

UNITED STATES OF

CVS CAREMARK CORPORATION,  
a corporation,

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**FILE NO: 112 3210**

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of CVS Caremark Corporation (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between CVS Caremark Corporation, by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent CVS Caremark Corporation is a Delaware corporation with its principal office or place

thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's addresses as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" or "CVSC" means CVS Caremark Corporation, a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Medicare Part D prescription drug" means a covered Part D drug, as defined in 42 U.S.C. § 1395w-102(e), that can only be obtained by means of a physician's or other authorized health practitioner's prescription and that is dispensed under a Medicare Part D prescription drug plan, as defined below.

3. “Medicare Part D prescription drug plan” means Medicare Part D prescription drug coverage that is offered pursuant to a contract between the Centers for Medicare and Medicaid Services (CMS) and Respondent.
4. “Medicare Part D” means “qualified prescription drug coverage” administered by the United States federal government pursuant to the Medicare Prescription Drug Improvement and Modernization Act (“MMA”), 42 U.S.C. § 1395w *et seq.*
5. “Medicare Part D coverage gap” means the gap that occurs after a Medicare Part D beneficiary passes the initial coverage limit at which point the prescription drug plan does not cover any cost of prescription drugs until the beneficiary’s out of pocket costs reach a statutory threshold, pursuant to the MMA, 42 U.S.C. § 1395w-102(b). The gap is often referred to as the “donut hole.”
6. “Plan Finder” means CMS’ online tool (available at [www.medicare.gov/find-a-plan](http://www.medicare.gov/find-a-plan)) used by beneficiaries to compare and select from among available Medicare Part D prescription drug plans in their area.
7. “Beneficiary” means any Part D eligible individual as defined in 42 U.S.C. § 1395w-151(a)(4).
8. “Enrollee” means any beneficiary enrolled in the RxAmerica prescription drug plans who was not eligible for a full low-income subsidy as set forth in 42 U.S.C. § 1395w-114(a)(1).
9. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
10. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively respectively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

I.

**IT IS ORDERED** that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, in connection with the marketing, advertising, promotion, distribution, offer for sale, sale or administration of Medicare Part D prescription drugs and Medicare Part D prescription drug plans, in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, the price or cost of Medicare Part D prescription drugs or other prices or costs associated with Medicare Part D prescription drug plans.



F. In accordance with 31 U.S.C § 7701, Respondent is hereby required, unless it has done so already require

- B. In compiling the information required by Section IIIA, Respondent shall conduct a diligent search of records in its possession, custody, or control, including but not limited to computer files, sales records, invoices, complaints and correspondence. Respondent shall produce the list in an encrypted and secure fashion as directed by the Commission. Along with the list, Respondent shall specify the version of the software program used to create the list and Respondent must declare under penalty of perjury to its best knowledge, information and belief, that the list is true, accurate, and complete. If Commission counsel requests further related information in writing, Respondent shall provide it within fourteen (14) days from the date of the request.

IV.

**IT IS FURTHER ORDERED** that Respondent shall, for five (5



VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. any Section in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Section.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to Respondent will terminate according to this Section as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CVS CAREMARK CORPORATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CVS Caremark Corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
BRUCE SOKLER  
ROBERT KIDWELL  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, N.W., Suite 900  
Washington, D.C. 20004  
Counsel for Respondent



Dated: \_\_\_\_\_

By: \_\_\_\_\_

SETH SILBER  
Wilson Sonsini Goodrich & Rosati  
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Washington, DC 20006  
Counsel for Respondent

Dated: \_\_\_\_\_

By: \_\_\_\_\_

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Counsel for the Federal Trade Commission

APPROVED:

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