

report; (3) receive oral scoping comments under the National Environmental Policy Act on the Trust's proposed environmental review for the Public Health Service Hospital project; and (4) receive public comment in accordance with the Trust's Public Outreach Policy.

Accommodation: Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561-5300 prior to November 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, California 94129-0052, Telephone: (415) 561-5300.

Dated: November 20, 2003.

**Karen A. Cook,**  
General Counsel.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26258; 812-12920]

### John Hancock Bank and Thrift Opportunity Fund; Notice of Application

November 20, 2003.

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

**ACTION:** Notice of 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 APPLICATION:** John Hancock Bank and Thrift Opportunity Fund (the "Applicant") requests an order to permit it to make periodic distributions of long-term capital gains, as often as monthly, so long as it maintains in effect a distribution policy calling for periodic distributions of a fixed percentage of net asset value or a fixed dollar amount each taxable year ("Distribution Plan").

**FILING DATES:** The application was filed on January 17, 2003, and amended on November 10, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief 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 December 15, 2003 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 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 Susan S. Newton, John Hancock Advisers, LLC, 101 Huntington Avenue, Boston, MA 02199-7603.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 942-0581, or Mary 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 Fifth Street NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicant's Representations

1. Applicant is organized as a Massachusetts business trust and is registered under the Act as a closed-end diversified management investment company. Applicant's investment objective is long-term capital appreciation through investment of at least 80% of its net assets in securities of U.S. regional banks and thrifts and holding companies that primarily own or receive a substantial portion of their income from regional banks or thrifts. Applicant's shares are listed and traded on the New York Stock Exchange. John Hancock Advisers, LLC, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the Applicant.

2. On May 20, 2003, the Applicant's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of the Applicant, adopted a Distribution Plan, pursuant to which the Applicant would make quarterly distributions of an amount equal to at least 2.5% of the Applicant's net asset value determined as of December 31st of the prior calendar year, for a total distribution of at least 10% annually. Applicant believes that the discount at which the Applicant's shares trade may be reduced

if the Applicant implemented the Distribution Plan.

3. Applicant requests relief to permit it, so long as it maintains in effect a Distribution Plan, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock.

### 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 gains distribution, 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 asserts that rule 19b-1 under the Act, by limiting the number of net long-term capital gains distributions that it may make with respect to any one year, would prevent the normal and efficient operation of the Distribution Plan whenever the Applicant's realized net long-term capital gains in any year exceed the total of the fixed regular periodic distributions that may include such capital gains under the rule. Applicant states that rule 19b-1 thus may force the fixed regular periodic distributions to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. Applicant further asserts that, to distribute all of its long-term capital gains within the limits in rule 19b-1, the Applicant may be required to make total distributions in excess of the annual amount called for by the Distribution Plan or retain and pay taxes on the excess amount. Applicant asserts that the application of rule 19b-1 to the Applicant's Distribution Plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The Applicant submits that one of the concerns leading to the enactment of section 19(b) and the adoption of the

rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The Applicant states that the proposed Distribution Plan, including the fact that the distributions called for by the Distribution Plan will include returns of capital to the extent that the Applicant's net investment income and net realized capital gains are insufficient to meet the minimum percentage dividend, will be fully described in each of the Applicant's periodic reports to shareholders. The Applicant states that, in accordance with rule 19a-1 under the Act, a statement showing the source of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under the Applicant's dividend reinvestment plan). The Applicant states that the amount and source of each distribution received during the calendar year will be included with the Applicant's IRS Form 1099-DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). The Applicant states that this information also will be included in the Applicant's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend"), where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as the Applicant, which do not continuously distribute their shares. In addition, the Applicant states that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, the Applicant states that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. 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. Any offering by the Applicant of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if 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, the Applicant believes that the requested relief satisfies this standard.

#### **Applicant's Condition**

The 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 the Applicant of its shares other than:

(i) a rights offering to holders of the Applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) the 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 the Applicant; unless the 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, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 35-27766]

### **Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")**

November 20, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **KeySpan Corporation, et al. (70-10129)**

KeySpan Corporation ("KeySpan"), a registered holding company and KeySpan's directly owned public utility subsidiaries The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("KEDNY"); KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KEDLI"); KeySpan Generation LLC ("KeySpan Generation"); and KeySpan's public utility subsidiaries indirectly owned through KeySpan New England LLC ("KeySpan New England"), Boston Gas Company d/b/a KeySpan Energy Delivery New England ("Boston Gas"), Essex Gas Company d/b/a KeySpan Energy Delivery New England ("Essex Gas"), Colonial Gas Company d/b/a KeySpan Energy Delivery New England ("Colonial Gas"), and EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England ("ENGI" and the