

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71142; File No. TP 14-03)

December 19, 2013

Order Granting a Limited Exemption from Rule 102(a) of Regulation M to Certain Business Development Companies Pursuant to Rule 102(e) of Regulation M

By letter dated December 19, 2013 (“letter”), as supplemented by conversations with the staff of the Division of Trading and Markets (“Staff”), counsel for CION Investment Corporation (“Company”), an unlisted business development company (“BDC”),¹ requested on behalf of the Company that the Securities and Exchange Commission (“Commission”) issue an exemption from Rule 102 of Regulation M.² Specifically, the letter requests that the Commission exempt the Company from the requirements of Rule 102(a) so that the Company may conduct a periodic share repurchase program during the course of the continuous offering of shares of the Company (“Shares”).

Rule 102(a) of Regulation M specifically prohibits issuers, selling security holders, and any of their affiliated purchasers from directly or indirectly bidding for, purchasing, or attempting to induce another person to bid for or purchase a “covered security” until the applicable restricted period has ended. As a consequence of the continuous offering of the Shares, the Company will be engaged in a distribution of the Shares pursuant to Rule 102. As a result, bids for or purchases of Shares or any reference security by the Company or any affiliated purchaser of the Company are prohibited during the restricted period specified in Rule 102, unless specifically excepted by or exempted from Rule 102. As the Company seeks to engage in

¹ See Section 2(a)(48) of the Investment Company Act of 1940 (“1940 Act”) (defining “business development company”).

² 17 CFR 242.102.

periodic repurchases of Shares during the applicable restricted period, absent an exception these repurchases would violate Rule 102(a).

The request is similar to a number of requests from unlisted BDCs for conditional exemptive relief from Rule 102 that were granted pursuant to delegated authority.³ Like other BDC repurchase programs that have been given exemptive relief from Rule 102, the repurchase program is designed to provide a limited source of liquidity for the Company's shareholders as there is no trading market for the Shares. In addition, like other BDC repurchase programs, the repurchase program is fully disclosed to shareholders in the prospectus so the existence of the repurchase program should be known by investors, thus minimizing potential manipulative effects. The relief requested is also similar to that extended to unlisted real estate investment trusts to permit similar repurchase programs.⁴ Based on our experience with these prior requests, we believe that it is appropriate to extend exemptive relief for all BDC repurchase programs that meet the same criteria. Accordingly, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rule 102(a) to permit any unlisted company, including the Company, that has elected to be treated as a BDC under the 1940 Act to engage in periodic repurchases of their shares during the applicable restricted period, subject to the conditions described below.

³ See, e.g., Order Granting Business Development Corporation of America a Limited Exemption from Rule 102(a) of Regulation M Pursuant to Rule 102(e), Exchange Act Rel. No. 67620 (August 8, 2012); Order Granting FS Investment Corporation II a Limited Exemption from Rule 102(a) of Regulation M Pursuant to Rule 102(e), Exchange Act Rel. No. 67163 (June 7, 2012); and Letter from Josephine J. Tao, Assistant Director, to Steven B. Boehm, Sutherland Asbill and Brennan LLP regarding FS Investment Corporation (April 20, 2009).

⁴ Letter from James A. Brigagliano, Associate Director, to Dennis O. Garris, Alston & Bird LLP regarding Class Relief for REIT Share Redemption Programs (October 22, 2007).

Pursuant to the conditions to this exemptive relief, any BDC seeking to rely on this exemption must terminate their repurchase program should a secondary trading market for its common stock develop. As a result, the repurchase programs being given exemptive relief in this order should not have a manipulative effect on the applicable distribution. This exemptive relief is further conditioned on the repurchase program purchasing shares of common stock at a price that does not exceed the then current public offering price of such securities. This should help ensure that the repurchase programs being extended relief in this order do not have a manipulative effect on the price of such distributions as the purchases should not improve the offering price.

Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 102(e), that any unlisted company that has elected to be treated as a BDC under the 1940 Act is exempt from Rule 102(a) for the limited purpose of engaging in periodic repurchases of their shares during the applicable restricted period, subject to the following conditions:

- Any company relying upon this exemption shall terminate its repurchase program if a secondary market for the shares being repurchased develops; and
- Any repurchase pursuant to this exemption will be made at a price that does not exceed the then current public offering price for such securities.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any

other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, such transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Kevin M. O'Neill
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(6).