

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8966 / September 29, 2008**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28416 / September 29, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13257**

**In the Matter of**

**CLX MEDICAL, INC.**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST AND EXEMPTION SUSPENSION PROCEEDINGS, MAKING FINDINGS, IMPOSING A CEASE-AND-DESIST ORDER, AND PERMANENTLY SUSPENDING THE REGULATION E EXEMPTION AS TO CLX MEDICAL, INC., PURSUANT TO SECTION 9(f) OF THE INVESTMENT COMPANY ACT OF 1940 AND RULE 610(c) OF REGULATION E**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 610(c) of Regulation E against CLX Medical, Inc. (“CLX” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to CLX Medical, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. Since electing to be regulated as a business development company ("BDC") in September 2004, CLX has, among other things, issued senior securities without adequate asset coverage, rights to purchase securities without expiration to non-security holders, issued prohibited non-voting stock, and failed to establish a majority of disinterested directors on its board. As a result, CLX violated Sections 18(a), 18(d), 18(i), and 56(a) respectively, of the Investment Company Act. In addition, from September 13, 2004, through July 27, 2006, CLX did not obtain a fidelity bond, as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and never implemented a compliance program as required under Investment Company Act Rule 38a-1. Finally, CLX failed to comply with Rule 609 of Regulation E because it did not file offering-status reports on Form 2-E in connection with a securities offering under Regulation E commenced in September 2004.

#### Respondent

2. CLX is a Colorado corporation with its principal offices located in Murrieta, California. It elected to be regulated as a BDC on September 13, 2004, and withdrew its election on May 30, 2007. Prior to its BDC election, CLX was an operating company known as CLX Energy, Inc., which was engaged in the acquisition, exploration, development, and operation of oil-and-gas properties. CLX's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol CLXN.

#### Issuing Senior Securities

3. Between September 13, 2004, and September 30, 2005, CLX issued convertible debentures to investors in a private transaction in exchange for \$696,888. The debentures included an 8% annual interest rate, matured on various dates within 120 days of their issuance, and converted to common stock at a price equal to 50% of the closing bid price on the date of conversion.

4. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(a), as modified by Section 61(a) for application to BDCs, permits a BDC to issue any class of senior security representing indebtedness, if the BDC has asset coverage of at least 200% immediately after such issuance. Section 18(g) defines "senior security" to include debentures. Under Section 18(h), the asset coverage for senior securities representing indebtedness is determined by the ratio of the issuer's

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

total asset value (less all liabilities and indebtedness not represented by senior securities) to the aggregate amount of the senior securities representing indebtedness.

5. On September 1, 2005 and September 28, 2005, CLX issued debentures of \$186,488 and \$5,400. As of September 30, 2005, CLX's balance sheet reflected total assets of \$586,012 and total liabilities of \$491,698.46, which included convertible debentures totaling \$426,428. The asset coverage for the convertible security issued on September 28, 2007, was approximately 122%, significantly below the required 200% coverage.

### **Issuing Convertible Securities with Unequal Voting Rights**

6. On February 1, 2005, CLX issued 9 million shares of Series-A preferred stock to a private investor at a price of \$0.015 per share. These shares were convertible on a one-to-one basis into common stock at any time and would convert automatically upon liquidation. The Series-A preferred stock had no voting rights, except that its owner was entitled to elect a majority of CLX's board. On August 8, 2005, CLX issued 100,000 shares of Series-B preferred stock to the holder of the Series-A preferred stock in exchange for all of the Series-A preferred stock. The Series-B preferred stock, which was not convertible, entitled its owner to elect a majority of the CLX's Board in addition to voting the preferred stock on a one-to-one basis with the common stock in all other voting matters.

7. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders." The conversion feature of CLX's Series-A preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance as required under Section 18(d).

8. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. CLX's shareholders did not authorize the issuance of the conversion feature on the Series-A preferred stock.

9. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. CLX's Series-A and Series-B preferred stock did not have voting rights equal to that of its common stock.

### **Failure to Adopt and Implement Compliance Policies and Procedures**

10. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and

implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and to fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. CLX did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

### **Failure to Establish a Majority of Disinterested Directors**

11. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. From September 13, 2004 to August 8, 2005, CLX failed to have a board composed of a majority of disinterested persons.

### **Failure to Provide and Maintain a Fidelity Bond**

12. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. From September 13, 2004, through July 27, 2006, CLX did not provide and maintain a fidelity bond.

### **Violations**

13. As a result of the conduct described above, CLX violated Sections 17(g), 18(a), 18(d), 18(i), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

### **Failure to Comply with Rule 609 of Regulation E**

14. On September 14, 2004, CLX filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. CLX did not file the Forms 2-E that were due within 30 days after March 14, 2005, September 14, 2006, and March 14, 2007, nor has it filed a notification of the termination of the offering. Therefore, CLX did not comply with Rule 609.

15. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending an issuer's Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

### **Respondent's Remedial Efforts**

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent CLX's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent CLX cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(i), 18(d), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent CLX be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon  
Acting Secretary