

whether a rule filing must be filed by the Exchange pursuant to Section 19(b)(1) of the Act. Accordingly, the Commission designates the proposed rule change to be operative upon filing.<sup>16</sup>

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.

#### IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-059 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2016-059. 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

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, 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 office of the Exchange. 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-NASDAQ-2016-059 and should be submitted on or May 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Robert W. Errett,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77716; File No. SR-ISEMercury-2016-09]

### Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Rule Change Relating to Preferred Volume

April 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("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 the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the Exchange's Schedule of Fees to explain that while 100% of eligible traded volume preferred to a Market Maker counts towards that member's volume tiers, Market Makers not preferred on an order will receive credit for the volume those non-preferred members

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

execute. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

On March 10, 2016, ISE Mercury introduced fee and rebate tiers for Market Maker<sup>3</sup> and Priority Customer<sup>4</sup> orders based on the average daily volume ("ADV") that a member executes in Priority Customer orders.<sup>5</sup> The Exchange assesses fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV, as described in Table 4 of the Fee Schedule:<sup>6</sup> 0—19,999 contracts ("Tier 1"), 20,000—39,999 contracts ("Tier 2"), 40,000—59,999 contracts ("Tier 3"), 60,000—79,999 contracts ("Tier 4"), and 80,000 or more contracts ("Tier 5").<sup>7</sup> As

<sup>3</sup> The term Market Makers refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

<sup>4</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Mercury Rule 100(a)(37A).

<sup>5</sup> See Securities Exchange Act Release No. 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISE Mercury-2016-05).

<sup>6</sup> The Total Affiliated Priority Customer ADV category includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the PIM, Facilitation, and QCC mechanisms.

<sup>7</sup> The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

is the case on ISE Mercury's affiliated exchanges—the International Securities Exchange, LLC (“ISE”) and ISE Gemini, LLC (“ISE Gemini”)—the Exchange's ADV calculation includes volume executed by affiliated members. In particular, the Exchange aggregates all eligible volume from affiliated members in determining applicable tiers, provided that there is at least 75% common ownership between the members as reflected on the member's Form BD, Schedule A. While this method of aggregating volume is beneficial to large firms with multiple affiliated members, the Exchange believed that it was also important to give smaller firms the ability to compete for more favorable fees and rebates.

On March 10, 2016, the Exchange adopted ADV tiers that are based on preferred volume<sup>8</sup>—*i.e.*, volume directed to a specific Market Maker as provided in Supplementary Material .03 to Rule 713.<sup>9</sup> In particular, the Exchange gives Market Makers volume credit for 100% of eligible traded volume preferred to that member,<sup>10</sup> regardless of the actual allocation that the Market Maker receives. For example, assume Market Maker ABC is quoting at the national best bid or offer (“NBBO”) and receives a Preferred Order for 10 contracts from an unaffiliated firm for the account of a Priority Customer. If there are other Market Makers quoting at the NBBO, Market Maker ABC may receive an allocation of 4 contracts—*i.e.*, 40% of the order. Rather than counting only the 4 contracts executed towards the Market Maker's volume total, the Exchange gives that Market Maker credit for the full 10 contracts preferred to it. This is the same credit the member would receive if the 10 contracts were sent to the exchange by an affiliated member. The purpose of the current rule filing is to clarify that even though Market Maker ABC receives full credit for all 10 contracts when executing 4 contracts, the non-preferred Market Makers that execute the remaining 6 contracts will still receive credit for

those 6 contracts as they normally would.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>11</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed clarification is reasonable and equitable because it will eliminate member confusion regarding how volume is counted among Market Makers when contracts are preferred to a Market Maker and executed by preferred and non-preferred Market Makers.

### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change merely clarifies an existing rule already in effect.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

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.

## IV. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEMercury-2016-09 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEMercury-2016-09. 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

<sup>8</sup> See Securities Exchange Act Release No. 77412 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISE Mercury-2016-06).

<sup>9</sup> An Electronic Access Member (“EAM”) may designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). Supplementary Material .03 to Rule 713 describes the Exchange's rules concerning Preferred Orders.

<sup>10</sup> “Eligible volume” refers to volume that would otherwise count towards to applicable volume tier. In the case of ADV thresholds based on Total Affiliated Priority Customer ADV, as currently implemented on ISE Mercury, all Priority Customer volume would be “eligible.” See note 6 supra.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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 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 office of the Exchange. 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-ISEMercury-2016-09, and should be submitted on or before May 23, 2016.<sup>16</sup>

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

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-10155 Filed 4-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## 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,<sup>1</sup> 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 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 Web site 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.<sup>2</sup> The Company's investment Objectives and Strategies<sup>3</sup> 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 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

<sup>2</sup> 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 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.

<sup>3</sup> 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.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 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.