

PUBLIC VERSION

May 10, 2024

VIA EMAIL

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Re: Kroger/Albertsons - Supplemental Information Requests Issued to Kroger on December 18, 2023

Dear Jenny:

We write with responses to the supplemental information requests issued by the Oregon Health Authority (“OHA”) to Kroger on December 18, 2023 regarding Kroger’s proposed acquisition of Albertsons (“Proposed Transaction”) and Kroger’s and Albertsons’ proposed divestiture to C&S in conjunction with the Proposed Transaction (“Proposed Divestiture”).

RFI #1: On August 9, 2023, the Entities provided a copy of the Agreement and Plan of Merger by and among Albertsons, Kroger and Kettle Merger Sub, Inc. dated as of October 13, 2022 (the “Agreement”). Please provide a copy of the Agreement that includes the “Company Disclosure Letter” along with any amendments or other attachments, exhibits or schedules to the Agreement and/or the Company Disclosure Letter.

- a. To the extent not set forth in the Company Disclosure Letter, please provide a list of all third parties that are required to approve the Merger (either by contract or regulatory approval). Please provide an update on the status of those approvals.**
- b. To the extent any approval is contractually based and related to the provision of pharmacy and/or healthcare-related products or services (or the supply of products or services in connection therewith) please describe any conditions to**

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consent any such third-parties have made (e.g., raising the rates of products or services, more favorable terms, contract extensions, etc.).

In response to RFI #1, Kroger is providing the Company Disclosure Letter (KR-OHA-00000318) that was attached to the Agreement and Plan of Merger by and among Albertsons, Kroger, and Kettle Merger Sub, Inc. (“Merger Agreement”). Kroger provided OHA with the Merger Agreement on August 9, 2023.

RFI #2: Please provide copies of all agreements (e.g., an asset purchase agreement or similar operative agreement), understandings, side letters or similar agreements in respect of the transactions contemplated by the Divestiture (the “Divestiture Agreement”) pursuant to which C&S will acquire the divested stores from Kroger and Albertsons.

- a. Please include any and all disclosure schedules and exhibits that are referenced by or incorporated into the Divestiture Agreement.**
- b. Please provide a list of all third parties that are required to approve the Divestiture (either by contract or regulatory approval), along with an update on the status of those approvals.**
- c. To the extent any approval is contractually based and related to the provision of pharmacy and/or healthcare-related products or services (or the supply of products or services in connection therewith) please describe any conditions to consent any such third-parties have made (e.g., raising the rates of products or services, more favorable terms, contract extensions, etc.).**

In response to RFI #2, Kroger is providing KR-OHA-00000607 and KR-OHA-00001412, which are the Amended and Restated Asset Purchase Agreement by and among Kroger, Albertsons, and C&S Wholesale Grocers, LLC, dated April 22, 2024, and the Disclosure Schedules to that agreement (together, the “Divestiture Agreement”).

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RFI #3: Please provide copies of all transition services agreements (“TSA”) between the Entities including copies of all schedules and exhibits thereto.

The transition services agreement contemplated as part of the proposed divestiture is included as Exhibit B to the Divestiture Agreement.

RFI #4: Please provide a list of the pharmacy and/or healthcare-related advisors that each of Kroger and/or Albertsons used in connection with conducting diligence in relation to the Transactions. Please provide copies of any analysis, summaries, reports, etc. prepared by such advisors with respect to pharmacy and/or healthcare issues in Oregon.

None.

RFI #5: The fairness opinions provided by Goldman, Sachs & Co. and Credit Suisse Group, AG, referred to in Section 4.21 of the Agreement, reflected the initial “SpinCo” structure. Please advise if these fairness opinions will be updated to reflect the Divestiture and, if so, provide copies of the updated opinions. If not, please explain the rationale for not updating the opinions.

Albertsons does not expect the fairness opinions to be updated because the divestitures do not currently adjust the form or amount of consideration payable to Albertsons’ stockholders. Only the SpinCo provisions, which are no longer relevant, adjusted the consideration payable to Albertsons’ stockholders.

RFI #6: Please describe the negotiation/transaction process that resulted in the Entities entering into the Agreement. In connection with the foregoing request, please include details and descriptions of how the Entities were identified (e.g., did one party approach the other, did one party engage in a bid/auction process, etc.).

Albertsons’ proxy filing related to the Proposed Transaction contains a detailed description of the negotiation process that resulted in Kroger and Albertsons entering into the Merger Agreement. *See* Albertsons Companies, Inc. Schedule 14C at 21-38 (Apr. 21, 2023), <https://d18m0p25nwr6d.cloudfront.net/CIK-0001646972/16eeb1c1-e9b6-4844-b503-d341a8cb5711.pdf>.

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RFI #7: Please describe the negotiation/transaction process that resulted in the Entities entering into the agreement to affect the Divestiture. In connection with the foregoing request, please include additional detail on how C&S was identified as a party to the Divestiture.

Kroger conducted a robust sale process over the course of eleven months in order to identify potential buyers with the operational expertise and capabilities, experienced management team, strong financials, and comprehensive business plan that would best position a buyer to operate the divested assets. It was important to Kroger that the selected divestiture buyer be committed to continue serving the communities in which the divested stores are located and to supporting the associates serving those stores. C&S meets all of these criteria.

C&S is an industry-leading wholesale grocery supplier and provider of supply chain solutions to more than 7,500 independent supermarkets and military bases. C&S also has significant retail experience. It owns, operates, and franchises Piggly Wiggly and Grand Union grocery stores in the Midwest, Northeast, and the Carolinas, none of which overlap with the proposed divestiture stores. C&S also provides a wide range of retail services – such as retail development, pricing, merchandising, marketing, advertising, technology, category management, pharmacy network, and private label branding services – to its franchisees and its wholesale customers. To operate the divested business, C&S has a management team with deep experience in grocery and retail:

- Mark McGowan, Executive Vice President, Retail: Has more than 30 years of experience in the grocery industry. Most recently served as President of Stop & Shop Supermarket Company and prior to that held officer roles responsible for merchandising and supply chain functions at Ahold Delhaize.
- Brett Wing, Chief Operating Officer: Has more than 45 years of experience in the grocery industry. Has held numerous grocery industry roles, including store director, district manager, corporate director of dairy and frozen food, corporate director of produce, division president, and vice president of marketing and advertising. Most recently served as Senior Vice President, Retail Operations for Wakefern Food Corporation, the wholesale and distribution arm for ShopRite, Price Rite Marketplace, and other banners. Prior to that, he was the President and COO of ShopRite Supermarkets, Inc. and a Vice President of Food Maxx, a division of SaveMart Supermarkets.

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- Mark Messier, Chief Merchant: Has more than 35 years of merchandising management experience in the grocery industry. Most recently served as President/Consultant for Top Mark Solutions, LLC and previously was Executive Vice President of Merchandising for Stop & Shop/Giant Food.
- Erik Keptner, Chief Marketing Officer: Has more than 20 years of experience in the grocery industry. Most recently served as Chief Marketing and Merchandising Officer for Rite Aid. Has also served as Chief Marketing Officer of Giant, Chief Marketing Officer of Ahold USA (now Ahold Delhaize US), Senior Vice President of Sales, Merchandising, and Marketing for Giant, and Senior Vice President of Marketing for Wakefern Food Corporation.
- Everett Boutwell, Senior Vice President of Distribution Operations: Has nearly 25 years of experience in grocery and food service supply chain operations. Previously served as Chief Operating Officer and Regional Vice President of McLane Grocery.
- Kathy Russello, Retail HR: Has more than 30 years of experience in the grocery industry. Previously served as Chief Human Resources Officer for Ahold Delhaize US, Senior Vice President of Human Resources and Labor Relations for Ahold USA and Stop & Shop, and Vice President Human Resources and Lead Business Partner for Retail Stores for Stop & Shop and Edwards Supermarkets.

Following the announcement of the proposed merger of Kroger and Albertsons on October 14, 2022, Citigroup Global Markets Inc. (“Citi”) and Wells Fargo Securities LLC (“Wells Fargo”), Kroger’s financial advisors for the divestiture sale process, began reaching out to potentially interested parties. Citi and Wells Fargo also received inquiries from potentially interested parties. During the course of the sale process, more than 90 potential bidders were contacted, of which more than 50 executed non-disclosure agreements and conducted due diligence.

In January 2023, Citi and Wells Fargo sent process letters to potentially interested parties and opened the diligence virtual data room. The process letter requested indications of interest based on the stores in the December 1, 2022 divestiture proposal provided to the FTC. In addition to a preliminary, non-binding indication of the purchase price, the process letter requested information on the proposed purchaser, management team, sources of financing, required transition services, if any, and ability to acquire additional stores, among other information. There was no minimum bid amount. Citi and Wells Fargo ultimately received nearly 30 indications of interest.

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In May 2023, Citi and Wells Fargo conducted another round of bidding (“Phase 2”). Citi and Wells Fargo ultimately received [REDACTED] Phase 2 offers. The Phase 2 offers were evaluated based on value, transaction certainty, and buyer flexibility to acquire additional stores. Based on the Phase 2 offers, the potential buyers were narrowed to a smaller set, who were asked to submit another round of offers (“Phase 3”). The Phase 3 offers were received in August 2023.

After the Phase 3 offers, a final set of potential buyers was asked to complete diligence on their proposed asset packages, finalize discussions on definitive agreements, including a transition services agreement, provide final information on financing, and submit final offers (“Phase 4”). By the end of August, each potential buyer had conducted site visits of distribution centers. In addition, the parties conducted dozens of diligence and transition services calls with each of these potential buyers.

After the Phase 4 offers, Kroger selected C&S as the buyer best positioned to successfully operate the divested assets as a strong competitor and to provide transaction certainty and flexibility to acquire additional stores. The parties then proceeded to negotiate an Asset Purchase Agreement (“APA”), which was entered in September 2023. In April 2024, the parties amended their APA to enhance and expand the divestiture package.

RFI #8: Please provide a break-down of the historic (2020-2022) and five-year annual projected performance of (i) the stores that will be divested via the Divestiture, and (ii) the stores that will be retained by a combined Kroger/Albertsons upon consummation of the Merger. Please include the following performance metrics for each store:

- a. **Total revenue (including pharmacy)**
- b. **Total pharmacy revenue**
- c. **Gross profit (revenue – cost of sales)**
- d. **Earnings before interest, taxes, depreciation, and amortization (EBITDA)**
- e. **Gross profit per prescription (for stores with pharmacies)**

In response to RFI #8, Kroger and Albertsons are respectively providing KR-OHA-000001782 and ACI-ORHCMO-00001031, which provide the 2020-2022 data requested for Kroger’s and Albertsons’ stores in Oregon. Kroger and Albertsons’ data show de minimis pharmacy-related revenues and/or gross profit at certain stores in Oregon that do not have pharmacies or NPIs, which likely reflect misallocated sales.

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Kroger and Albertsons do not have forward-looking projections as requested in RFI #8.

RFI #9: In response to RFI #5 issued by OHA to Kroger on September 12, 2023, the Entities describe detailed analysis conducted on the competitive landscape with respect to grocery retailers. Has this analysis been completed specifically on pharmacies (retail or specialty) and/or mobile clinics? If so, please provide copies of such analysis together with all supporting material.

Kroger and Albertsons have not completed a detailed analysis specific to pharmacies or mobile clinics similar to the analysis of the retail grocery competitive landscape in Oregon.

RFI #10: In C&S's October 3, 2023, presentation to the Federal Trade Commission titled "C&S Is a Qualified Divestiture Buyer" C&S states that it "also agreed to acquire additional unidentified stores (up to 650) from Kroger-Albertsons for a potential total purchase price of up to \$2.65 billion."

- a. Have these stores been identified? Are any located in Oregon? Is 650 the total number of stores, inclusive of the 413 stores proposed to be acquired as part of the current application, or in addition to the 413 stores?**
- b. If the additional divestitures have been identified, please provide revenue analysis for each such store. Please include revenue breakdowns as requested in RFI #8. Above.**
- c. Please describe the nature of the commitment to acquire the additional stores. For example, where is this commitment memorialized? If memorialized, please provide a copy of the agreement. At which party's option is it exercised?**

On April 22, 2024, Kroger and Albertsons announced an amended divestiture agreement with C&S that updates and expands the initial, 413-store divestiture package. See Press Release, Kroger, Albertsons Companies and C&S Wholesale Grocers, LLC Announce an Updated and Expanded Divestiture Plan (Apr. 22, 2024), <https://ir.kroger.com/news/news-details/2024/Kroger-Albertsons-Companies-and-CS-Wholesale-Grocers-LLC-Announce-an-Updated-and-Expanded-Divestiture-Plan/default.aspx>. Under that amended agreement, Kroger and Albertsons will divest 579 stores to C&S, an increase of 166 stores from the initial divestiture package. The updated divestiture package includes 62 Albertsons and Kroger stores in Oregon, an increase of 13 stores from

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the initial divestiture package, which included 49 Albertsons and Kroger stores in Oregon. No stores beyond those included in the Divestiture Agreement have been identified.

The revenue breakdowns for all Kroger and Albertsons stores in Oregon, including any stores to be divested, have been provided in response to RFI #8.

The Divestiture Agreement provided in response to RFI #2 memorializes C&S's commitment to acquire these 579 stores.

RFI #11: Please describe the amount of consideration to be paid by C&S as consideration for the Divestiture and the amount of such consideration that consists of third-party financing. Please describe the terms of such financing.

C&S agreed to pay \$2.761 billion for 579 stores, as reflected in the Divestiture Agreement. In connection with the Divestiture Agreement, and to accommodate the increase in purchase price, C&S expects to enter into one or more commitment letters to provide for commitments in respect of its existing credit facility or other debt or equity financing, which commitments would be available to fund the acquisition price at closing of the acquisition by C&S. The form and nature of such financing remains subject to ongoing discussion and will be finalized prior to closing of the acquisition by C&S.

RFI #12: The Business Plan and additional supporting material suggest that the TSA period with respect to the pharmacy implementation is short. Why did C&S negotiate for a short TSA period in respect of a pharmacy business given its limited experience at present?

The terms of the Transition Services Agreement, including the duration of the support for pharmacy operations, were the result of negotiations. C&S believes it can be successful with the TSA support in the current package and has the right under the TSA to seek an extension of the period if that becomes necessary. TSA § 7.5.

RFI #13: The Business Plan states that C&S engaged consultants from Bain & Company, Consolidated Affiliates, Centerview Partners, KPMG as part of its diligence.

a. Were any other consultants engaged?

C&S did not retain any other consultants to conduct diligence for the divestiture transaction, though C&S has hired [REDACTED] to provide pharmacy integration planning support.

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b. Please provide a copy of the report prepared by KPMG containing its quality of earnings analysis.

In response to RFI #13 subpart b, C&S is providing the Project Walnut KPMG Integrated Due Diligence Report, which contains a quality of earnings analysis (FTC-CS-00005973).

c. Please provide a copy of the report from Centerview with its valuation and financial analyses.

Centerview Partners prepared numerous analyses of the proposed transaction, which reflect changes in the scope of the transaction, additional information learned through C&S's diligence on the asset package, and negotiations between the parties. In response to RFI #13 subpart c, C&S is providing FTC-CS-00004017 to FTC-CS-00004575, which contain drafts of these analyses. Centerview Partners is currently updating their analyses in light of the Divestiture Agreement.

RFI #14: Please provide the audited financial statements for C&S for the years ended 2020, 2021 and 2022.

In response to RFI #14, C&S is providing FTC-CS-00000001, FTC-CS-00000286, and FTC-CS-00000161, which are its annual reports for fiscal years 2020, 2021, and 2022, respectively. C&S's annual reports included audited financial statements for each year.

RFI #15: Please provide three-year pro forma financial projections (balance sheet and income statement) developed by C&S or its advisors for the stores to be acquired by C&S by way of the Divestiture.

C&S is producing its deal model (CS-00001457), which contains its most recent financial projections. C&S has not developed specific projections for the balance sheets or income statements of stores it will acquire. The Centerview documents provided in response to RFI #13 subpart c contain summaries of the pro forma projections for the store packages that C&S considered.

a. In the pro forma P&L projections included at page 87 of the Business Plan, does "Cashew" refer to Kroger, Albertsons, or the combined, post-closing company?

The term "Cashew" refers to C&S in all documents prepared by C&S related to the proposed transaction. Other code names used in the documents prepared by C&S include

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the term “Kettle” to refer to Kroger, “Acorn” to refer to Albertsons, and “Walnut” to refer to the divestiture package.

b. Did Centerview Partners express a view on the P&L projections provided by “Cashew Management?”

Centerview did not express a formal view on C&S’s P&L projections. [REDACTED]

RFI #16: Did C&S develop pro forma projections for the pharmacy operation within each store it would acquire under the Divestiture?

No. As explained below, C&S used store-level historical sales data to develop financial projections for its pharmacies at the regional level.

a. If so, please provide.

N/A

b. If not, were such projections (specific to pharmacy operations) provided by Kroger/Albertsons to C&S?

C&S’s current deal model (CS-00001457) contains pharmacy sales per store for FY2020 through the last twelve month period. Based on these historical results, C&S developed projections for pharmacy sales per banner in each region. Pharmacy sales figures for the Pacific Northwest region, including Oregon, are detailed in the “Pacific Northwest P&L” tab. The regional projections on that tab were built using store-specific data.

RFI #17: Describe all transactions Kroger or Albertsons completed in the past ten years that included operations or assets in Oregon. Provide all executed agreements related to these transactions.

Kroger has completed five pharmacy-related acquisitions in Oregon in the last ten years. KR-OHA-00001783 to -1888 provide the executed agreements related to these transactions.

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

This list excludes sale-leaseback transactions in which Kroger continued to operate the store while legal title passed from one third-party lessor to another third-party lessor in a transaction facilitated by Kroger.

The only transaction Albertsons has completed in the last ten years that included operations or assets in Oregon is the 2015 Albertsons/Safeway merger, which included the Oregon stores divested to Haggen. The executed agreements for the Albertsons/Safeway transaction and the Haggen divestiture have been provided in response to RFI 54.

RFI #18: Please provide store-level data related to Kroger’s and Albertsons’ pharmacy operations in Oregon by completing the attached data template.

In response to RFI #18, Kroger and Albertsons are respectively providing KR-OHA-00001889 and ACI-ORHCMO-00000087, which provide store-level data related to Kroger and Albertsons’ pharmacy operations in Oregon available in the ordinary course and responsive to this request.

Kroger cannot provide certain breakdowns requested in the template for RFI #18 because it does not maintain those breakdowns in the ordinary course of business. The data in the “Rx” tabs of KR-OHA-00001889 provide the requested information for all Oregon residents served by the listed Kroger retail pharmacies and all Oregon addresses to which prescriptions fulfilled by Kroger’s mail order and specialty pharmacies were sent. The “Medicare Part D” column covers both Medicare Part D and Medicare Advantage. For retail and mail order Rx, the “Oregon Health Program (OHP) Fee For Service (FFS)”

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columns cover all of Kroger's Medicaid-related data. Kroger cannot separately provide a breakdown for the "Patient Assistance Program." Kroger expects that the data related to the "Patient Assistance Program" is covered by the "Commercial" columns, but data related to this program may also be captured by other columns. Data related to "Discount Cards" is covered by the "Commercial" columns. Kroger does not have any Tricare data for mail order or specialty Rx in Oregon, or any cash pay data for specialty Rx in Oregon.

Kroger has interpreted "Medication Therapy Management" ("MTM") to cover a range of medication-related services beyond dispensing prescriptions, including but not limited to counseling for underutilization of maintenance medications, comprehensive medication reviews, and the identification of gaps in care (e.g., vaccinations) or cost savings opportunities. Kroger and Albertsons may track MTM services differently. The Kroger 2020 MTM data requested in the "Healthcare services" tab is not reasonably available.

Albertsons provides the following explanations and caveats related to the data responsive to RFI #18 provided in ACI-ORHCMO-00000087: As to the "Rx" tabs in ACI-ORHCMO-00000087, Albertsons does not separately track prescriptions dispensed to patients through Medicare Part D and Medicare Advantage in the ordinary course of business; accordingly information related to both Medicare Part D and Medicare Advantage is included under the "Medicare Part D" columns. The "Cash Pay" columns include cash payers excluding customers using a pharmacy discount card program. The "Commercial" columns include commercial payers and any payer type not included in the other categories requested in RFI #18. For example, the "Commercial" columns include Health Exchange payers, Medicare Part B payers, and may include 340B covered entities and Managed Medicaid (in some instances, Albertsons cannot separate Managed Medicaid scripts from commercial scripts).

As to the "Healthcare services – ACT" tab, Albertsons does not track the number of unique persons served for Medication Therapy Management ("MTM") in the ordinary course of business. Payments for MTM services are made outside of Albertsons' EPS Dispensing System and the system does not include patient information.

For both Kroger and Albertsons, the employee headcount information provided relating to pharmacists and pharmacy technicians in the "Staffing" tabs excludes unlicensed pharmacy clerks.

RFI #19: Identify, by NPI, all Kroger and Albertsons pharmacies that currently serve as a contract pharmacy for an entity in Oregon participating in the 340B Drug Pricing

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Program (“340B covered entity”). For each pharmacy, identify the associated 340B covered entity by name and address.

In response to RFI #19, Kroger and Albertsons are respectively providing KR-OHA-00001890 and the “340B” tab of ACI-ORHCMO-00000087, which identify the Kroger and Albertsons pharmacies in Oregon that currently serve as a contract pharmacy for a 340B covered entity and identify the 340B covered entities associated with each such pharmacy.

RFI #20: Provide all performance and quality data (i) Kroger and (ii) Albertsons collects for pharmacies in Oregon covering the three most recent reporting years. Please include:

Kroger provides responses to RFI #20 subparts a-d in-line below. Albertsons does not track data responsive to RFI #20 in the ordinary course of business.

a. Customer satisfaction/experience scores.

In response to RFI #20 subpart a, Kroger is providing KR-OHA-00001891, which provides the “Overall Satisfaction” of customers at each Kroger pharmacy in Oregon. Kroger tracks “Overall Satisfaction” based on customer feedback via unique invitations to take surveys regarding the service they received during their shopping trip. The percentages listed in Exhibit 20-1 reflect the total percentage of respondents who indicated they were “Highly Satisfied” with their experience.

b. In-store wait times for pharmacy services.

In response to RFI #20 subpart b, Kroger is providing KR-OHA-000001892, which provides the average wait time at each Kroger pharmacy in Oregon. “Wait Time” is calculated as the duration a customer is waiting at a store for a prescription to be filled. “Waiting Count” refers to the number of prescriptions for which customers had to wait at the store for the prescription to be filled.

c. Time taken to fill prescriptions.

In response to RFI #20 subpart c, Kroger is providing KR-OHA-000001893, which provides the “Ready Rate” at each Kroger pharmacy in Oregon for calendar years 2020 to 2022. Kroger’s “Ready Rate” measures the percentage of prescriptions that are ready to sell at the time that the customer is told they will be ready.

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d. Any other metrics reported to federal or state agencies or other governing entity.

Kroger does not report any other performance or quality data metrics to state authorities in Oregon.

RFI #21: Provide a list of all Pharmacy Benefit Managers (PBMs) that (i) Kroger and (ii) Albertsons contract with for pharmacy services in Oregon.

In response to RFI #21, Kroger and Albertsons are respectively providing KR-OHA-000001894 and the “Oregon PBM Contracts” tab of ACI-ORHCMO-00000087, which list the PBMs that Kroger and Albertsons contract with for pharmacy services in Oregon.

RFI #22: List all insurance plans (including commercial, Medicare Advantage, and Medicaid managed care plans) for which (i) Kroger and (ii) Albertsons pharmacies in Oregon are in-network or preferred pharmacies. Please include:

- a. Insurance carrier**
- b. Name of plan**
- c. Type of plan (Medicare Advantage, Group Commercial, Group Individual, Medicaid managed care, etc.)**
- d. Network status/tier of Kroger/Albertsons pharmacies**

In response to RFI #22, Kroger and Albertsons are respectively providing KR-OHA-000001895 and the “Medicare Part D” tab of ACI-ORHCMO-00000087, which provide the requested information reasonably available to Kroger and Albertsons about insurance plans for which Kroger’s and Albertsons’ pharmacies in Oregon are in-network or preferred pharmacies.

In KR-OHA-000001895, the list of “Commercial” plans may not capture all self-insured plans, in particular administrative services only plans for large employers or small employer-sponsored plans, for which Kroger’s pharmacies in Oregon are in-network or preferred pharmacies. Kroger is unable to provide information on fully insured employer-sponsored plans as they are not individually identifiable.

Albertsons only tracks information responsive to RFI #22 for Medicare Part D plans. The insurance carrier is in the field “Medicare Part D Plan,” the name of the plan is

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in the field “Name of Plan,” the type of plan is in the field “Type of Plan,” and the network status of Albertsons’ pharmacies is in the field “ABS CO.” The values “MAPD” and “PDP” in the “Type of Plan” column denote “Medicare Advantage Part D” and “Prescription Drug Plan,” respectively.

RFI #23: Does Kroger/Albertsons intend to consolidate or close any of the retained stores within the next five years?

No.

RFI #24: Does Kroger/Albertsons intend to discontinue pharmacy operations in any of the retained stores within the next five years?

No.

RFI #25: The materials provided to OHA on October 20, 2023, suggest that Albertsons is (or was) in the process of implementing a central fill/central processing model to its pharmacy business that will allow certain tasks (e.g., refilling prescriptions that are on automatic refill) to be outsourced from local pharmacies to a central location.

a. Provide an update on the implementation of this model for Albertsons pharmacies in Oregon.



b. Describe any plans by Kroger to implement this model in existing Kroger pharmacies following the close of the transaction and describe any impact to the operation of Kroger pharmacies in doing so.

In response to RFI #25 subpart b, Kroger notes that it also operates extensive central fill operations today. At this time, Kroger has not made any final plans regarding whether to implement any aspect of Albertsons’ central fill processes or to simply continue using and improving its own central fill operations.

c. Did the financials (whether historic or projected) that were made available to C&S in respect of the divested stores assume the cost-savings that are

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projected (or actually obtained) as a result of Albertsons' pharmacy central fill/central processing implementation?

Regarding its in-house central fill implementation, Albertsons only provided C&S with historical financial information, not projected financial information.

[REDACTED] Albertsons [REDACTED] contracts for central fill services from [REDACTED]; all related charges for these central fill services were passed through to the store-level financials already provided. Multiple central fill vendors are available to C&S if C&S chooses to implement a central fill model. [REDACTED]

RFI #26: Describe any anticipated changes to (i) the PBMs with which the retained pharmacies in Oregon are contracted, or (ii) the insurance plan networks they participate in.

At this time, Kroger does not anticipate any changes to the PBMs it contracts with in Oregon or the insurance plan networks it participates in in Oregon, though ordinary course negotiations about network inclusion are ongoing throughout the year.

RFI #27: Albertsons and Safeway pharmacies are currently in network with Express Scripts (ESI) whereas Kroger stores are not. Will Kroger contract with ESI for network inclusion of the retained Albertsons and Safeway pharmacies?

Kroger does not have any insight into Albertsons' current contract with ESI or any terms therein. Kroger intends to allow Albertsons to continue to adhere to the terms of its current contract with ESI. After that contract expires, Kroger is willing to enter into a new agreement with ESI if ESI is willing to offer Kroger fair terms.

RFI #28: Does Kroger Prescription Plans (KPP) manage pharmacy benefits for Kroger employees in Oregon? If so, please specify which groups of employees.

- a. Will KPP manage pharmacy benefits for Albertsons employees in Oregon after the transaction closes? If so, please specify which groups of employees.**

Kroger Prescription Plans ("KPP") manages pharmacy benefits for approximately [REDACTED] non-union Kroger associates in Oregon. More than 70% of these associates work at Fred Meyer grocery stores or Fred Meyer Jewelers, and more than 20% work at Fred Meyer's office in Oregon or work from home. The remaining associates (less than 10% of

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the total) work at other Kroger facilities in Oregon. The health plan fiduciaries/trustees for Kroger's employees determine which vendors provide plan administrative services, including pharmacy benefit management. KPP competes with other PBMs for this business. At this time, the plan fiduciaries/trustees have not determined which PBM(s) will manage pharmacy benefits for any Albertsons employees in Oregon after the transaction closes.

RFI #29: The response to item 6 in the notice states, "plans for store improvements and an upgraded consumer experience..." and "...plans to offer lower-priced products..."

- a. Describe any plans for store improvements as they relate to pharmacies or prescription drug services.**
- b. Describe any plans for an upgraded consumer experience as they relate to pharmacies or prescription drug services.**
- c. Describe any plans to offer lower-priced prescription drugs.**
- d. Describe any plans to offer lower prices for other pharmacy products or services.**
- e. Provide documentation of the plans described under a.- d., including business plans, projections, and analyses.**

In response to RFI #29 subparts a and b, Kroger has allocated capital for store improvements at Albertsons stores, but at this time it does not have any specific plans for store improvements at Albertsons pharmacies in Oregon. Any improvements planned for Albertsons pharmacies will be part of Kroger's broader plans to make improvements at Albertsons stores. Kroger also plans to continue to invest in its pharmacy-related technology and its back-office systems, which will benefit Albertsons pharmacies when they are integrated onto Kroger's platform and help improve the pharmacy experience for Albertsons' customers. For example, Kroger has plans to launch new capabilities in 2024 that will allow its pharmacists to more efficiently document and bill services related to prescribing. After the transaction closes, these capabilities will benefit Albertsons' pharmacy associates by improving the work flow for prescribing and Albertsons' pharmacy customers by facilitating a more seamless customer experience.

In response to RFI #29 subparts c and d, Kroger does not have any specific plans to offer lower-priced prescription drugs or offer lower prices for pharmacy products or services as a result of the merger. The majority of Kroger's prescription drug pricing is

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dictated by the terms of its contracts with PBMs. Kroger is constantly seeking to improve the pricing of its products where possible.

As Kroger does not have specific plans responsive to RFI #29 subparts a-d, Kroger does not have documentation responsive to RFI #29 subpart e.

RFI #30: The response to item 9b. in the notice states: “While neither Kroger nor Albertsons currently offers in-store clinical services in Oregon, Kroger and Albertsons both offer such services outside Oregon as part of their efforts to improve access to cost-effective health care.”

- a. Please provide a definition of “in-store clinical services” as used here. What types of services would be included in this definition?**

By “in-store clinical services” as used in this response, Kroger meant The Little Clinic.

Albertsons defines “in-store clinical services” as healthcare services (including but not limited to immunizations, health screenings, health assessments, injury treatment, or healthcare advice) provided within an Albertsons retail pharmacy store by healthcare professionals other than Albertsons pharmacists or temporary immunization contractors.

- b. Describe any plans for the Entities to launch in-store clinical services in Oregon after the transaction closes.**

To date, Kroger and Albertsons have not formulated any plans to launch in-store clinical services in Oregon after the transaction closes.

- c. Provide any analysis, plans, or projections previously developed by Kroger or Albertsons related to offering in-store clinical services in Oregon.**

Kroger and Albertsons have not developed any such analyses, plans, or projections.

RFI #31: The “Walnut Business Plan” dated as of October 3, 2023 (the “Business Plan”) indicates key subject matter experts (each, a “SME”) have been or will be hired to assist C&S with the implementation of its pharmacy business. Please provide additional detail around the following:

- a. If the SMEs have been identified, please provide additional information on their background and experience with respect to the implementation of C&S’s pharmacy business.**

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C&S has hired Roxanne Schwans, an executive with 28 years of healthcare experience, including senior positions at both Walgreens and Rite Aid to run its pharmacy business. With her assistance, C&S has already begun discussions with pharmacy benefit managers, suppliers, insurance companies, and other stakeholders to ensure that pharmacy patients at the acquired stores receive the same or greater level of service than they previously did.

C&S also recently hired Nicole Leiter, an experienced pharmacy executive who recently led Walgreens USA through its acquisition of Rite Aid, which was the largest transformation program in Walgreens' history. C&S is also in the process of hiring an in-house pharmacy counsel, and will continue to recruit other external experts to support its pharmacy business in the coming months.

As part of the divestiture, C&S will also hire approximately [REDACTED] pharmacy SMEs from Kroger and Albertsons. C&S, Kroger, and Albertsons are in active dialogue and holding weekly discussions to identify key SMEs and to ensure that all areas of expertise are covered for the transition and post-TSA period. In addition, C&S will hire approximately [REDACTED] regional and district managers from Kroger and Albertsons.

b. Please provide detail into the selection criteria that was (or will be) used in identifying the SMEs.

The selection criteria are based on the technical requirements of each position, as well as typical hiring factors, such as education, years of experience, performance history, and geographic location. [REDACTED]

[REDACTED] C&S expects to work with the sellers in the next few months to further develop the selection criteria and to identify candidate SMEs.

c. If the SMEs have not been hired or retained, when do you expect them to be hired or retained and providing direct assistance to C&S in its operation of the pharmacy business?

As explained above, C&S has hired SMEs for the pharmacy business and continues to bring on addition experts as it prepares to operate the divested pharmacies. This is an ongoing process, and C&S intends to have all of the SMEs needed to run the pharmacy business in their roles on day one.

RFI #32: Please provide a detailed description of the pharmacy assets C&S will obtain as part of the Divestiture Agreement.

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Physical in-store pharmacy assets will transfer with the stores. C&S will also acquire the current pharmacy inventories of the acquired stores. C&S is also receiving support from Kroger and Albertsons during the TSA period, which is explained in greater detail below in the response to RFI #33.

- a. Will C&S acquire the prescription drug and other pharmacy inventory at the divested stores? Please describe.**

As noted above, C&S will acquire all of the current inventories for the divested stores.

- b. Will C&S acquire customer prescription records for the divested stores? Please describe.**

C&S will receive historical pharmacy records, including prescription dispensing records and other patient records, for at least [REDACTED] prior to the closing date.

- c. Will C&S acquire other data on pharmacy customers at the divested stores, for example, demographics, loyalty program membership, insurance coverage, or engagement with third-party prescription discount programs? Please describe.**

C&S will receive access to the [REDACTED] of customer pharmacy history (e.g., transaction data) in Kroger's possession as of the closing along with all historical data held in the pharmacy management system at closing that is necessary to support critical marketing and merchandising functions. APA § 7.7(a)(ii). This data will include detailed patient information [REDACTED] [REDACTED] which are required to validate the accuracy and safety of prescriptions.

- d. Will C&S acquire any assets related to Kroger's or Albertsons' specialty pharmacy business?**

C&S will not acquire any specialty pharmacy assets from Kroger or Albertsons.

RFI #33: Please provide a detailed description of the pharmacy support included in the TSA. Please include further detail on each of the bulleted "pharmacy TSA

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support” items listed on p. 73 of the Business Plan. Include references to relevant sections of the TSA.

A summary of the pharmacy support included in the TSA is provided below. This support will be provided where permitted under Kroger’s and Albertsons’ existing agreements with third parties.

- Systems and process support for dispensing and inventory management

-

[Redacted]

[Redacted]

[Redacted]

- Data conversion

-

[Redacted]

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- Operations and compliance reporting

- [REDACTED]

- Support in obtaining licenses and permits and responding to compliance inquiries

- [REDACTED]

- Introductions to service providers related to pharmacy operations, procurement, and PBMs

- [REDACTED]

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- Support for accounts receivable, medical billing, and immunization reimbursement

- [REDACTED]

- Knowledge transfer for dispensing training and labor scheduling

- [REDACTED]

- a. Does the TSA include re-assignment or “ride along” of any existing Albertsons or Kroger contracts with PBMs or wholesale drug suppliers? Please describe.

[REDACTED]

C&S is actively working to finalize contracts with PBMs before the close of the transaction.

RFI #34: OHA understands that there is no TSA support for “Digital Rx”. Does C&S plan to offer an e-commerce solution with respect to its pharmacy business?

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- a. If so, does it have the means to implement the e-commerce business? Please describe.**

C&S believes that a digital application for refills is important for pharmacy patients

[REDACTED]

- b. If not, does C&S believe it can remain competitive with large scale chain pharmacies?**

N/A

RFI #35: Describe C&S' plans for hiring and retaining pharmacy talent, including pharmacists and pharmacy technicians.

C&S recognizes the importance of retail pharmacists and their support staff and will take a number of steps to ensure accessible care. C&S is focused on retaining the pharmacists and support staff included in the divestiture transaction by communicating openly, minimizing changes to their day-to-day activities, and employing retention incentives if needed. C&S will also build its recruiting pipeline by offering internships and externships and engaging in campus recruiting and educational partnerships.

- a. Using the "Retention of personnel" worksheet in the attached data template, please provide data on the number of licensed pharmacists and pharmacy technicians currently working at the divested pharmacies that C&S expects to hire.**

Kroger and Albertsons have not yet provided this data to C&S, but C&S is planning to hire all of the employees currently working in the divested pharmacies and believes that it will need those employees to successfully operate its pharmacy business and therefore plans to retain them. C&S also intends to extend employment offers to

[REDACTED]

- b. What strategies does C&S plan to implement to combat labor shortages for pharmacists and pharmacy technicians in Oregon?**

C&S is committed to hiring licensed pharmacists in good standing to staff all of its locations. C&S will prevent labor shortages by maintaining relationships with staffing and recruiting agencies, as well as accredited pharmacy schools and associate technician programs. Roxanne Schwans and Nicole Leiter will obtain lists of licensed pharmacists

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from the Boards of Pharmacy in states allowing that disclosure. C&S will also reach out to qualified pharmacists who have been laid off by the large chains. Nicole is a former member of the National Association of Chain Drug Stores and is familiar with the labor challenges facing all retail pharmacies and pharmacists.

- c. Please provide all employee hiring plans, retention plans, incentive plans or similar arrangements to retain employees after close of the transaction (e.g., retention bonuses, offers, employment contracts, etc.).**

Key pharmacy personnel in stores and at the district level will transfer to C&S as part of the transaction. The C&S talent acquisition team is building the pharmacy talent pipeline so that C&S will be prepared to hire any roles that become vacant after the transition. The C&S pharmacy implementation team has connections to the marketplace for pharmacy candidates, and C&S will be able to draw on their expertise to find talent in specialized areas.

C&S is currently developing its overall strategy for retention or incentive plans. C&S wants to retain all transitioning pharmacy personnel and will offer retention incentives and bonuses on a case-by-case basis. C&S's goal is to make the transition as seamless as possible for both employees and customers. C&S is also partnering with [REDACTED] to ensure current rewards programs are competitive in the job market and to evaluate whether other programs, such as variable compensation or retention plans, may be needed.

RFI #36: Describe how C&S intends to address management of the pharmacy supply chain following close of the transaction.

Under the TSA, Kroger and Albertsons are required to facilitate introductions with vendors and to provide copies of relevant procurement contracts. C&S is actively working to negotiate contracts with vendors and has already finalized an agreement with its primary pharmacy wholesaler. C&S can now begin negotiations with that wholesaler and to plan its initial supply chain operations.

- a. Does C&S's current wholesale operation include pharmacy?**

No. C&S does not supply pharmacy products. [REDACTED]

- b. Are the distribution centers to be acquired in the Divestiture currently involved in the pharmacy supply chain? If so, please describe.**

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No, the distribution centers that C&S will acquire as part of the divestiture are not currently involved in the pharmacy supply chain.

c. Does C&S believe its wholesale and supply chain expertise can be applied to pharmacy operations? Please describe.

Yes. C&S has experience supporting its own pharmacies and the pharmacies of its independent grocers. Following the transaction, C&S will be able to leverage its expertise in pharmacy support to obtain efficient distribution for pharmacy goods and to lower prices for consumers.

RFI #37: Did C&S experience any issues transitioning union workers in connection with the Piggly Wiggly transition? If so, please describe any such issues and how they were addressed.

No. As part of that transaction, C&S assumed the pre-existing collective bargaining agreements with UFCW 1473 and IBT 662. C&S has worked collaboratively with those local unions since stepping into the CBAs.

RFI #38: The presentation to the FTC dated October 3, 2023 (“Exhibit 1-1”), p. 16 indicates that, since 2005, C&S has operated a number of pharmacies and that at its height, C&S operated approximately 40 pharmacies. The materials suggest C&S currently operates one pharmacy.

a. How many pharmacies does C&S currently operate?

C&S currently operates one pharmacy in Sherrill, NY. That pharmacy was acquired from Grand Union in 2022 and has been operated by C&S since that time.

b. Did the 12 stores acquired by C&S from Tops-Price Chopper in 2022 (Exhibit 1-1, p. 6) include pharmacies?

As part of the acquisition of several Tops stores, C&S acquired the pharmacy in Sherrill, NY discussed above. The other acquired Tops stores did not include pharmacies.

c. For each of the pharmacies C&S previously operated, please provide (i) the reason(s) why C&S no longer operates the pharmacy, and (ii) the current

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status of the pharmacy (e.g., closed, operated under new ownership, operated by franchisee, etc.)

As explained above, C&S acquired retail grocery stores and pharmacies in the past two decades to support its wholesale distribution business. In line with its objectives during that time, many of C&S's retail assets, including pharmacies, were sold to existing customers shortly after their acquisition by C&S. In 2021, C&S conducted a strategic review of its business and decided to enter retail operations for the long term. As a result, C&S has continuously and successfully operated the stores acquired in more recent years.

In 2005, C&S acquired 41 in-store pharmacies as part of a larger acquisition. Since then, C&S has operated numerous pharmacies in eight different states. Consistent with its previous retail strategy, C&S occasionally sold off stores and pharmacies and purchased others. By 2009, C&S operated 16 pharmacies associated with the Southern Family Markets stores. It sold these pharmacies in separate transactions to CVS, Walgreens, and Rite-Aid in 2012. In 2014, as part of a larger acquisition of Nell's Family Market grocery stores, C&S purchased four stores with pharmacies. It sold three of these stores and pharmacies to Weis Supermarkets and one store and pharmacy to Giant Food Stores between 2015 and 2022.

d. Describe C&S's experience acquiring or transitioning pharmacies from third parties.

Over the last two decades, C&S has been involved in numerous mergers and acquisitions that involved pharmacy assets. C&S has successfully operated the pharmacies acquired in those transactions in eight states—most recently by operating the pharmacy in Sherrill, NY, which was acquired by C&S in 2022. Before that, C&S purchased several in-store pharmacies in Pennsylvania in 2014. C&S operated these pharmacies as part of the Nell's Family Market grocery stores before selling the stores and pharmacies to Weis Supermarkets and Giant Food Stores. C&S also acquired and successfully operated 41 in-store pharmacies in multiple states when it established Southern Family Markets in 2005. Consistent with its previous retail strategy, C&S sold these stores and pharmacies over time. It sold the last 16 pharmacies associated with Southern Family Markets stores to CVS, Walgreens, and Rite-Aid in 2012.

e. Describe C&S' experience supporting the pharmacies of independent grocers.

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i. How many pharmacies does C&S support and what services does C&S provide to these pharmacies?

C&S supports the pharmacies of multiple independent grocers. C&S's pharmacy network programs provide account management, access to deliveries from Cardinal Health, and an automated prescription-filling service.

RFI #39: Does C&S intend to consolidate or close any of the acquired stores within the next five years?

C&S is committed to operating every one of the retail stores included in the divestiture package and will continue to look for opportunities to expand its retail business. C&S has no plans to close any stores in the divestiture package.

a. Does C&S intend to discontinue pharmacy operations in any of the acquired stores within the next five years?

No. C&S is committed to its pharmacy business and intends to operate all acquired pharmacies successfully. Pharmacies are an important component of retail grocery stores, and C&S believes that it needs to operate the pharmacies in the divestiture package to compete effectively.

RFI #40: Does C&S intend to franchise any of the acquired stores to independent grocery retailers? If so, please identify the stores and describe the stores that include a pharmacy business (including retail pharmacy, mobile clinics or any other provision of healthcare related services or products currently offered by the Entities).

No. C&S plans to operate each of the acquired stores in the divestiture package.

RFI #41: The Business Plan states that an identified risk includes “the timely acquisition of permits and licenses requiring extensive regulatory review and approvals. Some of these permits are not transferable or assignable; each requiring a state-by-state inquiry most notably involving liquor, tobacco, gaming and pharmacy.”

a. Describe C&S's strategy to address required pharmacy and telehealth approvals in Oregon.

C&S will acquire 52 pharmacies in Oregon and has prepared a letter of intent describing the transaction and associated stores. C&S's pharmacy team has contacted the

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Oregon Board of Pharmacy for an introductory conversation and to establish appropriate timelines for filing change-of-ownership applications. C&S has also contacted the Drug Enforcement Administration's Oregon office to establish a change-of-ownership-timeline.

C&S will comply with Oregon's regulatory requirements. C&S will notify the Board of Pharmacy at least 15 days before the change of ownership and file a controlled substances registration for each pharmacy. C&S understands that the application process takes about 60 days and that each pharmacy will need to complete a self-inspection before the licenses can be issued.

None of the pharmacies offer telehealth services and [REDACTED].

- b. The Business Plan states that C&S has "internal and external support in licensing pharmacy operations by state." Describe C&S's approach to licensing in Oregon and identify the internal and external support that will be used.**

C&S has engaged [REDACTED] to provide counsel for pharmacy start-up and operations. [REDACTED] the co-chair of the firm's Health Transactions and Regulatory practice group, is the lead attorney on the matter. [REDACTED] is experienced in pharmacy acquisitions, licensing and permitting, and strategic contractual negotiations with PBMs and wholesale pharmacy providers.

[REDACTED] will also provide support for licensing and permitting for all pharmacies. [REDACTED] will work with Kroger and Albertsons to acquire all supporting materials for the Oregon pharmacy licensing applications. [REDACTED] will work with [REDACTED] to ensure timely applications to the Oregon Board of Pharmacy and other appropriate regulatory bodies.

RFI #42: The Business Plan contains a "Day 1 readiness" plan. One of the action items is "[r]ecruiting Rx team from point of deal signing."

- a. Please advise as to whether this has occurred.**

C&S is establishing relationships with pharmacy SMEs so that it can hire them immediately after the deal closes.

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b. Provide an update on achieving the other items/metrics identified in the Day 1 readiness plan.

C&S has started discussions with PBMs and is getting NDAs in place so that C&S can start contract negotiations. As explained above, C&S is also currently recruiting PBM SMEs. To avoid disruptions with pharmacy wholesale and service providers, C&S will seek amendments to existing contracts to allow those contracts to remain in place between C&S and the service providers during the transition period.

C&S has selected its main pharmacy wholesaler. Negotiations are ongoing and C&S is beginning to plan initial operations.

C&S is also meeting with secondary distributors and manufacturers. Kroger pharmacies currently [REDACTED] and Albertsons stores use [REDACTED] for prescription dispensing. C&S will continue to use these solutions in the short term, and plans to extend the licenses for any other third-party solutions currently in place at the divested pharmacies.

As discussed above, C&S has selected [REDACTED].

Finally, Kroger and Albertsons have agreed to a process for transferring pharmacy licensing, and C&S has applied for the relevant pharmacy licenses.

c. Provide an update on mitigating the “critical risks” for the pharmacy business identified in the Business Plan.

C&S is establishing relationships with pharmacy SMEs so that it can hire them immediately after the deal closes. To avoid disruptions with pharmacy wholesale and service providers, C&S is setting up contracts with PBMs to minimize disruption and will seek amendments to existing contracts to allow those contracts to remain in place during the transition.

RFI #43: Is C&S anticipating any changes to the PBMs with which the divested pharmacies in Oregon are contracted or the insurance plan networks they participate in (including commercial and government plans)? If so, please describe.

C&S is negotiating with [REDACTED], to assist with its pharmacy business. C&S is also negotiating with all current PBMs to minimize disruption during the transition, but the exact contractual terms are subject to the result of these negotiations.

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- a. **As noted in RFI #27, Albertsons and Safeway pharmacies are currently in network with ESI, whereas Kroger/QFC stores are not. Will C&S continue to contract with ESI for network inclusion of the divested Albertsons and Safeway pharmacies?**

C&S is looking to partner with ESI for all divested pharmacies for future contracts. If C&S uses the business continuity clauses, Kroger pharmacies, including the QFC pharmacies, will not be in the ESI network on day one, and C&S will negotiate the transition to ESI in the future.

RFI #44: Is C&S anticipating any changes to the drug manufacturers or wholesalers with which the divested pharmacies in Oregon are contracted? If so, please describe.

C&S plans to have [REDACTED] provide wholesale service for all divested stores in Oregon. As a result, the divested Kroger pharmacies will transition to [REDACTED] following the transaction.

RFI #45: Is C&S anticipating any changes to the wholesale or acquisition prices for drugs dispensed by the divested pharmacies as compared to the wholesale prices currently obtained by the Entities? If yes, please explain why. If no, please explain why not.

C&S plans to negotiate with [REDACTED] to obtain the best possible rates and to mitigate pricing risks on common prescriptions. C&S believes that it will obtain competitive prices from the wholesaler.

RFI #46: Is C&S planning to implement a central fill and/or central processing model for the divested pharmacies? Please describe any such plans.

[REDACTED]

- a. **Are the Albertsons pharmacy central fill and/or central processing functions noted in RFI #25 being provided to C&S via the TSA (or any other post-closing agreement)? If the latter, please provide a copy of any such agreement.**

[REDACTED]
[REDACTED] the TSA provides support for pharmacy operations, including prescription dispensing, inventory management, and patient counseling.

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RFI #47: Describe any plans by C&S to offer mail-order pharmacy services to patients in Oregon. Include in the description any personnel, operational infrastructure, or other resources C&S is planning to devote to the provision of these services, and the status of any plans to acquire such resources.

The divested pharmacies do not provide mail-order pharmacy services, and [REDACTED]. [REDACTED] PBMs use their own in-house mail-order services, so mail-order services will continue to be available to C&S's pharmacy patients.

RFI #48: Describe any plans by C&S to offer specialty pharmacy services to patients in Oregon. Include in the description any personnel, operational infrastructure, or other resources C&S is planning to devote to the provision of these services, and the status of any plans to acquire such resources.

[REDACTED]

RFI #49: Describe any plans for communicating with patients and payers about the ownership change and any potential changes to pharmacy services at the divested stores in connection with the Divestiture. Include discussion of any plans to mitigate potential disruptions for pharmacy customers.

C&S is coordinating with Kroger and Albertsons to minimize disruption. Areas which could experience changes include mobile refill, network rates, drug availability, and clinical services, and C&S is working with Kroger and Albertsons to coordinate messaging to patients about any changes.

RFI #50: Describe any potential impacts of the proposed transaction on the operation of divested pharmacies in Oregon. Please address the following areas:

a. Pharmacy staffing (number/ratio of pharmacists/pharmacy technicians).

C&S intends to employ all current employees of the divested pharmacies to minimize disruption to pharmacy operations and patient care.

b. The selection of prescription drugs available for dispensing, including specialty drugs.

C&S is negotiating with its primary wholesaler, [REDACTED], to ensure that all common prescriptions will be available following the transition. C&S is also seeking to establish a relationship with other wholesalers to fill any gaps in [REDACTED]'s distribution.

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C&S will not acquire any specialty pharmacy assets as part of the transaction [REDACTED].

c. Availability of telehealth services previously offered to Albertsons customers under the agreement with Providence Health.

C&S is not familiar with the Albertsons agreement with Providence Health. Subject to receiving any additional information about Albertsons' current telehealth offering, [REDACTED]. C&S plans to maintain all in-person clinical services currently offered by the divested pharmacies.

d. Availability of any other clinical services provided by pharmacies, including vaccinations, prescribing, or medication therapy management ("MTM").

C&S intends to maintain or expand all current pharmacy operations at the divested stores, including vaccinations, prescribing, and medication therapy management.

e. Availability of other health care products, such as over-the-counter birth control, diabetic supplies, and durable medical equipment.

C&S does not plan to make any changes to the availability of over-the-counter birth control, diabetic supplies, or durable medical equipment at the divested stores. C&S will work with [REDACTED], and its other wholesalers as necessary, to provide these products.

f. Operation of Patient Diagnostic Centers by Quest Diagnostics.

C&S is currently planning to continue the leases with Quest Diagnostics at the divested pharmacies. Quest Diagnostics determines what services it offers to patients at the Patient Diagnostic Centers. Kroger and Albertsons do not control any aspect of Quest Diagnostics business operations, and C&S will not either.

g. Usual and customary ("U&C") prices for prescription drugs.

C&S believes it will be able to maintain usual and customary prices for prescription drugs for its patients. C&S is actively negotiating with PBMs and wholesalers for competitive rates and is exploring other options (e.g., discount cards) to avoid changes to patients' out-of-pocket costs following the close of the transaction.

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h. Hours of operation.

C&S intends to maintain current pharmacy operations, including current hours of operation at the divested stores.

i. Availability of mail-order prescription services.

The divested pharmacies do not provide mail-order pharmacy services, and C&S is [REDACTED]. Many PBMs use their own in-house mail-order services, so those services will remain available to C&S's pharmacy patients.

j. Availability of prescription drug savings or discount programs (for example, GoodRx).

C&S is currently negotiating with prescription drug savings programs and discount card programs to ensure that it can offer competitive prices to patients. C&S's goal during these negotiations is to avoid any disruption for patients, including disruptions caused by a change in out-of-pocket costs.

k. Policies allowing individual pharmacists to decline to serve patients seeking certain medications for any reason. Please consider medications prescribed for birth control; abortion; prophylaxis against or treatment for HIV infection; Medication Assisted Treatment ("MAT") or Medications for Opioid Use Disorder ("MOUD"); or the medical diagnosis "gender dysphoria."

C&S understands that Kroger and Albertsons have policies permitting pharmacists to exercise their discretion or to make conscientious objections in serving patients. These policies are standard in the pharmacy industry, and C&S plans to leave those policies in place.

l. Status of participation in the 340B Drug Pricing Program.

C&S is currently evaluating whether to participate in the 340B program. Based on information received from Kroger and Albertsons, the divested pharmacies currently have only a few dozen 340B patients. At the same time, enrolling in the 340B program would be a time-consuming and expensive process, which would create ongoing compliance burdens for C&S. As a result, C&S believes that participating in the 340B program could increase the execution risks relating to the transaction. C&S does not believe that its decision regarding the 340B program will impact patient access. Patients who receive

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drugs through the 340B program do so through a hospital or clinic, which directs the patient to a pharmacy that can fill their prescriptions.

RFI #51: Describe any potential impacts of the proposed transaction on the operation of retained pharmacies in Oregon. Specify if changes would affect Kroger pharmacies only, Albertsons pharmacies only, or all retained pharmacies. Please address the following areas:

Kroger provides responses to RFI #51 subparts a-l in-line below.

a. Pharmacy staffing (number/ratio of pharmacists/pharmacy technicians).

Kroger does not anticipate any changes in pharmacy staffing at Kroger or Albertsons pharmacies in Oregon as a result of the proposed transaction.

b. The selection of prescription drugs available for dispensing, including specialty drugs.

Kroger does not anticipate any changes in the selection of prescription drugs available at Kroger or Albertsons pharmacies in Oregon as a result of proposed transaction.

c. Availability of telehealth services previously offered to Albertsons customers under the agreement with Providence Health.

Kroger does not anticipate any changes to Albertsons' provision of telehealth services under its agreement with Providence Health as a result of the proposed transaction.

d. Availability of any other clinical services provided by pharmacies, including vaccinations, prescribing, or MTM.

Kroger does not anticipate any reduction in the availability of clinical services provides by Kroger or Albertsons pharmacies in Oregon as a result of the proposed transaction. The scope of services that Kroger and Albertsons pharmacies in Oregon provide may increase post-transaction.

e. Availability of other health care products, such as over-the-counter birth control, diabetic supplies, and durable medical equipment.

Kroger does not anticipate any change in the availability of other health care products at Kroger or Albertsons pharmacies in Oregon as a result of the proposed transaction.

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f. Operation of Patient Diagnostic Centers by Quest Diagnostics.

Kroger does not anticipate any changes to the operation of Patient Diagnostic Centers by Quest as a result of the proposed transaction.

g. U&C prices for prescription drugs.

Kroger does not anticipate any increase in the U&C prices for prescription drugs at Kroger or Albertsons pharmacies in Oregon as a result of the proposed transaction.

h. Hours of operation.

Kroger is aware that there are differences in hours of operations at Kroger and Albertsons pharmacies in Oregon. Kroger has not made any decisions about whether and how the hours at Kroger and Albertsons pharmacies in Oregon will be aligned post-merger.

i. Availability of mail-order prescription services.

Kroger does not anticipate any change in the availability of its mail-order prescription services as a result of the proposed transaction.

j. Availability of prescription drug savings or discount programs (for example, GoodRx).

Kroger is aware that it and Albertsons participate in a different mix of prescription drug savings or discount programs today. In the short term, Kroger has no plans to change the prescription drug savings or discount programs that it participates in as a result of the proposed transaction. Kroger plans to continue to participate in a variety of prescription drug savings or discount programs after the proposed transaction closes. In the long term, Kroger may look to adjust the makeup of programs in which it participates, but at this time, it has not made any decisions related to that potential adjustment.

k. Policies allowing individual pharmacists to decline to serve patients seeking certain medications for any reason. Please consider medications prescribed for birth control; abortion; prophylaxis against or treatment for HIV infection; MAT or MOUD; or the medical diagnosis “gender dysphoria.”

Kroger does not have any plans to change its policies related to allowing individual pharmacists to decline to serve patients certain medications as a result of the proposed transaction. [REDACTED]

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I. Status of participation in the 340B Drug Pricing Program.

Kroger does not intend to reduce the participation of its or Albertsons pharmacies in the 340B drug pricing program. After closing the transaction, Kroger will evaluate whether there is an opportunity for Kroger to expand Albertsons' participation in 340B programs.

RFI #52: The response to item 9b. in the notice states: "Kroger anticipates sourcing efficiencies from the combination with Albertsons that will enable lower sourcing costs for prescription drugs and other health care products, which will help Kroger maintain affordable prescription drug and health care product prices. As a result, Kroger expects that the transaction will improve access to affordable health care products sold in their retail locations in Oregon."

- a. Describe how these sourcing efficiencies will be attained.**
- b. Describe the nature of these efficiencies. For example, which types of products could be impacted and what is the expected magnitude of any wholesale price reductions?**
- c. Explain in detail how sourcing efficiencies will result in lower prescription drug and pharmacy costs for consumers. Explain which consumers will experience lower costs.**
- d. Provide objective metrics, analyses, and projections to support this statement.**

Kroger has not yet finalized any analyses of potential pharmacy-related sourcing efficiencies resulting from the transaction.

RFI #53: Provide a detailed explanation, supported by objective metrics, projections, and analyses regarding how the proposed transaction will benefit the public good and communities and/or improve health outcomes for Oregon residents. In your response, please address how the transaction will achieve any or all of the following:

- a. Reduce the growth in pharmacy/prescription drug costs for consumers.**

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- b. Increase access to pharmacy/prescription drug services in medically underserved areas.**
- c. Rectify historical and contemporary factors contributing to a lack of health equity or access to pharmacy/ prescription drug services.**
- d. Improve health outcomes for Oregon residents.**

As discussed in our call on December 21, 2023 and in our previous submissions, the Proposed Transaction is driven by the benefits of combined Kroger's grocery business with Albertsons' grocery business, not pharmacy-related considerations. Kroger believes strongly in the preventative power of food, as reflected in its Food as Medicine initiative to help people make healthier food choices that lead to better health outcomes. Every day, Kroger's dietitians and healthcare providers counsel patients who suffer from diseases that could be slowed or prevented entirely with some simple changes to the way they eat. By connecting patients with better-for-you foods in the same place they receive expert healthcare, Kroger has an opportunity to change the way America eats. Kroger will expand this kind of care and focus on helping patients make healthier choices after the merger closes, including by investing \$500 million to lower prices starting on day one after closing to expand access to fresh, affordable food for its customers. Kroger's business model is built on lowering prices and providing better value to customers, and it has a long record of lowering prices and improving the customer experience following mergers.

Beyond these benefits, Kroger will invest \$1 billion to continue raising wages and comprehensive wages for associates, while ensuring zero frontline associate layoffs. Since 2018, Kroger has invested \$2.4 billion in improved wages and expanded benefits. These investments will also help improve health outcomes for Oregon residents.

RFI #54: Provide the final definitive agreement(s) for Albertsons' acquisition of Safeway in 2015, including divestiture agreements between Albertsons and Haggen.

The final purchase agreement for Albertsons' acquisition of Safeway is available as an attachment to the 8-K filed by Safeway, Inc. on March 10, 2014 here: <https://www.sec.gov/Archives/edgar/data/86144/000119312514089704/d688462dex21.htm>. Albertsons is providing ACI-ORHCMO-00000088 to -1030, which represent the divestiture agreement between Albertsons and Haggen.

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- a. Please list the Safeway stores that Albertsons acquired in Oregon. In doing so, please state which stores had pharmacies.**

In response to RFI #54(a), Albertsons is providing the data in the “54(a)(c) Acquisitions” tab of the ACI-ORHCMO-00000087. The tab lists each Safeway store acquired by Albertsons in Oregon with its NPI (where applicable) and a flag for whether the store had a pharmacy in the field “Pharmacy Flag.”

- b. Please list the Safeway and Albertsons stores in Oregon that were divested to Haggen. In doing so, please state which stores had pharmacies.**

In response to RFI #54(b), Albertsons is providing data in the “54(b)(c) Divestitures” tab of ACI-ORHCMO-00000087. This tab lists each store divested to Haggen after Albertsons’ acquisition of Safeway. None of these stores had pharmacies at the time of their divestiture to Haggen. This tab also provides the date of the divestiture of the store.

- c. For each store listed in under a. and b., provide the current status of each store and pharmacy (e.g., operating under new owner, operating under Albertson’s ownership, closed, etc.)**

In response to RFI #54(c), Albertsons is providing data in the “54(a)(c) Acquisitions” and “54(b)(c) Divestitures” tabs of ACI-ORHCMO-00000087.

In the “54(a)(c) Acquisitions” tab, the field “Most recent operating status of the acquired store” contains the operating status for each acquired store. If the store is no longer operational, the store closure date is provided in the field “The date the acquired store closed.”

In the “54(b)(c) Divestitures” tab, the field “The current operator of the Supermarket or former Supermarket location” contains the current operator of each store divested to Haggen. The fields “The date the Prior Divestiture Buyer closed or ceased operating the Supermarket, if applicable” and “The date the Prior Divestiture Buyer sold, closed, or transferred the Supermarket (including, as applicable, subleasing the store or returning the store to the landlord), if applicable” contain information relating to the operation dates of each divested store.

- d. Describe how the current divestiture plan differs from the divestiture strategy in the Albertsons-Safeway transaction, if at all.**

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i. Describe how any differences may impact the likelihood of success in maintaining competition and access to pharmacy services.

The parties' proposed divestiture to C&S differs on every dimension from the divestiture to Haggen in Albertsons/Safeway. As we describe below, the Haggen divestiture failed because Haggen lacked the expertise to operate the stores and was too undercapitalized to rebound from its mistakes. These issues were compounded by Haggen's failure to acquire the right assets and people, financial projections based upon unrealistic assumptions, and aggressive financial engineering. A divestiture to C&S raises none of those concerns.

A Sale to C&S Presents None of the Risks that Doomed the Haggen Acquisition

At the end of the day, the primary reason that the Albertsons/Safeway divestiture to Haggen failed is that Haggen lacked the expertise to operate the acquired stores and lacked the financial cushion that would allow it to rebound from its mistakes. This caused Haggen to declare bankruptcy only a few months after the acquisition. *See generally In re HH Liquidation, LLC*, 590 B.R. 211 (Bankr. D. Del. 2018).

As described by the bankruptcy court, Haggen suffered "an immediate meltdown post-closing," caused by a flawed pricing strategy that drove customers away from its stores. *Id.* at 237. Haggen "did not have the . . . talent nor the numbers of people in merchandising to adequately negotiate, make decisions, set up pricing, and manage a large chain," and the "consequences of these decisions and deficiencies were immediate and catastrophic," including a decline in same-store sales of 20-25% within months of acquiring the stores. *Id.* at 238. By July 2015, only months after closing its first store acquisition, Haggen was illiquid (with \$25 million in liquidity but \$44 million in payables) and was in default on its loans, and by September it was in bankruptcy. *Id.* at 239 and 219.

A divestiture to C&S presents none of these concerns. While Haggen was an undercapitalized, PE-funded acquirer (that was in severe financial distress when it was acquired by that distress-focused PE firm just a few years before), C&S is an over 100-year-old \$21 billion privately-held company that operates a successful wholesale business. It is one of the largest privately-owned companies in the U.S. and is well-capitalized. It runs a successful grocery business today with more than 160 franchised and owned locations (versus the 18 stores owned by Haggen before acquiring 146 stores in the divestiture), plus operates the largest wholesale grocery business in the United States, serving more than 7,500 customers with more than 100,000 products. C&S has successfully integrated their Piggly Wiggly acquisition and their Grand Union acquisition in the Tops-Price Chopper divestiture, meeting their financial projections.

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C&S plainly has the pricing and other expertise that Haggen lacked, both in-house and from personnel that will go with the divestiture. Mark McGowan, the leader of C&S's retail business previously served as CEO of Stop & Shop, a 416-store chain, and before that was responsible for merchandising and supply chain for Ahold Delhaize's 2,000 stores. McGowan is joined by an experienced executive team, and C&S will hire several hundred subject matter experts from Kroger and Albertsons, including between [REDACTED] merchandising, pricing, and promotion subject matter experts. C&S today not only runs pricing for its Piggly Wiggly and Grand Union retail groceries, but also provides retail pricing solutions to its wholesale customers. This is a far cry from Haggen, which had to outsource critical pricing decisions to a third-party advisor.

C&S is not engaging – and has no reason to engage – in any of the aggressive financial engineering that exacerbated Haggen's operational failures and led to its insolvency. Haggen's owners engaged in a series of sale-leaseback transactions that increased rental costs for many of the acquired stores by imposing above-market rates. *Id.* at 235. At the same time, Haggen's private equity owners made no real equity investment in the company, capitalizing the business based on overly-optimistic projected growth rather than historical sales.

C&S, Unlike Haggen, Is Acquiring the Right Assets

Haggen acquired only stores, no distribution centers and none of the brands under which the acquired stores operated, relying instead on the Haggen brand that was only known in a few local areas in the Pacific Northwest.

In contrast, as we described above, C&S is acquiring all of the assets they told Kroger and Albertsons they need, and all of the assets they need to compete successfully. While C&S already has an extensive distribution network as a result of their wholesale business, as part of the divestiture they will acquire significant distribution center capacity from Albertsons as well as corporate and office infrastructure. These assets ensure C&S will be able to service the stores it acquires from nearby distribution centers and have division offices with key personnel close to the stores it is acquiring.

In addition to hiring all store leadership and employees, C&S is hiring [REDACTED]

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[REDACTED] This ensures C&S has a complete team from each of Kroger and Albertsons familiar with the operations, systems, and stores to ensure C&S has the knowledge and information to compete effectively.

Significantly, in order to pre-emptively maintain the critical customer continuity that Haggen clearly failed to achieve, C&S is acquiring the Carrs, QFC, Haggen, and Mariano's banners, is getting an exclusive license to the Albertsons banner in two states and the Safeway banner in two states, and will re-banner under its own well-known Piggly Wiggly banner in geographies where that brand is already strong. C&S is also acquiring e-commerce capabilities and private label brands (to supplement the private label brands that C&S already owns), among other assets.

The acquired assets will be buttressed with a comprehensive TSA that provides IT support, e-commerce services, pharmacy, leased property administration, and finance and accounting support, as well as services to ensure a successful transfer of supplier and other relationships.

C&S, Unlike Haggen, Has a Well-Considered Plan

Haggen originally wanted to acquire 22 stores in Washington and Oregon, but over the course of three months, its divestiture acquisition became a 146-store deal spread over five states, with most stores located in three states (California, Arizona, and Nevada) where it had no prior market presence and where customers had no recognition of or loyalty to the Haggen banner to which all acquired stores were quickly converted after closing. (Here in contrast, C&S will have [REDACTED] to re-banner acquired stores.) The entire Haggen transaction was negotiated in less than four months. 590 B.R. at 251-52. And Haggen was rushed, it "had just several months to develop conversion plans, hire hundreds of workers and managers, and create the 'infrastructure' necessary to run a business of this magnitude." *Id.* at 252. C&S in contrast comes to the divestiture with far more acquisition and integration experience and has spent far more time conducting intensive due diligence and working with its consultants and advisors to develop a realistic plan for the business.

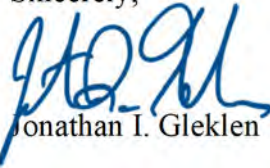
* * *

This response and all of the exhibits and documents identified in this response contain confidential business and financial information that qualifies as trade secrets. I am

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enclosing a confidentiality log that describes the confidential information in this submission per ORS 415.501 and ORS 192.345(2).

Sincerely,



Jonathan I. Gleklen

Enclosures