previously noted a company's contributions to a multiemployer plan serve as a crude approximation of its pension service cost obligation. However, as we understand this issue, a company's contributions include not only the annual pension service cost but may also include catch-up amounts or other contractual contributions. ITAC believes footnote disclosures on how the annual contributions are calculated including a breakout between the current year's pension service cost and other contractual contributions would be helpful.

Question 2: Do you believe that disclosing the estimated amount of the withdrawal liability, even when withdrawal is not at least reasonably possible, will provide users of financial statements with decision-useful information? Why or why not?

Yes, ITAC believes that investors similarly consider single-employer corporate pension plan exposures and multiemployer plan exposures and, therefore, they want equivalent disclosure irrespective of the legal form of the pension obligation.

The estimated amount of the withdrawal liability provides investors with the necessary information to understand the magnitude of the liability. However, if the costs to estimate the withdrawal liability are prohibitive ITAC would suggest the following alternatives:

First, if a company's total withdrawal liability is not material then ITAC does not believe a company and its multiemployer plans should have to calculate the withdrawal liability on an annual basis. For example, if a major company with a market capitalization of \$10 billion has an estimated withdrawal liability of \$25 million, a precise estimate of this number may not be decision-useful information. Rather, a footnote disclosure that notes that a company's estimated withdrawal liability is between \$20 million and \$30 million would provide investors with sufficient understanding of the liability.

Second, ITAC believes the most important information an investor needs to understand a multiemployer liability are: a) historical trend of and future expected contributions, b) a company's aggregate percentage of the underfunded amount of its multiemployer plans, and c) the risks and uncertainties arising from its participation in the plans.

Kroger's disclosure that follows provides investors with the lion share of the information required to understand a company's exposure to its multiemployer plan obligations. ITAC believes that one additional disclosure to the information provided by Kroger would be beneficial to investors, i.e., what penalties or catch-up amounts would be required if a company withdrew from a multiemployer plan.

Kroger 2009 10-K

b) Multi-Employer Plans

We also contribute to various multi-employer pension plans based on obligations arising from most of our collective bargaining agreements. These plans provide retirement benefits to participants based on their service to contributing employers. The benefits are paid from assets held in trust for that purpose. Trustees are appointed in equal number by employers and unions. The trustees typically are responsible for determining the level of benefits to be provided to participants as well as for such matters as the investment of the assets and the administration of the plans.

We recognize expense in connection with these plans as contributions are funded, in accordance with GAAP. We made contributions to these plans, and recognized expense, of \$233 million in 2009, \$219 million in 2008 and \$207 million in 2007.

Based on the most recent information available to us, we believe that the present value of actuarially accrued liabilities in most or all of these multi-employer plans substantially exceeds the value of the assets held in trust to pay benefits. We have attempted to estimate the amount by which these liabilities exceed the assets, (i.e., the amount of underfunding), as of December 31, 2009. Because Kroger is only one of a number of employers contributing to these plans, we also have attempted to estimate the ratio of Kroger's contributions to the total of all contributions to these plans in a year as a way of assessing Kroger's "share" of the underfunding. Nonetheless, the underfunding is not a direct obligation or liability of Kroger or of any employer. As of December 31, 2009, we estimate that Kroger's share of the underfunding of multi-employer plans to which Kroger contributes was \$2.7 billion, pre-tax, or \$1.7 billion, after-tax. This represents a decrease in the estimated amount of underfunding of \$380 million, pre-tax, or \$238 million, after-tax, as of December 31, 2009, compared to December 31, 2008. The decrease in the amount of underfunding is attributable to the strength of the market during the last year and benefit reductions. Our estimate is based on the most current information available to us including actuarial evaluations and other data (that include the estimates of others), and such information may be outdated or otherwise unreliable. Our estimate is imprecise and not necessarily reliable.

We have made and disclosed this estimate not because this underfunding is a direct liability of Kroger. Rather, we believe the underfunding is likely to have important consequences. In 2009, our contributions to these plans increased approximately 6% over the prior year and have grown at a compound annual rate of approximately 6% since 2004. In 2010, we expect to contribute approximately \$250 million to our multi-employer pension plans, subject to collective bargaining and capital market conditions. Based on current market conditions, we expect meaningful increases in funding and in expense as a result of increases in multi-employer pension plan contributions over the next five years, but we believe it is unlikely that contributions will double during that period, which is a change from our estimate at year-end 2008. Finally, underfunding means that, in the event we were to exit certain markets or otherwise cease making contributions to these funds, we could trigger a substantial withdrawal liability. Any adjustment for withdrawal liability will be recorded when it is probable that a liability exists and can be reasonably estimated, in accordance with GAAP.

The amount of underfunding described above is an estimate and could change based on contract negotiations, returns on the assets held in the multi-employer plans and benefit payments. The amount could decline, and Kroger's future expense would be favorably affected, if the values of the assets held in the trust significantly increase or if further changes occur through collective bargaining, trustee action or favorable legislation. On the other hand, Kroger's share of the underfunding could increase and Kroger's future expense could be adversely affected if the asset values decline, if employers currently contributing to these funds cease participation or if changes occur through collective bargaining, trustee action or adverse legislation.

We encourage the Board to continue its efforts to provide investors more valuable insight with regards to companies' multiemployer plan obligations and exposures. Should the Board wish additional information regarding our views, please contact any member of the ITAC.

Sincerely,

Investors Technical Advisory Committee

Clovestors Technical advisory Committee

Cc: Peter Clark, Director of Research, International Accounting Standards Board