

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25729/812-12460]

Notice of Application of The Mexico Fund, Inc. and Commission Statement

September 13, 2002.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTIONS: (1) Notice of an application under sections 6(c), 17(b) and 23(c)(3) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 5(a)(2), 17(a)(1) and 17(a)(2) of the Act and rule 23c-3 under the Act; and (2) Commission statement concerning section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION AND COMMISSION STATEMENT:

The Mexico Fund, Inc. (the "Fund") requests an order that would permit the Fund to make periodic repurchase offers in compliance with rule 23c-3 under the Act except that (a) the repurchase offers would be for between one and one hundred percent of the Fund's outstanding shares provided that the Fund will offer to repurchase at least five percent of its outstanding shares each fiscal year; (b) shareholders participating in the repurchase offers would receive in-kind pro-rata portfolio securities of the Fund for their shares; and (c) the board of directors of the Fund ("Board") would be able to set and reset the periodic interval between repurchase offers at three, six or 12 months upon prior notice to shareholders. The requested order also would grant relief from sections 5(a)(2) and 17(a) of the Act. The Commission also is issuing a statement concerning reimbursement of proxy solicitation expenses of an affiliated shareholder and similar transactions by registered investment companies which present issues under section 17(d) of the Act and rule 17d-1 under the Act (*see* Commission Statement *infra*).

FILING DATES: The application was filed on March 2, 2001, and amended on February 22, 2002, June 5, 2002, August 1, 2002 and August 16, 2002.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2002, and should be accompanied by proof of

service on the applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicant, The Mexico Fund, Inc., 1775 Eye Street, NW, Washington, DC 20006, Attention Sander M. Bieber, *Esq.*

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942-0646, or Janet M. Grossnickle, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application and a Commission statement. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicant's Representations in the Application

1. The Fund is a Maryland corporation registered under the Act as a closed-end non-diversified management investment company. Shares of the Fund are listed and trade on the New York Stock Exchange ("NYSE"). Impulsora del Fondo México, S.A. de C.V., a Mexican corporation registered under the Investment Advisers Act of 1940, serves as investment adviser to the Fund.

2. The Fund's investment objective is to provide long-term capital appreciation through investment in securities listed on the Bolsa Mexicana de Valores, S.A. de C.V. (the "Mexican Stock Exchange"). Since 1997, an average of 95 percent of the Fund's assets have been invested in equity securities of Mexican issuers. The Fund also may invest in Mexican fixed-income securities, bank time deposits of Mexican banks and U.S. fixed income securities. All of the equity securities and most of the fixed-income securities acquired for investment by the Fund are listed on the Mexican Stock Exchange. Applicant states that with \$346 million of net assets under management, the Fund is one of the largest U.S. funds investing in equity securities of the Mexican market. The Fund's net assets represent about 3.4 times the size of the daily trading volume of the Mexican Stock Exchange.

3. Applicant states that the Mexican market is relatively illiquid and concentrated and, along with the Fund's investment strategy, is largely responsible for the Fund's organization as a closed-end investment company. Applicant states that the Fund's shares typically have traded at a discount to their net asset value (the "market discount"), which has averaged over twenty percent since 1998. In the past, the Fund has conducted share repurchase programs and a tender offer for its shares, each of which, the Fund states, reduced the market discount temporarily.

4. The Fund proposes to conduct periodic repurchase offers for its shares at net asset value (each a "Repurchase Offer") pursuant to a fundamental policy that has been approved by the Fund's shareholders ("Fundamental Policy"). Under the Fund's proposal (the "Repurchase Structure"), the Fund would offer to repurchase no less than five percent of the Fund's outstanding shares during each fiscal year, based on the number of shares outstanding at the beginning of the fiscal year. Repurchase Offers would be conducted at least once each fiscal year, but no more frequently than quarterly, and would be for between one and one hundred percent of the Fund's outstanding shares (the "Repurchase Offer Amount"). The Board would be able to set or reset the periodic interval between Repurchase Offers at three, six or 12 months.

5. Under the Repurchase Structure, shareholders submitting shares to be repurchased would receive a pro-rata distribution of the equity securities held by the Fund,¹ valued at net asset value minus a repurchase fee of no more than two percent.² The Fund may pay cash for fractional shares and odd lots of securities, round off odd lots or fractional shares to eliminate them prior to distribution, or pay a higher pro-rata percentage of equity securities to represent these items. If a greater number of shares are submitted for repurchase than the total amount of the

¹ Under the Repurchase Structure, shareholders will not receive (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933 ("Securities Act"); (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership.

² The Fund states that it has received a ruling from the Internal Revenue Service finding that the in-kind distribution of securities by the Fund, in payment for the repurchases, will not result in the recognition of any taxable gains to the Fund. *See* PLR-200148030 (Aug. 28, 2001).

Repurchase Offer, each participating shareholder would receive a pro-rata share of the distribution equal to the total shares repurchased. The Repurchase Structure has been approved by the Fund's shareholders, subject to the Fund's obtaining the requested order. The Repurchase Structure would be disclosed in the Fund's annual, semi-annual and quarterly reports.

6. The Fund requests relief from rule 23c-3 under the Act to the extent necessary to conduct the Repurchase Offers and from section 5(a)(2) of the Act to remain a closed-end company should its securities be deemed "redeemable securities" as a result of the Repurchase Structure. The Fund also requests relief from sections 17(a)(1) and 17(a)(2) of the Act to allow any Fund shareholder who is an "affiliated person" of the Fund within the meaning of section 2(a)(3) of the Act solely by virtue of owning five percent or more of the outstanding voting securities of the Fund ("Affiliated Shareholder") to participate in the Repurchase Structure. The requested order would not apply to shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

Applicant's Legal Analysis in the Application

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company may purchase any securities of any class of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis that does not discriminate unfairly against any holders of the class or classes of securities to be purchased.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rule 23c-3 under the Act permits a registered closed-end investment company to make repurchase offers at net asset value to its shareholders at periodic intervals pursuant to a

fundamental policy of the investment company. The Fund states that the Repurchase Structure would comply with rule 23c-3, except for paragraphs (a)(3), (b)(1), (b)(2) and (b)(10) of the rule.

4. Rule 23c-3(a)(3) under the Act requires that a repurchase offer amount must be no less than five or more than twenty-five percent of a fund's outstanding common stock on the repurchase request deadline. Applicant seeks an exemption from this provision to the extent necessary to conduct a Repurchase Offer for an amount between one and one hundred percent of its outstanding shares provided that the Fund will offer to repurchase at least five percent of its outstanding shares each fiscal year. Applicant states that a Repurchase Offer Amount of between one and one hundred percent would provide shareholders with an equal and definite opportunity to sell Fund shares at net asset value (minus a repurchase fee). The Fund also notes that, as long as its shares are listed on the NYSE, shareholders would retain their ability to sell shares at market price. Applicant further asserts that Repurchase Offers in the range of one to one hundred percent would complement the flexibility sought by the Fund in determining the periodic intervals and may be prudent given the capitalization and average trading volume of the Mexican securities market.

5. Rule 23c-3(b)(1) under the Act requires that repurchase proceeds be paid in cash. The Fund requests an exemption from rule 23c-3(b)(1) to the extent necessary to allow it to pay shareholders who participate in the Repurchase Offers with a pro-rata distribution of the Fund's portfolio securities. Applicant states that in-kind repurchases are preferable for the Fund because it invests in a relatively illiquid market and would allow the Fund to better commit its assets to its investment objective.

Applicant also states that a periodic liquidation of the Fund's assets to conduct Repurchase Offers in cash would likely have a negative impact on the Mexican securities market and force the Fund to accept lower prices for liquidated securities. Applicant further states that in-kind repurchases will allow shareholders the discretion as to whether and when to sell securities received in the Repurchase Offers and allow shareholders remaining in the Fund to avoid realization of long-term capital gains.

6. Rule 23c-3(b)(10) requires that, from the time shareholders receive notification of a repurchase offer until the repurchase pricing date, the Fund

maintain an amount of liquid assets equal to at least one hundred percent of the minimum amount of the dollar value of the shares offered to be repurchased. The Fund states that this requirement is not necessary as applied to the Repurchase Structure because the Fund will conduct Repurchase Offers in-kind rather than for cash. The Fund represents that it will, from the time it sends notification to shareholders pursuant to rule 23c-3(b)(4) until the repurchase pricing date, maintain a percentage of the Fund's assets approximately equal to the portion of the Repurchase Offer Amount that the Fund reasonably expects will be paid in cash in assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the Fund has valued the investment, within a period equal to the period between the repurchase request deadline and the repurchase payment deadline or of assets that mature by the next repurchase payment deadline.

7. Rule 23c-3(b)(2) requires that repurchase offers be made at periodic intervals specified in the fundamental policy. The Fund requests an exemption from rule 23c-3(b)(2)(i)(B) and (C) to the extent necessary to permit the Board, pursuant to the Fundamental Policy, to set and reset the periodic intervals at which Repurchase Offers will be made at three, six, or 12 months ("Repurchase Offer Intervals"). The Fund states that it will provide written notice of the information required by rule 23c-3(b)(2)(i)(B) and (C) to shareholders notifying them of any change in the Repurchase Offer Interval prior to, or simultaneously with, the notification for the most recent Repurchase Offer if the Repurchase Offer Interval is lengthened, and in the Fund's quarterly reports if the Repurchase Offer Interval is shortened. The Fund believes that the Repurchase Structure would provide Fund shareholders considerably more certainty than would be available under a discretionary repurchase program while providing the Fund flexibility to change Repurchase Offer Intervals when advisable. Applicants state that, when determining whether a Repurchase Offer Interval should be reset, the Board will consider, among other things, the factors set forth in condition 9 below.

Section 5(a)(2) of the Act

1. Section 5(a)(2) of the Act defines "closed-end company" as "any management company other than an open-end company." Section 5(a)(1) of the Act defines "open-end company" as "a management company which is offering for sale or has outstanding any redeemable security for which it is the

issuer.” Section 2(a)(32) defines “redeemable security” as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net assets, or the cash equivalent thereof. Applicant seeks exemptive relief from section 5(a)(2) to assure that the Fund maintains its status as a closed-end company notwithstanding the possibility that the Repurchase Structure may cause the Fund to be deemed an issuer of redeemable securities and thus an open-end company.

2. Applicant submits that in formulating rule 23c–3, the Commission recognized that many aspects of regular, periodic repurchase offers by closed-end funds could raise concerns that are associated with open-end funds’ redeemable securities. These concerns include the method of pricing shares for repurchase, potential suspension of repurchase offers, and excessive leverage. Applicant states that rule 23c–3 addresses these concerns by requiring “forward pricing” of fund shares for repurchase (the same method required for open-end funds), prohibiting suspensions of repurchase offers except under circumstances generally permitted open-end funds, and imposing specific requirements on the amount and type of leverage that a closed-end fund relying on the rule may incur. Applicant states that because it will be subject to these requirements, the concerns associated with redeemable securities are appropriately addressed. Applicant also states that, as a condition to the requested order, the Fund will not be advertised or marketed as an open-end fund or mutual fund nor will its securities be advertised or marketed as redeemable. Applicant believes therefore that an exemption from section 5(a)(2) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 17(a)(1) and 17(a)(2) of the Act

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits any affiliated person, acting as principal, from knowingly purchasing any security or other property from the registered investment company. Section 2(a)(3)(A) of the Act defines an “affiliated person” to include

any person owning five percent or more of the outstanding voting securities of the other person. Applicant states that to the extent that a Repurchase Offer could be deemed to involve the sale or purchase of portfolio securities by an Affiliated Shareholder, the participation of Affiliated Shareholders in the Repurchase Offer would be prohibited by sections 17(a)(1) and 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant states that because all shareholders participating in a Repurchase Offer will receive a pro-rata distribution of the Fund’s portfolio securities, neither the Fund nor an Affiliated Shareholder will have any choice as to the securities to be distributed as proceeds in the Repurchase Offers. Applicant further states that securities to be distributed under the Repurchase Structure will be valued in the same manner as they would be valued for the purposes of computing the Fund’s net asset value. Applicant submits that the terms of the proposed transactions by Affiliated Shareholders therefore meet the standards set forth in sections 6(c) and 17(b) of the Act.

Applicant’s Conditions in the Application

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The Repurchase Structure will comply with rule 23c–3 under the Act except for subparagraphs (a)(3), (b)(1), (b)(2) and (b)(10).

2. Repurchases made pursuant to the Repurchase Structure will comply with rule 23c–3(a)(3) under the Act except to the extent necessary to permit the Fund to offer to repurchase between one and one hundred percent of its outstanding common stock. The Fund will offer to repurchase no less than five percent of its outstanding shares during each fiscal year (based on the number of outstanding shares at the beginning of the fiscal year).

3. Repurchases made pursuant to the Repurchase Structure will comply with rule 23c–3(b)(1) under the Act except to the extent necessary to permit the Fund to pay shareholders who participate in

the repurchases with a pro-rata portion of the Fund’s portfolio securities.

4. Repurchases made pursuant to the Repurchase Structure will comply with rule 23c–3(b)(2) under the Act, except for subparagraphs (i)(B) and (C) to the extent necessary to permit the Fund to have the Fundamental Policy that allows the Board to set or reset the Repurchase Offer Intervals to three, six, or 12 months, provided that written notice (containing the information addressed in subparagraphs (i)(B) and (C)) of any change in the Repurchase Offer Interval is provided to shareholders prior to or simultaneously with the notification required by rule 23c–3(b)(4) for the last Repurchase Offer under the former Repurchase Offer Interval.

5. Repurchases made pursuant to the Repurchase Structure will comply with rule 23c–3(b)(10) under the Act except, in place of the requirements of subparagraph (i), the Fund will, from the time the Fund sends a repurchase offer notice until the repurchase pricing date, maintain a percentage of the Fund’s assets approximately equal to the portion of the Repurchase Offer Amount that the Fund reasonably expects will be paid in cash in assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the Fund has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

6. The Board, including a majority of directors who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Independent Directors”), shall adopt procedures reasonably designed to ensure the Fund’s compliance with the terms and conditions of this application and make and approve such changes to these procedures as it deems necessary.

7. The Fund will distribute to shareholders participating in the Repurchase Structure an in-kind pro-rata distribution of equity portfolio securities of the Fund. The pro-rata distribution will not include (a) securities which, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets (such as forward currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, include the

assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership.

8. Securities distributed as proceeds for participation in the Repurchase Structure will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value on the repurchase pricing date, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price). The securities distributed to shareholders pursuant to Repurchase Offers will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

9. The Board, including a majority of Independent Directors, in determining whether to reset the Repurchase Offer Intervals will consider, among other things, whether shares are trading at a market discount or premium; the effect of a Repurchase Offer's timing on the Mexican securities market (given the size of the Repurchase Offer and the liquidity of the Fund's assets and the liquidity of the Mexican securities markets); the potential shareholder demand for Repurchase Offers given the current trading activity of Fund shares and its market and net asset values; the interests of shareholders not participating in the Repurchase Offers; and the history of the Fund in operating the Repurchase Structure.

10. The Fund will not be advertised or marketed as an open-end fund or mutual fund nor will its securities be advertised or marketed as redeemable. The Fund will disclose the terms of the Repurchase Structure in its annual, semi-annual and quarterly reports.

11. The Repurchase Structure will be conducted in a manner consistent with the investment and other policies of the Fund.

12. The Board, including a majority of the Independent Directors, will determine no less frequently than annually: (a) whether the portfolio securities distributed as proceeds of Repurchase Offers have been valued and distributed in accordance with the terms and conditions of this application; and (b) whether the Fund conducted the

Repurchase Offers during the preceding year in accordance with the terms and conditions of this application.

13. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any in-kind repurchase occurs, the first two years in an easily accessible place, a written record of each repurchase that includes the identity of each shareholder of record that participated in the repurchase, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, the information or materials upon which the valuation was made, and a record of the Board's determinations made pursuant to the terms and conditions of this application.

Commission Statement

In connection with the Fund's annual shareholders meeting, in February 2002, Laxey Partners Limited ("Laxey"), then a beneficial owner of over 5% of the Fund's outstanding shares, filed with the Commission a definitive proxy statement ("Proxy Statement"). The Proxy Statement solicited proxies for, among other things, the election of two directors to the Board and termination of the Fund's Investment Advisory and Management Agreement with Impulsora del Fondo Mexico, S.A., de C.V. ("Adviser"). On March 6, 2002, the Fund announced that the Board approved a policy to conduct quarterly in-kind repurchase offers at 98% of net asset value for 100% of the Fund's outstanding shares. On March 7, 2002, Laxey withdrew its Proxy Statement proposals from consideration at the annual shareholders meeting. Also on March 7, 2002, the Fund entered into a standstill agreement with Laxey and agreed to reimburse Laxey for its fees and expenses in connection with the proxy solicitation ("Reimbursement Agreement"). The Fund paid approximately \$600,000 to Laxey pursuant to the Reimbursement Agreement. We note that the Fund's shareholders have now received from the Fund's Adviser the monies paid to Laxey out of Fund assets, together with the appropriate interest.

In light of these occurrences, the Commission takes this opportunity to remind the fund industry of the importance of the requirements of section 17(d) and rule 17d-1 particularly in the context of an agreement to reimburse the costs of a proxy contest. These provisions broadly prohibit certain joint transactions or arrangements between registered investment companies and their affiliates without the Commission's

advance approval. Approval must be sought from the Commission prior to investment companies engaging in reimbursement agreements of this type.

The Commission considers it essential that the industry carefully scrutinize any use of fund assets to reimburse proxy contestants, and cautions the industry to refrain from effecting inappropriate reimbursement arrangements.

Since the requested exemption is for the benefit of Fund shareholders, we are approving the issuance of the notice of the application.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02-23783 Filed 9-18-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25730; 812-12298]

TCW Convertible Securities Fund, Inc.; Notice of Application

September 13, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

SUMMARY OF THE APPLICATION: TCW Convertible Securities Fund, Inc. ("Applicant") requests an order to permit it to make up to four long-term capital gains distributions in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed dollar amount or a fixed percentage of net asset value.

FILING DATES: The application was filed on October 12, 2000 and amended on August 29, 2002.

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 the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 2002, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the