



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 18, 2009

Mr. John R. Butcher
Commonwealth of Virginia

Re: In the Matter of CVS Caremark Corporation, File No. 072-3119, Docket No. C-4259

Dear Mr. Butcher:

Thank you for your letter commenting on the Federal Trade Commission's consent agreement in the above-entitled proceeding. Your letter was placed on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and was given serious consideration by the Commission. The Commission's responses follow.

Several of your comments concern assessments required by the order. In particular, you ask the Commission to: require security professionals to decide whether CVS Caremark Corporation's ("CVS Caremark") security measures are reasonable, based on concepts (*e.g.*, confidentiality, integrity, and availability) generally used in the information security profession; ensure that assessors are independent by requiring an independent third party to select and pay the assessor, with CVS Caremark to reimburse the cost; and require CVS Caremark to produce its initial assessment on the date when the order becomes final.

The Commission shares your view about the importance of using information security professionals to perform the required assessments and that such professionals rely on principles generally used in the profession. Accordingly, the order requires that assessments be conducted by independent, objective, third-party professionals using standards and procedures generally accepted in the profession. Further, consistent with generally accepted information security standards, CVS Caremark's program must be reasonably designed to protect the security, confidentiality, and integrity of personal information, and the assessor must certify that the program is operating with sufficient effectiveness to provide reasonable assurance that such standards are met.

The Commission also believes that the order provides it with appropriate means to evaluate the qualifications, independence, and objectivity of assessors and the credibility of their assessments. The Commission may review CVS Caremark's compliance with the order at any time by requesting and examining any plans, audits, policies, and other materials related to compliance. If an assessor fails to meet the requirement of independence and objectivity, CVS Caremark could be in violation of the order and subject to civil monetary penalties of up to \$16,000 per violation.

The Commission believes that changing the due date for the initial assessment could result in the failure to evaluate important aspects of how the information security program operates and would be impractical for an entity like CVS Caremark, which operates more than 6,000 pharmacies and a pharmacy benefit management business. The order, as proposed, requires CVS Caremark to submit to the Commission a written report setting out how the company has complied with the order 90 days after the order becomes final. This requirement should give the Commission a thorough and timely view of how the program is operating.

Finally, you ask the Commission to require CVS Caremark to use particular methods to notify consumers whose information was discarded in the dumpster incidents alleged in the complaint. The Commission considers a variety of factors in deciding whether notice to consumers is an appropriate remedy in a particular case, such as whether consumer victims are reasonably identifiable and whether the notice would be likely to benefit consumers under the circumstances. Here, the Commission has determined that the remedies in the proposed order – including implementing and maintaining a comprehensive information security program and obtaining independent assessments of its effectiveness every other year for 20 years – will ensure appropriate protections for consumers.

After considering your comments, the Commission has determined that the public interest would be best served by accepting the consent order. Thank you again for your letter.

By direction of the Commission.

Donald S. Clark
Secretary