

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23506; 812-11308]

### John Hancock Institutional Series Trust; Notice of Application

October 23, 1998.

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

**ACTION:** Notice of application for an exemption under section 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicant, John Hancock Institutional Series Trust (the "Trust"), on behalf of its series John Hancock Multi-Sector Growth Fund (the "Fund"), seeks an order to permit an in-kind redemption of shares of the Fund held by certain affiliated persons of the Fund.

**FILING DATES:** The application was filed on September 17, 1998 and amended on October 22, 1998.

**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 November 17, 1998 and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. Applicant, 101 Huntington Avenue, Boston, Massachusetts 02199.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or May Kay Frech, Branch Chief at (202) 942-0564, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202-942-8090).

### Applicant's Representations

1. The Trust, a Massachusetts business trust, is an open-end

management investment company registered under the Act. The Fund is a series of the Trust. John Hancock Advisers, Inc. (the "Adviser"), registered as an investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser to the Fund. The Adviser is owned by John Hancock Mutual Life Insurance Company ("JHMLIC").

2. The Investment-Incentive Plan for John Hancock Mutual Life Insurance Company Employees ("TIP Plan") and the John Hancock Savings and Investment Plan ("SIP Plan") (collectively, the "Plans") are qualified retirement plans for the employees of JHMLIC and some of its subsidiaries. Investors Bank & Trust Company ("IBT") serves as trustee for the Plans. As of September 1, 1998, the TIP Plan and the SIP Plan beneficially owned approximately 46.03% and 3.99%, respectively, of the outstanding shares of the Fund. IBT, as trustee for the Plans, has advised the Fund that it intends to redeem all shares of the Fund beneficially owned by the Plans.

3. The Fund's prospectus and statement of additional information (together, the "Prospectus") provide that, in limited circumstances, the Fund may satisfy all or part a redemption request by delivering portfolio securities to a redeeming shareholder. The board of trustees of the Trust (the "Board"), including a majority of the non-interested trustees, has determined that the Fund should redeem the shares of the Plans in-kind to protect the Fund from the potentially adverse impact of liquidating a significant amount of portfolio securities if it satisfied the redemption request in cash.

4. The Fund proposes to redeem the shares of the Plans in the form of a *pro rata* distribution of each portfolio security held by the Fund after excluding: (a) securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in

beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities will be excluded from portfolio securities distributed in-kind to the Plans.

5. The Trust has elected to be governed by the provisions of rule 18f-1 under the Act which commits the Fund to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of \$250,000 or 1% of the Fund's net asset value ("NAV") at the beginning of such period. The Fund will comply with rule 18f-1.

### Applicant's Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to knowingly purchase from the registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3) of the Act defines "affiliated person" to include any person owning 5% or more of the outstanding voting securities of the other person; any person controlling or under common control with the other person; and an investment adviser to an investment company. The TIP Plan owns beneficially in excess of 25% of the Fund's shares and, thus, is an affiliated person of the Fund. The Plans and the Adviser may also be deemed to be under common control of JHMLIC, and thus, the Plans may be affiliated persons by an affiliated person of the Fund. Applicant states that, to the extent that the proposed in-kind redemption would involve the "purchase" of the Fund's portfolio securities by the Plans, the proposed in-kind redemption would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the SEC 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 submits that the terms of the proposed in-kind redemption by the Plans meet the standards set forth in section 17(b) of the act. The Plans will have no choice as to the type of consideration to be received in the redemption and neither the Adviser nor IBT as trustee for the Plans will have any opportunity to select the portfolio securities to be distributed. Applicant also states that the securities to be distributed to the Plans will be valued in the same manner as they are valued for purposes of determining the Fund's NAV. In addition, applicant states that the proposed in-kind redemption is consistent with the investment policies of the Fund, as set forth in the Fund's Prospectus.

#### **Applicant's Conditions**

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

1. The portfolio securities of the Fund distributed to the Plans pursuant to the redemptions in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to the Plans. Cash will be paid for the portion of the in-kind distribution represented by the excluded assets set

forth above less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Plans will be valued in the same manner as they would be valued for purposes of computing the Fund's NAV, 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 most recent bid price.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption by the Plans occurred, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Plans, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 40591; File No. SR-BSE-98-9]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Fees Schedule**

October 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 1998, the Boston Stock Exchange, Inc. ("BSE" or Exchange) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

The Exchange proposes to amend its fee schedules to: (1) eliminate fees for specialist odd lot trades; (2) increase specialist and floor broker occupancy fees; (3) revise transaction fee maximums under the Competing Specialist Initiative program; (4) increase Members' Dues; and (5) implement a revenue sharing program for member firms ("firms").

The text of the proposed rule change is available at the Office of the Secretary, 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 Statutory Basis for the Proposed Rule Change**

##### **1. Purpose**

The purpose of the proposed rule change is to amend several of the Exchange's fee schedules as follows:

##### **Floor Operation Fees**

The Exchange proposes to eliminate specialist odd lot fees.<sup>3</sup> The purpose of this rule change is to support the Exchange's Floor Members' efforts in attracting additional odd lot order flow to the Exchange. The Exchange also proposes to increase specialist and floor broker occupancy fees from \$400 per post per month to \$500 per post per month. The purpose of this increase is to help offset the costs associated with operating the trading floor.

Additionally, the Exchange proposes to revise Competing Specialist Initiative (CSI) transaction fee maximums to:

CTA trade rank	Monthly transaction fee maximum
1-50 .....	\$400

<sup>3</sup> Specialist odd lot fees were \$.75 per order.