

CAREMARK RX INC
Form DFAN14A
March 15, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
SCHEDULE 14A
PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Materials Pursuant to Section 240.14a-12

**CAREMARK RX, INC.
(Name of Registrant as Specified in its Charter)**

EXPRESS SCRIPTS, INC.

KEW CORP.

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

1) Title of each class of securities to which the transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

Fee paid previously with preliminary materials

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- 1) Amount Previously Paid:

 - 2) Form, Schedule or Registration Statement No.:

 - 3) Filing Party:

 - 4) Date Filed:
-

EXHIBIT INDEX

Exhibit No

99.1 Express Scripts Press Release, dated March 15, 2007

FOR IMMEDIATE RELEASE

Investor Contacts:
Edward Stiften, Chief Financial Officer
David Myers, Vice President, Investor Relations
(314) 702-7173

Media Contacts:
Steve Littlejohn, VP, Public Affairs
(314) 702-7556

Laurie Connell
MacKenzie Partners, Inc.
(212) 929-5500

Joele Frank / Jamie Moser
Joele Frank, Wilkinson Brimmer Katcher
(212) 355-4449

**EXPRESS SCRIPTS REITERATES COMMITMENT TO RAISING OFFER
IF ADDITIONAL SYNERGIES IDENTIFIED**

*Advisory Services, Analysts, Stockholders Support Express Scripts Position
Company Urges Caremark Stockholders to Vote GOLD Proxy Card AGAINST
The Flawed Caremark Merger Process*

St. Louis, March 15, 2007 Express Scripts, Inc. (Nasdaq: ESRX) today issued the following statement of commitment to an acquisition of Caremark Rx, Inc. (NYSE: CMX):

Express Scripts is firmly committed to increasing the cash portion of our offer if we identify additional synergies during confirmatory due diligence in excess of \$500 million. Caremark's closed door has prevented us from learning anything more about the company that would permit Express Scripts to increase its offer absent due diligence. We could not, in good conscience, increase our bid based on unknown, incremental synergies. However, we're absolutely committed to increasing our offer if we are able to identify more than \$500 million in synergies through confirmatory due diligence.

Caremark's flawed process of shutting Express Scripts out of conducting confirmatory due diligence has left money on the table. By refusing to talk to Express Scripts, the Caremark Board of Directors continues to waste opportunities to obtain the highest value for Caremark stockholders.

The upside potential in an Express Scripts-Caremark combination is too compelling to ignore. The Express Scripts currency is stronger and more valuable to Caremark stockholders than a weaker CVS currency. Express Scripts is poised for accelerated growth and Caremark stockholders have the opportunity to share in that upside.

On the other hand, history shows that the vertical CVS/Caremark combination will destroy value. Clients pay PBMs for the savings they are able to obtain from their management of the pharmaceutical supply chain to drive down costs and make them more competitive. Retail is part of that chain, making vertical transactions illogical and value destructive.

Express Scripts is very encouraged by the growing number of voices arrayed against approval of Caremark's acquisition by CVS. These include the labor movement's Change to Win coalition, as well as the investor advisory services Glass Lewis, Proxy Governance, and Egan-Jones. Respected analysts such as Jefferies & Co. have observed that the loser could actually be the current Caremark shareholder base * if the CVS acquisition of Caremark is approved. In addition, yesterday, one of the nation's most sophisticated institutional investors, CalPERS, announced via its website that it is voting against the acquisition on both the CVS and Caremark proxies.

There is a real opportunity to create more value for Caremark stockholders with Express Scripts. It's now time to vote AGAINST a flawed process; a speculative, unproven vertical transaction; and less than maximum value. You must vote AGAINST the CVS merger proposal in order to benefit from a competitive bidding process.

Vote the GOLD proxy card TODAY AGAINST the proposed CVS merger.

Skadden, Arps, Slate, Meagher & Flom LLP, Arnold & Porter LLP, and Young Conaway Stargatt & Taylor, LLP are acting as legal counsel to Express Scripts, and Citigroup Corporate and Investment Banking and Credit Suisse are acting as financial advisors. MacKenzie Partners, Inc. is acting as proxy advisor to Express Scripts.

*Permission to use quotation neither sought nor obtained.

Safe Harbor Statement

This press release contains forward-looking statements, including, but not limited to, statements related to the Company's plans, objectives, expectations (financial and otherwise) or intentions. Actual results may differ significantly from those projected or suggested in any forward-looking statements. Factors that may impact these forward-looking statements include but are not limited to:

- uncertainties associated with our acquisitions, which include integration risks and costs, uncertainties associated with client retention and repricing of client contracts, and uncertainties associated with the operations of acquired businesses

- costs and uncertainties of adverse results in litigation, including a number of pending class action cases that challenge certain of our business practices

- investigations of certain PBM practices and pharmaceutical pricing, marketing and distribution practices currently being conducted by the U.S. Attorney offices in Philadelphia and Boston, and by other regulatory agencies including the Department of Labor, and various state attorneys general

- changes in average wholesale prices (AWP), which could reduce prices and margins, including the impact of a proposed settlement in a class action case involving First DataBank, an AWP reporting service

- uncertainties regarding the implementation of the Medicare Part D prescription drug benefit, including the financial impact to us to the extent that we participate in the program on a risk-bearing basis, uncertainties of client or member losses to other providers under Medicare Part D, and increased regulatory risk

- uncertainties associated with U.S. Centers for Medicare & Medicaid's (CMS) implementation of the Medicare Part B Competitive Acquisition Program (CAP), including the potential loss of clients/revenues to providers choosing to participate in the CAP

- our ability to maintain growth rates, or to control operating or capital costs

continued pressure on margins resulting from client demands for lower prices, enhanced service offerings and/or higher service levels, and the possible termination of, or unfavorable modification to, contracts with key clients or providers

competition in the PBM and specialty pharmacy industries, and our ability to consummate contract negotiations with prospective clients, as well as competition from new competitors offering services that may in whole or in part replace services that we now provide to our customers

results in regulatory matters, the adoption of new legislation or regulations (including increased costs associated with compliance with new laws and regulations), more aggressive enforcement of existing legislation or regulations, or a change in the interpretation of existing legislation or regulations

increased compliance relating to our contracts with the DoD TRICARE Management Activity and various state governments and agencies

the possible loss, or adverse modification of the terms, of relationships with pharmaceutical manufacturers, or changes in pricing, discount or other practices of pharmaceutical manufacturers or interruption of the supply of any pharmaceutical products

the possible loss, or adverse modification of the terms, of contracts with pharmacies in our retail pharmacy network

the use and protection of the intellectual property we use in our business

our leverage and debt service obligations, including the effect of certain covenants in our borrowing agreements

our ability to continue to develop new products, services and delivery channels

general developments in the health care industry, including the impact of increases in health care costs, changes in drug utilization and cost patterns and introductions of new drugs

increase in credit risk relative to our clients due to adverse economic trends

our ability to attract and retain qualified personnel

other risks described from time to time in our filings with the SEC

Risks and uncertainties relating to the proposed transaction that may impact forward-looking statements include but are not limited to:

Express Scripts and Caremark may not enter into any definitive agreement with respect to the proposed transaction

required regulatory approvals may not be obtained in a timely manner, if at all

the proposed transaction may not be consummated

the anticipated benefits of the proposed transaction may not be realized

the integration of Caremark's operations with Express Scripts may be materially delayed or may be more costly or difficult than expected

the proposed transaction would materially increase leverage and debt service obligations, including the effect of certain covenants in any new borrowing agreements.

We do not undertake any obligation to release publicly any revisions to such forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Important Information

Express Scripts has filed a proxy statement and proxy supplement in connection with Caremark's special meeting of stockholders at which the Caremark stockholders will consider the CVS Merger Agreement and matters in connection therewith. Express Scripts stockholders are strongly advised to read that proxy statement and proxy supplement and the accompanying form of GOLD proxy card, as they contain important information. Express Scripts has also filed a preliminary proxy statement in connection with a

special meeting of Express Scripts stockholders to approve the issuance of additional shares of Express Scripts common stock to be used in the potential acquisition of Caremark and intends to file a proxy statement in connection with Caremark's annual meeting of stockholders at which the Caremark stockholders will vote on the election of directors to the board of directors of Caremark. Express Scripts stockholders are strongly advised to read these proxy statements and the accompanying proxy cards when they become available, as each will contain important information. Stockholders may obtain each proxy statement, proxy card and any amendments or supplements thereto which are or will be filed with the Securities and Exchange Commission (SEC) free of charge at the SEC's website (www.sec.gov) or by directing a request to MacKenzie Partners, Inc., at 800-322-2885 or by email at expressscripts@mackenziepartners.com.

In addition, this material is not a substitute for the prospectus/offer to exchange and registration statement that Express Scripts has filed with the SEC regarding its exchange offer for all of the outstanding shares of common stock of Caremark. Investors and security holders are urged to read these documents, all other applicable documents, and any amendments or supplements thereto when they become available, because each contains or will contain important information. Such documents are or will be available free of charge at the SEC's website (www.sec.gov) or by directing a request to MacKenzie Partners, Inc., at 800-322-2885 or by email at expressscripts@mackenziepartners.com.

Express Scripts and its directors, executive officers and other employees may be deemed to be participants in any solicitation of Express Scripts or Caremark shareholders in connection with the proposed transaction. Information about Express Scripts' directors and executive officers is available in Express Scripts' proxy statement, dated April 18, 2006, filed in connection with its 2006 annual meeting of stockholders. Additional information about the interests of potential participants is included in the proxy statement filed in connection with Caremark's special meeting to approve the proposed merger with CVS and will be included in any proxy statement regarding the proposed transaction. We have also filed additional information regarding our solicitation of stockholders with respect to Caremark's annual meeting on a Schedule 14A pursuant to Rule 14a-12 on January 9, 2007.

About Express Scripts

Express Scripts, Inc. is one of the largest PBM companies in North America, providing PBM services to over 50 million members. Express Scripts serves thousands of client groups, including managed-care organizations, insurance carriers, employers, third-party administrators, public sector, and union-sponsored benefit plans. Express Scripts provides integrated PBM services, including network-pharmacy claims processing, home delivery services, benefit-design consultation, drug-utilization review, formulary management, disease management, and medical- and drug-data analysis services. The Company also distributes a full range of injectable and infusion biopharmaceutical products directly to patients or their physicians, and provides extensive cost-management and patient-care services.

Express Scripts is headquartered in St. Louis, Missouri. More information can be found at www.express-scripts.com, which includes expanded investor information and resources.

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