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April 14, 2011

# Pressure Grows to Unwind CVS Merger

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**CVS Caremark** is coming under increasing pressure from consumer groups and shareholders to split up, at the same time that federal and state regulators are looking into accusations of anticompetitive behavior by the merged company.

The four-year-old merger of the drugstore chain and the pharmacy benefit manager is the subject of an investigation by the Federal Trade Commission and a multistate inquiry by the attorneys general of 24 states, [according to earlier disclosures](#) by **CVS Caremark**.

The company says it is “cooperating fully” with the inquiries. “We remain confident that our business practices and service offerings are being conducted in compliance with antitrust laws,” said Carolyn Castel, a company spokeswoman.

But on Thursday, [five consumer groups wrote a letter](#) to Jon Leibowitz, the commission’s chairman, claiming “there is strong evidence that the CVS Caremark merger has harmed consumers.”

The groups, which called for breaking up the \$27 billion merger, also accused the company of using confidential patient information from Caremark, which manages prescription benefits for health plans, to steer consumers to CVS pharmacies.

The company's practices effectively gave CVS an unfair advantage over other pharmacies, reducing competition and limiting consumer choice, according to the letter, which was signed by [Community Catalyst](#), [Consumer Federation of America](#), [Consumers Union](#), [the National Legislative Association on Prescription Drug Prices](#) and [U.S. PIRG](#).

CVS Caremark denied accusations that it had engaged in improper business practices, saying the charges were "false, unfounded and misleading." It defended its privacy protections, saying it maintained a firewall to ensure that Caremark and CVS did not share "certain competitively sensitive information," Ms. Castel said in an e-mail. The company did not improperly steer patients to CVS pharmacies, she said. She also said "there are no plans to split up the company."

A spokeswoman for the F.T.C., Cecelia Prewett, confirmed that the commission had received the letter, but said it could not comment on an open investigation.

For the last several years, some consumer groups as well as independent pharmacists, who have argued that they are now at a competitive disadvantage, have been calling for regulators to review the merger. Some investors have also been frustrated by the lack of financial results from the merger, and some industry analysts are saying the company would be valued more by investors as two distinct businesses. [CVS Caremark had revenue of \\$96.41 billion](#) in 2010, down from \$98.73 billion in 2009.

At the time of the merger, executives emphasized that the combined firm would prove itself to be more attractive to investors as well as health plans and consumers.

"The real synergy here is the top line synergy, the revenue synergy," said [Thomas M. Ryan](#), then chief executive of CVS, when the merger was announced. "That's how we're going to win this game."

Although CVS Caremark asserts that the merger has allowed it to better serve health plans and consumers, some analysts say the pharmacy benefit management operations of Caremark have struggled to persuade customers of its additional value. The company lost nearly \$5 billion in contracts with employers and health plans for 2010.

In fact, some critics of the merger say executives are running the combined company to benefit the retail operations of CVS through programs like maintenance choice, a prescription drug benefit plan that offers savings to health plans by limiting where customers can fill **prescriptions** to CVS stores or Caremark's mail-order operations.

"One question is whether they are just robbing Peter to pay Paul," said B. Kemp Dolliver, an analyst with Avondale Partners.

CVS says maintenance choice is valued by its customers because it offers a retail choice beyond programs that mandate prescription delivery by mail.

Given the lackluster performance of the stock, which has treaded water since the merger and closed Thursday at \$35.61, some investors have grown restless and are pushing management to reconsider the merger.

"The pressure is currently rising on them," said Jeffrey Jonas, who follows CVS Caremark for the Gabelli **mutual funds**, one of the company's investors.

In late March, **Citigroup** analysts issued a report that concluded the company would be worth more as separate entities. The Citigroup analysts said any breakup would probably not occur before 2012 because of the tax advantages of waiting until the merger was at least five years old.

"They now have roughly one year to make their case," said Adam J. Fein, who runs Pembroke Consulting, a Philadelphia firm that follows the industry. He predicted that without a clear sign that customers were beginning to be persuaded that the combination delivered better results, "the clamor to separate the business will be deafening."

At the same time, CVS Caremark has been accused by consumer advocates of not fulfilling promises made at the time of the merger; executives said then they would erect a firewall between the CVS and Caremark businesses and would be agnostic about where consumers filled their prescriptions.

In their letter, the consumer groups charged the merged company had engaged in unfair practices that favored company-owned pharmacies, including sharing information Caremark obtained in processing prescriptions to help solicit non-CVS customers to fill their prescriptions at CVS drugstores.

The situation is one in which a pharmacy benefit manager, which manages prescription benefits, is “using the information to steer people to their own pharmacies,” said [Sharon Anglin Treat](#), a Democratic legislator in the Maine House of Representatives, who is the executive director of the National Legislative Association on Prescription Drug Prices, a consumer group that signed the letter. “It really does appear that CVS has been unable to avoid a very significant conflict of interest.”

Mark N. Cooper, the director for research at the Consumer Federation of America, one of the groups that signed the letter, said that it was important for the F.T.C. to review the original grounds — including efficiencies, cost savings and consumer benefit — for the merger and determine whether the union had been justified. “The merger was a mistake,” he said.

CVS Caremark says the merger is helping its customers by reducing costs and improving health outcomes. “The innovative products we have introduced into the marketplace since the merger are gaining traction,” Ms. Castel said, and will “enhance shareholder value.”

The company also said it “places a high priority on protecting the privacy of its customers and plan members.” Ms. Castel said CVS Caremark used patient data internally for “appropriate purposes,” like identifying potentially adverse drug reactions.

In addition, some investors say the sharing of patient information is central to any claims by CVS Caremark that the combination of the drugstore chain and pharmacy benefit manager can better serve patients by coordinating information and reducing costs. “What some people are calling antitrust is in the customers’ favor,” Mr. Jonas said.



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