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]

BILLING CODE 8010–01–P

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

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, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Philip K. Holl, TCW Investment Management Corporation, 865 South Figueroa Street, Suite 1800, Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, 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. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is organized as a Maryland corporation and is registered under the Act as a closed-end diversified management investment company. Applicant's investment objective is to seek total investment return, composed of current income and capital appreciation, through investment principally in convertible securities. TCW Investment Management Company (''Investment Adviser''), an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to Applicant. Applicant's shares are listed and traded on the New York Stock Exchange.

2. On June 15, 1988, Applicant's board of directors (''Board''), including a majority of the members who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), adopted a managed distribution policy with respect to Applicant's common stock (''Distribution Policy'') that calls for distributions, on a quarterly basis, of $0.21 per share. In adopting the Distribution Policy, the Board, including a majority of the Independent Directors, concluded that a policy to provide steady, predictable cash distributions to shareholders would be in the best interest of the shareholders. Applicant states that in continuing the Distribution Policy, the Board has considered empirical evidence that, in some cases, discounts to net asset value of other closed-end funds have narrowed or have been eliminated with managed distribution policies.

3. Applicant requests relief to permit it, so long as it maintains in effect the Distribution Policy calling for quarterly distributions at a fixed dollar amount or fixed percentage of net asset value, to make up to four long-term capital gains distributions in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gain dividend, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant submits that rule 19b–1, by limiting the number of net long-term capital gains distributions that Applicant may make in any one year, prevents the routine inclusion over the course of Applicant's taxable year of realized long-term capital gains in quarterly distributions made under the Distribution Policy. Applicant states that rule 19b–1 thus may force the fixed quarterly distributions to be funded with returns of capital to the extent net investment income and realized net short-term capital gains are insufficient to fund the distribution, even though realized net long-term capital gains would otherwise be available. Applicant also submits that the tax rules require the total annual return of capital to be distributed so that the amounts constitute the same proportion of each of the four distributions. This results in having long-term capital gains in excess of the fixed quarterly distribution either added to one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Distribution Policy, or retained by Applicant (with Applicant paying taxes thereon). Applicant believes that the application of rule 19b–1 to its Distribution Policy may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include long-term capital gains.

3. Applicant also submits that one of the concerns leading to the adoption of rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicant states that its Distribution Policy, including the fact that the distributions called for by the Distribution Policy may include returns of capital to the extent that Applicant's net investment income and net long-term realized capital gains are insufficient to satisfy its distribution obligation, is and will continue to be described in periodic communications. Applicant further states that in accordance with rule 19a–1 under the Act a separate statement showing the source of the distribution (*i.e.*, net investment income, net realized capital gains or return of capital) will continue to accompany each distribution that Applicant makes to its shareholders (or the confirmation of the reinvestment thereof under Applicant's dividend reinvestment plan) that is not from Applicant's net investment income. In addition, a statement showing the amount and source of each distribution during each calendar year will be included with the Applicant's IRS Form 1099–DIV reports of distributions for that year and sent to shareholders of record who received distributions during the year (including shareholders who have sold shares during the year).

4. Applicant states that another concern that led to the adoption of Section 19(b) of the Act and rule 19b–1 was that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend''), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a return of the investor's capital. Applicant states that this concern does not apply to closed-end investment companies, such as Applicant, which do not continuously distribute shares. Applicant also states that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the Applicant. Applicant further states that any transferable rights offering by Applicant will comply with all Commission and staff guidelines. Applicant states that in determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Applicant

states that any such offering by Applicant of transferable rights will also comply with any applicable rules of the National Association of Securities Dealers, Inc. regarding the fairness of compensation.

5. Applicant states that increased administrative costs also is a concern underlying section 19(b) and rule 19b–1. Applicant asserts that the anticipated benefits to its shareholders are such that Applicant will continue to make quarterly distributions regardless of what portion thereof is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or from any rule under the Act 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. For the reasons stated above, Applicant believes that the requested relief satisfies this standard and would be in the best interests of Applicant and its shareholders.

Applicant's Condition

Applicant agrees that any order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by Applicant of its shares other than:

(i) A rights offering to holders of Applicant's common stock, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for the rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) Applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of Applicant; unless Applicant has received from the staff of the Commission written assurance that the order will remain in effect.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23815 Filed 9–18–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46496; File No. SR–BSE–2002–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. To Eliminate Its Current Market Data Revenue Sharing Program and Establish Two New Market Data Revenue Sharing Programs

September 13, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The BSE amended the proposed rule change on August 2, 2002.[3] On August 20, 2002, the BSE again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The BSE seeks to amend its Transaction Fee Schedule to eliminate its current revenue sharing program and replace it with two new revenue sharing programs. The text of the proposed rule change is available at the BSE and at the Commission.

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 Exchange 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 Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule by eliminating the BSE's current revenue sharing program and replacing it with two new revenue sharing programs that would allow the Exchange to continue to provide quality markets to its customers at competitive prices. The Exchange believes that its current revenue sharing program, which shares a portion of all transaction related fees, is too broad in scope and difficult for its customers to understand. By implementing a more clearly defined comprehensive program, the Exchange seeks to narrow and simplify its Transaction Fee Schedule for its customers. The Exchange is seeking to implement these new programs on a pilot basis, for an initial period of six months.

Under the Exchange's existing revenue sharing program, the amount of revenue to be shared is determined by the total amount of transaction related revenue (Value Charge fees, Trade Recording Fees, Specialist Transaction fees, Consolidated Tape revenue and Net ITS fees) the Exchange generates on a monthly basis. Once the Exchange generates $1,700,000 in monthly transaction revenue, 50% of the revenue above this amount is shared with those firms that have generated $50,000 in monthly-automated transaction revenue. The $50,000 cap is reviewed as necessary by the Executive Committee of the Board of Governors and adjusted as required to meet the costs of operating the trading floor. Each firm that reaches the $50,000 cap receives a pro-rata share of the excess revenue based on the total number of Exchange automated executions executed by those firms that reach the cap. However, if the Exchange does not attain its monthly revenue goal, no revenue is shared for that month.

The Exchange is seeking to replace the current revenue sharing program with a simpler, more comprehensive, two-part revenue sharing program. The first part of this program proposes to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 1, 2002 letter from John A. Boese, Assistant Vice President (''AVP''), Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, and attachments (''Amendment No. 1''). Although Amendment No. 1 makes no substantive changes to the original filing, Amendment No. 1 completely replaces and supersedes the original filing, so as to ensure that the proposed rule change is in proper format.

[4] *See* August 19, 2002 letter from John A. Boese, AVP, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaces and supersedes Amendment No. 1 and the original proposed rule change.