

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71142; File No. TP 14-03]

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

December 19, 2013.

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 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.

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71137; File No. SR-CHX-2013-22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Single-Sided Order Fees and Credits

December 19, 2013.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder,³ notice is hereby given that on December 18, 2013, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with

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

² 17 CFR 242.102.

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. Garriss, Alston & Bird LLP regarding Class Relief for REIT Share Redemption Programs (October 22, 2007).

⁵ 17 CFR 200.30-3(a)(6).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

CHX proposes to amend its Schedule of Participant Fees and Assessments (the “Fee Schedule”) to amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee. The Exchange proposes to implement the fee changes on January 2, 2014. The text of this proposed rule change is available on the Exchange’s Web site at http://www.chx.com/rules/proposed_rules.htm, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section E.1 of the Fee Schedule, effective January 2, 2014. Specifically, the Exchange proposes to amend Section E.1 to set the Liquidity Providing Credit for all single-sided orders of 100 or more shares executed in the Matching System in Tape A, B, and C securities priced greater than or equal to \$1.00/share at \$0.0020/share. The Exchange does not propose to make any other amendments to the Fee Schedule.

Current Section E.1

On July 1, 2013, the Exchange adopted current Section E.1 of the Fee

Schedule,⁴ which applies to all single-sided orders of 100 or more shares executed in the CHX Matching System. Specifically, the Exchange set the Liquidity Providing Credit for all Tape A, B, and C securities priced greater than or equal to \$1.00/share at \$0.00250/share and set the corresponding Liquidity Removing Fee at \$0.0030/share. In doing so, the Exchange unified pricing across all Tapes, eliminated the distinction between Derivative Securities Products and Non-Derivative Securities Products throughout the Fee Schedule and eliminated the distinction between “Regular Trading Session” and “Early or Late Trading Session” in Section E.1 of the Fee Schedule.⁵

Proposed Section E.1

The Exchange now proposes to reduce the Liquidity Providing Credit for all single-sided orders of 100 shares or more executed in the Matching System in Tape A, B, and C securities priced greater than or equal to \$1.00/share from \$0.00250/share to \$0.0020/share. As such, the Exchange proposes to amend paragraph (b) under Section E.1 to replace “\$0.00250/share” with “\$0.0020/share.”

However, the Exchange does not propose to change the corresponding Liquidity Removing Fee, which is currently \$0.0030/share. In addition, for all single-sided orders of 100 or more shares executed in the CHX Matching System in securities priced less than \$1.00/share, the Exchange will maintain the current Liquidity Providing Credit of \$0.00009/share and the Liquidity Removing Fee of 0.30% of the trade value.

Despite the proposed decrease in the Liquidity Providing Credit, the Exchange believes that a combination of the proposed Liquidity Providing Credit and the Exchange’s recently-adopted Market Data Revenue Rebates program⁶ will continue to incentivize activity by Participants on the Exchange’s trading facilities, encourage order flow, and allow the Exchange to remain

⁴ See Securities Exchange Act Release No. 69903 (July 1, 2013), 78 FR 40788 (July 8, 2013) (SR-CHX-2013-12) (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee”); see also Securities Exchange Act Release No. 69903A (August 13, 2013), 78 FR 49308 (August 13, 2013).

⁵ *Id.*

⁶ See Section P of the Fee Schedule; see also Securities Exchange Act Release No. 70546 (October 3, 2013), 78 FR 61413 (September 27, 2013) (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Market Data Revenue Rebates Program”).

competitive in today’s orders marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls, and does not unfairly discriminate between customers, issuers, or broker dealers.

Specifically, since the proposed Liquidity Providing Credit will continue to apply to all single-sided orders of 100 or more shares executed in the CHX Matching System and the corresponding Liquidity Removing Fee will remain unchanged, the Exchange believes that the proposed Section E.1 will equitably allocate credits and fees among Participants in a non-discriminatory nature. Furthermore, the proposed Liquidity Providing Credit of \$0.0020/share is reasonable, where the proposed value is similar to liquidity credits offered by other exchanges, such as NASDAQ.⁹

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed Liquidity Providing Credit will contribute to the protection of investors and the public interest by maintaining the simplified schedule of credits paid and fees assessed by the Exchange, as it will be applied to all single-sided orders of 100 shares or more executed in the Matching System in Tape A, B, and C securities priced greater than or equal to \$1.00/share. Moreover, the combination of the proposed Liquidity Providing Credit

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ NASDAQ “Rebate to Add Displayed Liquidity, Shares Executed at or Above \$1.00” ranges from \$0.0020/share to \$0.00305/share.

and Market Data Revenue Rebates will continue to incentivize order senders to submit orders to the Exchange, which will, in turn, enhance competition amongst competing trading centers and contribute to the production of investors and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder¹¹ because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

As fully discussed above, the Exchange believes that the proposed Fee Schedule will create equitable credit and fee amounts to incent activity among all Participants within the Exchange's trading facilities.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CHX-2013-22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2013-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2013-22, and should be submitted on or before January 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71146; File No. SR-NYSEArca-2013-141]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt New NYSE Arca Equities Rule 7.25 in Order To Create a Crowd Participant Program To Incent Competitive Quoting and Trading Volume in Exchange-Traded Products by Market Makers Qualified With the Exchange as CPs

December 19, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 6, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [sic] adopt new NYSE Arca Equities Rule 7.25 ("Rule 7.25") in order to create a Crowd Participant ("CP") program (the "CP Program") to incent competitive quoting and trading volume in exchange-traded products ("ETPs") by Market Makers qualified with the Exchange as CPs. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.