



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32097; 812-14645]

Terra Capital Partners, LLC, et al.; Notice of Application

April 26, 2016

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under sections 57(a)(4) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of the Application: Terra Capital Partners, LLC (the “Sponsor”), Terra Income Fund 6, Inc. (the “Company”), Terra Income Advisors, LLC (the “Advisor”), on behalf of itself and its successors,¹ and Terra Capital Markets, LLC (the “Dealer Manager” and collectively with the Sponsor, the Company, and the Advisor, the “Applicants”), on behalf of itself and its successors, request an order to permit the Applicants to complete certain transactions in connection with an amendment to the dealer-manager agreement entered into by and among the Company, the Advisor, and the Dealer Manager.

Filing Date: The application was filed on April 25, 2016.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for

¹ The term “successor,” as applied to each entity, means an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, Bruce D. Batkin, Terra Income Fund 6, Inc., c/o Terra Capital Partners, LLC, 805 Third Avenue, 8th Floor, New York, New York 10022.

For Further Information Contact: Kieran G. Brown, Senior Counsel, at (202) 551-6773, or James M. Curtis, Branch Chief, at (202) 551-6712 (Chief Counsel's Office, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations:

1. The Sponsor is a Delaware limited liability company and served as the organizer and sponsor of the Company. The Sponsor is also the parent company of the Advisor and the Dealer Manager. Since its formation in February 2001, the Sponsor has organized or acted as investment manager for multiple private real estate investment funds ("REITs").

2. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.² The Company's investment Objectives and

² The Company was incorporated in Maryland in 2013 and commenced operations on June 24, 2015, upon raising gross proceeds in excess of \$2.0 million in its initial public offering. Section

Strategies³ are to pay attractive and stable cash distributions and to preserve, protect and return capital contributions to the holders (“Common Shareholders”) of the Company’s common stock (“Common Shares”). On March 2, 2015, the Company filed a public registration statement on Form N-2 (the “Registration Statement”) with the Commission to offer its Common Shares in a continuous public offering (the “Offering”). The Registration Statement was declared effective on April 20, 2015. Since commencing the Offering and through April 14, 2016, the Company has sold 2,444,185.856 Common Shares, including Common Shares purchased by the Sponsor in both an initial private placement and from the Offering. The Company currently has a five-member board of directors (the “Board”) of whom three are not “interested persons” of the Company within the meaning of section 2(a)(19) of the Act (the “Non-interested Directors”).

3. The Advisor is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940. The Advisor serves as the investment adviser to the Company.

4. The Dealer Manager is a Delaware limited liability company that serves as the dealer manager of the Company pursuant to a dealer manager agreement dated April 20, 2015 by and among the Company, the Advisor and the Dealer Manager (the “Dealer Manager Agreement”). The Dealer Manager is duly registered as a broker-dealer pursuant to the provisions of the 1934 Act, a member in good standing with the Financial Industry Regulatory

2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

³ The “Objectives and Strategies” means the investment objectives and strategies, as described in the Registration Statement, other filings the Company has made with the Commission under the Securities Act of 1933, as amended or under the Securities Exchange Act of 1934, as amended (the “1934 Act”), and the Company’s reports to Common Shareholders.

Authority, Inc. (“FINRA”), and a broker dealer duly registered as such in those states where the Dealer Manager is required to be registered in order to carry out the Offering.

5. Currently, the Common Shares are sold at a public offering price of \$12.50 per Common Share. This public offering price includes \$1.25 in underwriting compensation (the “Underwriting Compensation”) payable to the Dealer Manager. The Underwriting Compensation as set forth in the current prospectus contained in the Registration Statement (the “Prospectus”) consists of three components: a 6% selling commission, a 3% dealer manager fee, and a 1% broker-dealer fee (collectively, the “Upfront Sales Load”), all of which are paid to the Dealer Manager and a portion of which is re-allowed to the selling broker-dealers as set forth in the Prospectus. The Underwriting Compensation terms are currently governed by the Dealer Manager Agreement.

6. The Board, including the Non-Interested Directors, has determined that it is in the best interests of the Common Shareholders to amend the Dealer Manager Agreement (the “Dealer Manager Agreement Amendment”) solely to change the Underwriting Compensation terms to reduce the Upfront Sales Load and implement an asset-based, ongoing distribution fee (a “Distribution Fee”). The proposed change would reduce the selling commissions and dealer manager fees from 6.0% and 3.0% to 3.0% and 1.5%, respectively, of gross offering proceeds or an aggregate reduction in Upfront Sales Load of 4.5%. The proposed change also implements the Distribution Fee of 1.125% of gross offering proceeds, payable annually for four years, or 4.5%. The maximum Distribution Fee of 4.5% is therefore equal to the reduction in the Upfront Sales Load. All Common Shares will continue to have an offering price of \$12.50 per Common Share after the proposed change.

7. To ensure that, following the change in Underwriting Compensation, the net proceeds to the Company from the sale of all Common Shares will be equivalent, the Dealer Manager proposes to reimburse to the Company an amount equal to the Distribution Fee to be paid with respect to the Common Shares outstanding, or 4.5% of the gross proceeds from the Offering, before the implementation of the proposed Dealer Manager Agreement Amendment (the “Distribution Fee Reimbursement”). Once this amount is returned to the Company, (1) all Common Shares will become subject to the same 5.5% Upfront Sales Load; (2) all holders of Common Shares will become subject to the same aggregate Distribution Fee of 4.5%; (3) the net proceeds to the Company from the sale of all Common Shares (whether issued before or after the implementation of the Dealer Manager Agreement Amendment) will be the same, \$11.25 per Common Share; and (4) all Common Shares will be subject to the same 10% in Underwriting Compensation, consistent with the limitations imposed by Conduct Rule 2310 of FINRA (“Conduct Rule 2310”).

8. Applicants believe that, if the Dealer Manager Agreement Amendment is entered into, a greater amount of the existing and future Common Shareholders’ capital will be available for investment at an earlier stage in the Company’s investment cycle. This would permit the Company and all Common Shareholders to benefit from the income generated from such investments while the Distribution Fee Payment is deferred, enable the Company to achieve its investment objectives and acquire a diversified portfolio, and lead to greater demand for the Company’s Common Shares, which would further benefit the Common Shareholders because of the lower operating expense ratio and Company portfolio diversification resulting from such increased sales of Common Shares.

9. The Company believes that the Dealer Manager Agreement Amendment will enable the Common Shares to remain competitive with similar investments sold by broker-dealers. Because the per share estimated value of Common Shares that appears on customer account statements for Common Shares with a low Upfront Sales Load combined with a Distribution Fee is greater than the per share estimated value of Common Shares with a high Upfront Sales Load and no Distribution Fee, the Company believes that broker-dealers generally would prefer selling Common Shares with a with a low Upfront Sales Load and a Distribution Fee.⁴ To accommodate the needs of these broker-dealers, other investment products (*e.g.*, non-traded REITs) offer common shares with a low Upfront Sales Load and a Distribution Fee, and the inability of the Company to offer Common Shares with a similar fee structure places the Company at a competitive disadvantage.

10. The Board, including the Non-Interested Directors, after reviewing and evaluating the proposed transactions and the Dealer Manager Agreement Amendment, determined that: (i) the Dealer Manager Agreement Amendment is in the best interests of the Company and its Common Shareholders; (ii) the services to be rendered by the Dealer Manager are required for the operation of the Company; (iii) the Dealer Manager can provide the services such that the nature and quality of the services are at least equal to those provided by others; and (iv) the fees charged are fair and reasonable in light of the usual and customary charges made by others for services of the same nature and quality.

⁴ NASD Rule 2340 requires, among other things, broker-dealers to include on customer account statements a “per share estimated value” for shares of non-traded, continuously offered BDCs and certain similar investments. Amendments to NASD Rule 2340 effective April 11, 2016 require, among other things, broker-dealers to include on the customer account statements a “per share estimated value,” generally the current public offering price of the Common Shares minus sales charges and estimated organization and offering expenses. Prior to the amendment of Rule 2340, the general industry practice was to use the public offering price as the per share estimated value on customer account statements.

11. The Company has filed a Post-Effective Amendment to its registration statement disclosing the changes to the Underwriting Compensation terms and will seek a declaration of effectiveness of such Post-Effective Amendment by the Commission prior to commencing sales of the Common Shares subject to the revised Underwriting Compensation as implemented by the Dealer Manager Agreement Amendment. All current Common Shares outstanding immediately prior to the implementation of the Dealer Manager Agreement Amendment and Common Shares to be issued upon effectiveness of the Post-Effective Amendment (exclusive of Common Shares to be issued pursuant to the Company's distribution reinvestment plan, as further described in the Prospectus) will be subject to the same Distribution Fee.

Applicants' Legal Analysis:

1. Section 57(a) of the Act prohibits certain transactions between a BDC and persons related to the BDC absent an order from the Commission. Specifically, section 57(a)(4) makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC or a company controlled by such BDC is a joint or a joint and several participant with that person in contravention of rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by the BDC or controlled company on a basis less advantageous than that of the other participant. Section 57(b) specifies the persons to whom the prohibitions of section 57(a)(4) apply. Under section 57(b)(2), these persons include any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with a BDC (except the BDC itself and any person who, if it were not directly or indirectly controlled by the BDC, would not be directly or indirectly under the control of a person who controls the BDC), or any person who is, within the

meaning of section 2(a)(3)(C) of the Act, an affiliated person of such person.

Sections 2(a)(3)(C) defines an “affiliated person” of another person as any person directly or indirectly controlling, controlled by, or under common control with, such other person.

2. Rule 17d-1 under the Act generally prohibits participation by a registered investment company and an affiliated person (as defined in section 2(a)(3) of the Act) or principal underwriter for that investment company, or an affiliated person of such affiliated person or principal underwriter, in any “joint enterprise or other joint arrangement or profit-sharing plan,” as defined in the rule, without prior approval by the Commission by order upon application. Although the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules (but not section 17(d) itself) under section 17(d) applicable to registered closed-end investment companies (*e.g.*, rule 17d-1) are, in the interim, deemed to apply to transactions subject to section 57(a).

3. As the investment adviser and principal underwriter to the Company, the Advisor and the Dealer Manager, respectively, are subject to the prohibitions of section 57(a)(4) as a result of section 57(b)(2) of the Act. Moreover, the Sponsor may be deemed to control both the Advisor and the Dealer Manager and the Advisor may be deemed to control the Company within the meaning of section 2(a)(9) of the Act.¹ Accordingly, the Company, the Advisor, the Dealer Manager and the Sponsor may be deemed to be affiliated persons of each other under section 2(a)(3)(C) of the Act because they are under common control of the Sponsor, and thus the Advisor, the Dealer Manager and the Sponsor would be persons described in section 57(b)(2) subject to the prohibitions of section 57(a)(4). The Distribution Fee Reimbursement and the Dealer-Manager Agreement Amendment (the “Proposed Transactions”) might be deemed a “joint enterprise or other joint arrangement,” within the meaning of section 57(a)(4) of the Act

and rule 17d-1 thereunder. Therefore, the Sponsor, the Advisor, the Dealer Manager, and the Company may be prohibited from engaging in the Proposed Transactions as a result of the prohibitions of section 57(a)(4) and rule 17d-1, without a grant of the Order of the Commission.

4. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants believe that the representations and conditions set forth in the application will ensure that the Proposed Transactions are consistent with the protection of the Company's Shareholders, including the Current Common Shareholders (as herein defined), and with the purposes intended by the policies and provisions of the Act. Applicants state that the Company's participation in the Proposed Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Company will ensure that total Underwriting Compensation payable in the Offering will not exceed 10% of the gross proceeds of the Offering, consistent with Conduct Rule 2310.

2. For the period of time in which the Distribution Fee is payable, the Dealer Manager will waive any annual Distribution Fee payment to which it is otherwise entitled in an amount sufficient to ensure that the total return experienced by the holders of the Company's

Common Shares immediately prior to the implementation of the Dealer Manager Agreement Amendment (the “Current Common Shareholders”) is not less than the total return the Current Common Shareholders would have experienced if the Proposed Transactions had not occurred and the Dealer Manager Agreement had not been amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett
Deputy Secretary

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