held for extended periods of time could result in substantial harm to the competitive position of the financial holding company pursuant to the FOIA (5 U.S.C. 552(b)(4) and (b)(8)).

*Abstract:* The FR Y–12 collects information from certain domestic BHCs on their equity investments in nonfinancial companies. Respondents report the FR Y–12 either quarterly or semi-annually based on reporting threshold criteria. The FR Y–12A is filed annually by institutions that hold merchant banking investments that are approaching the end of the holding period permissible under Regulation Y.

Please see the agency's FR Y–12 OMB supporting statement for a summary of the proposed reporting requirements and draft reporting form and instructions. *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm.*

*Current Actions:* On September 25, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 48960) requesting public comment for 60 days on the extension, with revision, of the FR Y–12. The comment period for this notice expired on November 24, 2009. No comments were received.

Board of Governors of the Federal Reserve System, December 3, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9–29184 Filed 12–7–09; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 12 p.m., Monday, December 14, 2009.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, December 4, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–29320 Filed 12–4–09; 4:15 pm]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

**[File No. 061 0139]**

### Watson Pharmaceuticals, Inc. and Andrx Corporation; Analysis of Agreement Containing Consent Orders to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

**DATES:** Comments must be received on or before January 4, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Watson Arrow, File No. 061 0139'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/watsonarrow*) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/watsonarrow*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Watson Arrow, File No. 061 0139'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

**FOR FURTHER INFORMATION CONTACT:** Stephanie C. Bovee (202-326-2083), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 6, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

**Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Watson Pharmaceuticals, Inc. (''Watson'') and Andrx Corporation (''Andrx''), which is designed to remedy the anticompetitive effects of the acquisition of Andrx by Watson. Under the terms of the proposed Consent Agreement, the companies would be required to: (1) terminate Watson's marketing agreement with Interpharm Holdings, Inc. (''Interpharm'') and return all of the Watson rights and assets necessary to market generic hydrocodone bitartrate/ibuprofen tablets back to Interpharm; (2) assign and divest the Andrx rights and assets necessary to develop, manufacture, and market generic extended release glipizide (''glipizide ER'') tablets to Actavis Elizabeth LLC, a subsidiary of The Actavis Group hf. (''Actavis''); and (3) divest the Andrx rights and assets necessary to develop, manufacture, and market the eleven generic oral contraceptive products to Teva Pharmaceutical Industries, Inc. (''Teva'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger dated March 12, 2006, Watson proposes to acquire all of the outstanding shares of Andrx at a cost of $25.00 per share. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of the following generic pharmaceutical products: (1) hydrocodone bitartrate/ibuprofen tablets; (2) glipizide ER tablets; and (3) eleven oral contraceptive products (the ''Products''). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

**The Products and Structure of the Markets**

The proposed acquisition of Andrx by Watson would strengthen Watson's position in generic pharmaceuticals and provide Watson with a stronger pipeline of generic products. The companies overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in thirteen of these markets, including eleven oral contraceptive markets.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are multiple generic equivalents for each of the products at issue here, the branded versions no longer significantly constrain the generics' pricing.

For four generic products, Watson and Andrx currently are two of a small number of suppliers offering the product. In each of these markets, there are a limited number of competitors. In nine additional oral contraceptive product markets, both Watson and Andrx have generic products either on the market or in development. Furthermore, there are few firms that are capable of, and interested in, entering these markets. As a result, the proposed acquisition would eliminate important future competition in these markets.

Hydrocodone bitartrate/ibuprofen is a combination of an opioid analgesic agent, hydrocodone bitartrate, and a nonsteroidal anti-inflammatory drug (''NSAID''), ibuprofen and is the generic version of Abbott Laboratories Inc.'s Vicoprofen. Generic hydrocodone bitartrate/ibuprofen tablets are used for the short-term management of acute pain and have been available in the United States since 2003. In 2005, sales of generic hydrocodone bitartrate/ibuprofen exceeded $62 million. Only three companies compete in the generic hydrocodone bitartrate/ibuprofen market: Watson, Andrx, and Teva. An additional company is in the process of obtaining FDA approval and expects to enter the market once the approval is granted, which is likely to occur in the next two years. Teva is the market leader with approximately 62 percent of the market. Andrx and Watson account for the rest of the market with about 27 percent and 12 percent market share, respectively. After Watson's acquisition of Andrx, Watson's market share would increase from 12 percent to approximately 39 percent, and Teva would be the only remaining competitor to Watson.

Glipizide ER is the generic version of Pfizer's Glucotrol XL. Glipizide ER corrects the effects of type 2 diabetes by stimulating the release of insulin in the pancreas, thereby reducing blood sugar levels in the body. Generic glipizide ER was first introduced in the United States in November 2003. In 2005, sales of generic glipizide ER totaled approximately $174 million. Watson is the leading supplier in the U.S. market for generic glipizide ER tablets with over 45 percent of the market. Only two other firms, Andrx and Greenstone Ltd.

(''Greenstone''), compete with Watson in this market. Andrx and Greenstone have market shares of about 35 percent and 20 percent, respectively. Post-acquisition, Watson's market share would increase to over 80 percent, and Greenstone would be the only other remaining U.S. supplier of generic glipizide ER.

Oral contraceptives are pills taken by mouth to prevent ovulation and pregnancy. They are the most common method of reversible birth control, used by up to 82 percent of women in the United States at some time during their reproductive years. Oral contraceptives contain various formulations of synthetic estrogen and progestin, which are chemical analogues of natural female hormones. Andrx and Teva have an agreement whereby Andrx develops and manufactures these oral contraceptives and Teva markets the products. Andrx also receives a royalty payment on Teva's sales of the products. In each of the eleven relevant oral contraceptive markets, Watson and Andrx/Teva are two of a limited number of suppliers or potential entrants.

Two of the oral contraceptive products at issue are currently marketed formulations of generic norgestimate/ethinyl estradiol bioequivalent to the branded products, Ortho-Cyclen and Ortho Tri-Cyclen, from Johnson & Johnson. Both products have varying ratios of norgestimate (a progestin) and ethinyl estradiol (an estrogen) that prevent ovulation and pregnancy. Generic formulations of Ortho-Cyclen and Ortho Tri-Cyclen are among the best selling generic oral contraceptives, representing sales of over $58 million and $261 million, respectively, in 2005.

Watson, Andrx/Teva, and Barr Pharmaceuticals, Inc. (''Barr'') are the only suppliers of generic Ortho-Cyclen and generic Ortho Tri-Cyclen in the United States. After the acquisition, the combined Watson/Andrx would account for 28 percent of the generic Ortho-Cyclen market. Watson is the leading supplier in the U.S. market for the manufacture and sale of generic Ortho Tri-Cyclen tablets. After the acquisition, Watson would account for 56 percent of the market.

Watson currently competes in seven additional oral contraceptive markets where Andrx/Teva is developing competitive products. These seven markets represent generic products that are equivalent to Ortho-cept, Triphasil 28, Alesse, Ortho-Novum 1/35, Ortho-Novum 7/7/7, Loestrin FE (1 mg/0.020 mg), and Loestrin FE (1.5 mg/0.030 mg). In each of these highly concentrated markets, Watson is one of only two or three suppliers. Andrx/Teva is one of a limited number of firms developing generic oral contraceptives that would compete in each of these markets, and is well-positioned to enter the markets in a timely manner.

Both Watson and Andrx/Teva are developing generic Mircette tablets and generic Ovcon-35 tablets. They are two of a limited number of suppliers capable of entering these future generic markets in a timely manner.

**Entry**

Entry into the markets for the manufacture and sale of the Products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Developing and obtaining Food and Drug Administration (''FDA'') approval for the manufacture and sale of the Products takes at least two (2) years due to substantial regulatory, technological, and intellectual property barriers.

**Effects**

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic hydrocodone bitartrate/ibuprofen tablets, generic glipizide ER tablets, generic Ortho-Cyclen tablets, and generic Ortho Tri-Cyclen tablets. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Here, the evidence shows that the price of the generic pharmaceutical product at issue decreases with the entry of each additional competitor. The proposed transaction would eliminate one of at most four competitors in these markets. Evidence gathered during our investigation indicates that anticompetitive effects – whether unilateral or coordinated – are likely to result from a decrease in the number of independent competitors in the markets at issue.

In the markets for generic hydrocodone bitartrate/ibuprofen and generic glipizide ER, the acquisition of Andrx by Watson would leave only two current competitors: the combined firm and one other company. The evidence indicates that the presence of three independent competitors in these markets allows customers to negotiate lower prices, and that a reduction in the number of competitors would allow the merged entity and other market participants to raise prices. Likewise, in the generic oral contraceptive markets, the reduction in the number of competitors from three to two would likely lead to higher prices.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

The acquisition also would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic Ortho-Cept tablets, generic Triphasil 28 tablets, generic Alesse tablets, generic OrthoNovum 1/35 tablets, generic OrthoNovum 7/7/7 tablets, generic Loestrin FE (1 mg/0.020 mg) tablets, and generic Loestrin FE (1.5 mg/0.030 mg) tablets, generic Mircette tablets and generic Ovcon-35 tablets by eliminating future competition between Watson and Andrx. In each of these markets, there are no more than three current suppliers, and Andrx is poised to enter in the near future. Andrx's independent entry into these markets likely would result in lower prices. The proposed transaction would eliminate that independent entry and, hence, would leave prices at their current, higher levels.

**The Consent Agreement**

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Watson and Andrx are required to divest certain rights and assets related to the relevant products to a Commission-approved acquirer no later than ten (10) days after the acquisition. Specifically, the proposed Consent Agreement requires that: (1) Watson terminate its marketing agreement with Interpharm, thereby returning all of its rights to generic hydrocodone bitartrate/ibuprofen back to Interpharm; (2) Andrx divest its rights and assets to generic glipizide ER to Actavis, including assigning its supply agreement with Pfizer, Inc.; and (3) Andrx divest its rights and assets related to the eleven generic oral contraceptives to Teva, and supply Teva with the products for five years in order for Teva (or its designated contract manufacturer) to obtain all necessary FDA approvals to

manufacture and sell the products independently.

The acquirers of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Interpharm specializes in the development, manufacture, and marketing of generic pharmaceutical and over-the-counter products. Interpharm currently manufactures and markets 23 generic pharmaceutical products, and has ten ANDAs under review by the FDA. As a contract manufacturer for Watson's product, Interpharm is an acceptable acquirer of generic hydrocodone bitartrate/ibuprofen because it already has the experience, know-how, and manufacturing infrastructure to produce and sell generic hydrocodone bitartrate/ibuprofen in the United States. Interpharm understands the scientific and technical details of generic hydrocodone bitartrate/ibuprofen because it formulated, developed, and tested the product, and registered the product with the FDA. Moreover, Interpharm will not present competitive problems in any of the markets in which it will acquire a divested asset because it currently does not compete in those markets. With its resources, capabilities, good reputation, and experience marketing generic products, Interpharm is well-positioned to replicate the competition that would be lost with the proposed acquisition.

Actavis is a leading developer, manufacturer, marketer, and distributer of generic pharmaceutical products, and is an acceptable acquirer of generic glipizide ER. Actavis has an extensive distribution network in the United States, with three major manufacturing facilities and approximately 162 pharmaceutical products in the U.S. market. Actavis also has experience obtaining FDA approvals for generic pharmaceutical products. While Actavis currently does not compete in the market for the divested assets, it has the resources, capabilities, good reputation, and experience necessary to restore fully the competition that would be lost if the proposed Watson/Andrx transaction were to proceed unremedied.

Teva is a global pharmaceutical company specializing in the development, production, and marketing of generic and branded pharmaceuticals. Founded in 1901 and headquartered in Petach Tikva, Israel, Teva employs approximately 25,000 people worldwide and has production facilities in Israel, North America, Europe, and Mexico. Teva and its affiliates are the world's largest generic pharmaceutical company with over 300 generic products, representing $6.6 billion in estimated 2006 revenue. Because of its current agreement with Andrx, and its well-known reputation and experience in the pharmaceutical industry, Teva is ideally positioned to be a viable, independent competitor in the eleven generic oral contraceptive markets. The acquisition of the eleven generic oral contraceptive products by Teva would effectively restore the competition that would be lost with the proposed merger.

If the Commission determines that either Interpharm or Actavis is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Interpharm, Actavis, or Teva is not acceptable, the parties must unwind the sale and divest the Products within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Product assets.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Watson and Andrx to provide transitional services to enable the Commission-approved acquirers to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Watson and Andrx.

The Commission has appointed Francis J. Civille as the Interim Monitor to oversee the asset transfer and to ensure Watson and Andrx's compliance with all of the provisions of the proposed Consent Agreement. Mr. Civille has over 27 years of experience in the pharmaceutical industry. He is a highly-qualified expert in areas such as pharmaceutical research and development, regulatory approval, manufacturing and supply, and marketing. He has provided consulting services in healthcare business development to major pharmaceutical companies, biotechnology companies, universities, and government agencies. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Watson and Andrx to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission, with Commissioner Harbour recused.

**Donald S. Clark**

*Secretary.*

[FR Doc. E9–29251 Filed 12–7–09: 7:54 am]

**BILLING CODE 6750–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 for Adjustments to the Third and Fourth Quarters of Fiscal Year 2009 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV–E Foster Care, Adoption Assistance and Guardianship Assistance Programs

**AGENCY:** Office of the Secretary, DHHS.

**ACTION:** Notice

**SUMMARY:** This notice finalizes the methodology for calculating the higher Federal matching funding that is made available under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA), and provides the final calculation of the adjusted Federal Medical Assistance Percentage (FMAP) rates for the third and fourth quarters of Fiscal Year 2009 (FY09). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that is defined as the period beginning October 1, 2008 and ending December 31, 2010.

**DATES:** *Effective Date:* The percentages listed are for the third quarter of FY09 beginning April 1, 2009 and ending June 30, 2009 and for the fourth quarter of FY09 beginning July 1, 2009 and ending September 30, 2009.

### A. Background

The FMAP is used to determine the amount of Federal matching for specified State expenditures for assistance payments under programs under the Social Security Act. Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act (''the Act'') require the Secretary of Health and Human Services