

CAREMARK RX INC  
Form DFAN14A  
March 13, 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.

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

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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:

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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 13, 2007
  - 99.2 Express Scripts Press Release, dated March 13, 2007
  - 99.3 Express Scripts Advertisement published in the Wall Street Journal on March 13, 2007
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**FOR IMMEDIATE RELEASE**

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**EXPRESS SCRIPTS COMMENTS ON ISS RECOMMENDATION**

**St. Louis, March 13, 2007** Express Scripts, Inc. (Nasdaq: ESRX) today issued the following statement in response to the recommendation issued by Institutional Shareholder Services (ISS) regarding the proposed acquisition of Caremark Rx, Inc., (NYSE: CMX) by CVS Corporation (NYSE: CVS) at Caremark's special meeting of stockholders on March 16, 2007:

It is unfortunate that ISS has chosen not to support a disciplined and stockholder centric approach to this transaction. The best scenario for Caremark stockholders is a bidding process with all parties at the table with equal information. Without that, it is unrealistic and short sighted to believe that stockholders have the opportunity to maximize value. Our strategy is dictated by creating the best long term value for Express Scripts and Caremark stockholders.

We urge Caremark stockholders to vote AGAINST the inferior, value-destructive CVS merger. Caremark has better options than the CVS transaction, which is the product of a fundamentally flawed process. The CVS merger trades a higher-growth Caremark stock for a lower-growth CVS stock. Caremark stockholders will receive a full and fair price only through an open and fair process, which thus far the Caremark Board of Directors has refused to pursue.

Express Scripts offers more value than CVS and the certainty of cash. If we identify additional value through confirmatory due diligence, we could increase our offer price. We believe that we can obtain antitrust approval and close no later than the third quarter. If Caremark runs an open and fair process, Express Scripts will be at the table.

Caremark stockholders must vote AGAINST the CVS merger proposal in order to receive more from Express Scripts or anyone else. Vote the GOLD proxy card AGAINST a flawed merger process to enhance the value of your investment.

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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.

**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](http://www.express-scripts.com), which includes expanded investor information and resources.

**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

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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 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](http://www.sec.gov)) or by directing a request to MacKenzie Partners, Inc., at 800-322-2885 or by email at [expressscripts@mackenziepartners.com](mailto: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](http://www.sec.gov)) or by directing a request to MacKenzie Partners, Inc., at 800-322-2885 or by email at [expressscripts@mackenziepartners.com](mailto: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.

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**PROXY GOVERNANCE RECOMMENDS CAREMARK STOCKHOLDERS VOTE AGAINST  
ACQUISITION BY CVS**

**St. Louis, March 13, 2007** Express Scripts, Inc. (Nasdaq: ESRX) today announced that PROXY Governance, Inc., a leading independent voting advisory service, recommends that its clients vote AGAINST the proposed acquisition of Caremark Rx, Inc., (NYSE: CMX) by CVS Corporation (NYSE: CVS) at Caremark's special meeting of stockholders on March 16, 2007.

In its report, PROXY Governance noted:

We question whether Caremark's management and board negotiated the best deal for shareholders. The merger agreement contains onerous deal protection measures and the process appears to have been aimed at discouraging other bidders rather than eliciting the best price for shareholders. Moreover, the CVS offer includes no collar to protect shareholders if the price of CVS's stock declines precipitously. Typically, we would expect an in-depth solicitation process (not just talks with one company), serious negotiations for enhanced terms, fewer protective measures, and cooperation with other interested parties.\*

Some institutional shareholders have filed suit alleging that stock options for senior management and directors have been backdated and that the merger is a way for the Company's directors and executives to avoid associated litigation. Although Caremark denies any backdating took place, the deal contains indemnification provisions for directors and management related to backdating.\*

We believe there is compelling evidence that the negotiation process for this deal was flawed. Typically, we would expect more extensive negotiations for a better price prior to the merger announcement.\*

We have concerns over the board's objectivity and willingness to consider all possible combinations that could deliver enhanced value for shareholders. The flawed process, along with certain onerous provisions in the merger agreement that appear designed to shut out competing offers, leave us with doubts that this transaction is in the best financial interests of shareholders.\*

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Overall, we feel that the whole process was rushed and we are not comfortable that Caremark shareholders are getting the best possible transaction from the standpoint of long-term shareholder value. \*

George Paz, president, chief executive officer and chairman of Express Scripts, stated, We are pleased PROXY Governance, Inc. has recommended that Caremark stockholders vote AGAINST the acquisition of Caremark by CVS. They recognize that the process run by Caremark's Board of Directors was flawed and that potential value has been left on the table.

Caremark stockholders must vote AGAINST the CVS merger proposal in order to receive more from Express Scripts or anyone else. Vote the GOLD proxy card AGAINST a flawed merger process to enhance the value of your investment.

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 quotes neither sought nor obtained

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