

CAREMARK RX INC
Form DFAN14A
February 02, 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

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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, Inc. press release, dated February 2, 2007.
 - 99.2 Express Scripts Investor Presentation, dated February 2007.
 - 99.3 Express Scripts e-mail to employees, dated February 2007.
-

FOR IMMEDIATE RELEASE

Investor Contacts:

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

Media Contacts:

Steve Littlejohn, Vice President, Public Affairs
(314) 702-7556

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

Joele Frank / Steve Frankel
Joele Frank, Wilkinson Brimmer Katcher
(212) 355-4449

**Express Scripts Urges Caremark Stockholders to Reject Value
Destruction of Proposed Acquisition by CVS**

St. Louis, February 2, 2007 In an advertisement published today in *The Wall Street Journal*, Express Scripts, Inc. (Nasdaq: ESRX) urged Caremark Rx, Inc. (NYSE: CMX) stockholders to consider the enhanced value that an Express Scripts/Caremark combination offers to stockholders, plan sponsors and patients. By contrast, the proposed acquisition of Caremark by CVS Corporation (NYSE: CVS) is strategically and financially flawed.

The text of the advertisement follows:

ATTENTION CAREMARK RX INC. STOCKHOLDERS

An Express Scripts/Caremark combination delivers enhanced value to stockholders, plan sponsors and patients. By contrast, the proposed acquisition of Caremark by CVS is strategically and financially flawed.

EXPRESS SCRIPTS OFFER PROVIDES SUPERIOR AND MORE CERTAIN VALUE

§ The CVS deal is at virtually no premium with only a recently added \$2.00 dividend, of which Caremark stockholders are financing 45.5%, for a total of \$1.09 per share

§ Better currency: Express Scripts has outperformed CVS over the past 10 years: 1,531% versus 315%. Which company's stock would you prefer to own?

§ More cash: Express Scripts is offering \$29.25 per share in cash versus \$2.00 in the CVS deal

MAKE NO MISTAKE EXPRESS SCRIPTS BOTTOM LINE IS PROOF POSITIVE OF ITS ABILITY TO INNOVATE AND EXECUTE

§ Express Scripts has delivered outstanding growth through innovation and execution generating a return to stockholders in excess of 8,500% over the past 15 years

§ Our fundamental business model is hitting on all profit generating cylinders: greater use of generics, home delivery, and specialty pharmacy

§ By marshalling the best and brightest minds in pharmacy benefits management, our proposed value-enhancing horizontal merger with Caremark will fuel further innovation and execution to meet growing, shifting client and patient needs

CAREMARK S CLIENT RETENTION BOGEYMAN

§ Each time Express Scripts has made an acquisition, the result has been an increase in the number of customers beyond what both companies had previously

§ About one-third of business in our industry comes up for renewal or is at risk every year, completely unrelated to any acquisition activity

§ Over the past three years, Express Scripts has taken more than two times as many clients from Caremark than vice versa demonstrating the attractiveness of Express Scripts to Caremark s book of business

VERTICAL PBM INTEGRATIONS DESTROY SHAREHOLDER VALUE

§ Historically, vertical integrations involving a PBM have resulted in value destruction, on average, of 36%

§ Here s what experts are saying:

The news [of Express Scripts offer] is consistent with our critical view of the CMX/CVS deal, and we think such a valuation premium is appropriate given a more logical horizontal combination that will eliminate the conflicts of interests inherent in a vertical transaction...CMX s board will be hard pressed to credibly thwart such an offer. *

(Robert M. Willoughby, Bank of America, 12.18.06) ...we believe it is important to recognize the historical issues associated with vertical integration in this sector could unfavorably impact P/E multiple of CVS/CMX entity. *

(Robert Summers, Bear Stearns, 01.17.07)

§ Don t bet on a risky, unproven plan that is at odds with what history teaches

EXPRESS SCRIPTS IS COMMITTED TO ITS OFFER FOR CAREMARK

We have:

§ Executed a commitment letter providing all required financing

§ Commenced an exchange offer bringing the offer directly to Caremark stockholders

§ Nominated a slate of four directors for election to Caremark s board at its 2007 annual meeting

§ Requested repeatedly that Caremark meet with us and allow us to conduct confirmatory due diligence

§ Determined to refile notification under the Hart-Scott- Rodino Antitrust Improvements Act, seeking to clear the transaction without the need for a second request

SEND A MESSAGE TO THE CAREMARK BOARD:

That You Will Not Settle for Inferior Value and an Uncertain Future

That it Must Engage in a Discussion with Express Scripts About Our Clearly Superior Offer

VOTE YOUR GOLD PROXY CARD AGAINST THE CVS TRANSACTION NOW

If you have any questions or need assistance in voting the **GOLD** proxy card **AGAINST** the proposed Caremark/CVS merger, please contact our proxy advisor MacKenzie Partners at the numbers below.

Remember, even if you have already voted Caremark's white proxy, you have every right to change your vote by executing the **GOLD** proxy card since only your latest dated proxy card will be counted at the special meeting.

MacKenzie Partners, Inc.

105 Madison Avenue

New York, New York 10016

(212) 929-5500 (Call Collect)

or

Call Toll-Free (800) 322-2885

Email: expresscripts@mackenziepartners.com

* Permission to use quotation was 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 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 the accompanying form of GOLD proxy card, as they contain important information. Express Scripts also 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 this proxy statement and the accompanying proxy card 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.

###











This message is being sent to all Annual Bonus Plan participants.

At the Jan. 18 Management Briefing, George Paz encouraged you to submit questions about our proposed acquisition of Caremark. This update includes answers to some of the questions we've received. Please watch for future updates with answers to more of your questions.

This information is for internal use only. If you have questions about our proposed acquisition of Caremark, please send them to Corporate Communications.

Q: We are re-filing our notification under the Hart-Scott-Rodino Antitrust Improvement Act. Why are we doing this?

A: This is not an unusual step in matters like our proposed acquisition of Caremark. The re-filing gives the Federal Trade Commission (FTC) an additional 30 days to review our proposed acquisition before deciding whether to issue a second request for more information. We will use the next 30 days to continue the process with the FTC, seeking to clear the transaction.

Q: Caremark has repeatedly alleged that our proposed acquisition would result in a loss of clients. What are the facts?

A: We disagree with Caremark's allegations:

1. Each time we've made an acquisition, the result has been an increase in the number of customers beyond what both companies had previously.
2. About one-third of the business in our industry comes up for renewal or is at risk every year. This is completely unrelated to any acquisition activity.
3. During the past three years, we have taken more than two times as many clients from Caremark than it has taken from Express Scripts. This demonstrates the attractiveness of Express Scripts to Caremark's book of business.

Q: Caremark has run several ads, encouraging its shareholders to vote in favor of the merger with CVS. Why so many ads, and what are we doing to encourage Caremark shareholders to vote against the merger with CVS?

A: In matters like this, it is common for companies to communicate with shareholders through several channels, including news releases, letters, conference calls, investor meetings and ads. We are using the same channels, and our first ad ran in today's *Wall Street Journal*.

Q: When will shareholders vote on the proposed Caremark/CVS merger?

A: Caremark shareholders will vote on Feb. 20, and CVS shareholders will vote on Feb. 23. We are soliciting proxies from Caremark shareholders and are actively urging Caremark shareholders to vote against the proposed merger.

For the latest information about our proposed acquisition of Caremark, visit [ESInet](#).

IMPORTANT INFORMATION

Express Scripts has filed a proxy statement 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 the accompanying form of GOLD proxy card, as they contain important information. Express Scripts also 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 this proxy statement and the accompanying proxy card 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.

© 2007 Express Scripts, Inc. All Rights Reserved. 07-05012