

INDEPENDENT BANK CORP /MI/

Form S-8

October 27, 2017

As filed with the Securities and Exchange Commission on October 27, 2017 — Registration No. 333-\_\_\_\_\_

---

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

INDEPENDENT BANK CORPORATION

(Exact name of registrant as specified in its charter)

Michigan

(State or other jurisdiction of incorporation or organization)

38-2032782

(I.R.S. Employer Identification No.)

4200 East Beltline, Grand Rapids, Michigan 49525

(Address of Principal Executive Offices Including Zip Code)

Independent Bank Corporation Long-Term Incentive Plan

(Full Title of the Plan)

Robert N. Shuster, 4200 East Beltline, Grand Rapids, Michigan 49525

(Name and address of agent for service)

(616) 527-5820

(Telephone number, including area code, of agent for service)

Copies of Communications to:

Michael G. Wooldridge

Varnum LLP

Bridgewater Place, P.O. Box 352

Grand Rapids, Michigan 49501-0352

(616) 336-6000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Edgar Filing: INDEPENDENT BANK CORP /MI/ - Form S-8

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock (no par value)	400,000	\$ 22.63	\$ 9,052,000	\$ 1,126.98

The number of shares being registered is the additional number of shares available for the grant of awards under the Independent Bank Corporation Long-Term Incentive Plan that have not been previously registered. Pursuant to (1) Rule 416(a) of the General Rules and Regulations under the Securities Act of 1933, as amended, this Registration Statement shall cover such additional securities as may be offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions.

For the purpose of computing the registration fee only, the price shown is based upon the price of \$22.63 per share, (2) the average of the high and low sale prices for the Common Stock of Independent Bank Corporation, as reported by the NASDAQ Stock Exchange Global Select Market on October 24, 2017, in accordance with Rule 457(h).

Pursuant to Rule 416(a) of the General Rules and Regulations under the Securities Act of 1933, as amended, this Registration Statement shall cover such additional securities as may be offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions.

This Registration Statement contains a total of 6 pages (plus exhibits). The Exhibit Index is located on page 5.

EXPLANATORY NOTE

This Registration Statement is filed pursuant to General Instruction E of Form S-8 for the purpose of registering an additional 400,000 shares of common stock, no par value (the "Common Stock"), of Independent Bank Corporation, a Michigan corporation (the "Registrant"), issuable pursuant to the Registrant's Long-Term Incentive Plan. The Registrant's previously filed Registration Statement on Form S-8 (Registration No. 333-89072), as filed with the Securities and Exchange Commission (the "Commission") on May 24, 2002, is hereby incorporated by reference, except for Items 3, 6, and 8 of such previously filed Registration Statement, which are replaced and superseded with the Items 3, 6, and 8 set forth in this Registration Statement below.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents filed with the Commission are incorporated herein by reference:

(a) The Annual Report on Form 10-K for the Registrant for the year ended December 31, 2016;

All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the (b) "Exchange Act"), since the end of the fiscal year covered by the Annual Report on Form 10-K referred to in (a) above; and

(c) The description of the Registrant's common stock contained in the Registrant's Registration Statement (File No. 0-7818 ) filed pursuant to Section 12(g) of the Exchange Act.

All other reports or documents filed by the Registrant pursuant to the requirements of Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, subsequent to the date hereof and prior to the termination of the offering of the securities offered hereby shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such reports or documents. Any statement contained in a document incorporated herein by reference shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 6. Indemnification of Directors and Officers

Michigan Business Corporation Act. Registrant is organized under the Michigan Business Corporation Act (the "MBCA") which, in general, empowers Michigan corporations to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another enterprise, against expenses, including attorney's fees, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection therewith if the person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders and, with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful.

The MBCA also empowers Michigan corporations to provide similar indemnity to such a person for expenses, including attorney's fees, and amounts paid in settlement actually and reasonably incurred by the person in connection with actions or suits by or in the right of the corporation if the person acted in good faith and in a manner the person

reasonably believed to be in or not opposed to the interests of the corporation or its shareholders, except in respect of any claim, issue or matter in which the person has been found liable to the corporation, unless the court determines that the person is fairly and reasonably entitled to indemnification in view of all relevant circumstances, in which case indemnification is limited to reasonable expenses incurred. If a person is successful in defending against a derivative action or third-party action, the MBCA requires that a Michigan corporation indemnify the person against expenses incurred in the action.

The MBCA also permits a Michigan corporation to purchase and maintain on behalf of such a person insurance against liabilities incurred in such capacities. IBC has obtained a policy of directors' and officers' liability insurance.

The MBCA further permits Michigan corporations to limit the personal liability of directors for a breach of their fiduciary duty. However, the MBCA does not eliminate or limit the liability of a director for any of the following: (i) the amount of a financial benefit received by a director to which he or she is not entitled; (ii) intentional infliction of harm on the corporation or the shareholders; (iii) a violation of Section 551 of the MBCA; or (iv) an intentional criminal act. If a Michigan corporation adopts such a provision, then the Michigan corporation may indemnify its directors without a determination that they have met the applicable standards for indemnification set forth above, except, in the case of an action or suit by or in the right of the corporation, only against expenses reasonably incurred in the action. The foregoing does not apply if the director's actions fall into one of the exceptions to the limitation on personal liability discussed above, unless a court determines that the person is fairly and reasonably entitled to indemnification in view of all relevant circumstances.

IBC's Articles of Incorporation and Bylaws. The Company's Restated Articles of Incorporation, as amended, provide, among other things, for the indemnification of directors and officers and authorize the Board of Directors to indemnify other persons in addition to the officers and directors. Directors and officers are indemnified against any actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding in which the director or officer is a witness or which is brought against such officer or director while serving at the request of the Company.

Insurance. The Company's Restated Articles of Incorporation, as amended, authorize the purchase of insurance for indemnification purposes and that the right of indemnity in the Restated Articles of Incorporation, as amended, is not the exclusive means of indemnification.

Indemnification Agreements. The Company has entered into Indemnification Agreements with each of its directors that provides for additional indemnity protection for the directors, consistent with the provisions of the MBCA.

Item 8. Exhibits

A list of exhibits to this Registration Statement is set forth in the Exhibit Index appearing on page 6 of this Registration Statement and is incorporated herein by reference.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Grand Rapids, State of Michigan, on the 24th day of October, 2017.

## INDEPENDENT BANK CORPORATION

/s/ Robert N. Shuster

By: Robert N. Shuster

Its: Executive VP and Chief Financial Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Robert N. Shuster and William B. Kessel, and each of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission and any other regulatory authority, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing required and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below on October 24, 2017, by the following persons in the capacities indicated.

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
/s/ Robert N. Shuster Robert N. Shuster	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	October 24, 2017
/s/ William B. Kessel William B. Kessel	Director, President and Chief Executive Officer (Principal Executive Officer)	October 24, 2017
/s/ James J. Twarozynski James J. Twarozynski	Senior Vice President and Controller (Principal Accounting Officer)	October 24, 2017
/s/ Michael M. Magee, Jr. Michael M. Magee, Jr.	Director	October 24, 2017
/s/ Stephen L. Gulis, Jr. Stephen L. Gulis, Jr.	Director	October 24, 2017
Terry L. Haske	Director	
/s/ Christina L. Keller Christina L. Keller	Director	October 24, 2017

Edgar Filing: INDEPENDENT BANK CORP /MI/ - Form S-8

/s/ Charles C. Van Loan Charles C. Van Loan	Director	October 24, 2017
/s/ William J. Boer William J. Boer	Director	October 24, 2017
/s/ Matthew J. Missad Matthew J. Missad	Director	October 24, 2017
/s/ Joan A. Budden Joan A. Budden	Director	October 24, 2017
/s/ James E. McCarty James E. McCarty	Director	October 24, 2017
/s/ Michael J. Cok Michael J. Cok	Director	October 24, 2017

EXHIBIT INDEX

Exhibit  
4.1 Restated Articles of Incorporation, conformed through October 26, 2017\*

Exhibit  
4.2 Amended and Restated Bylaws, conformed through January 24, 2017 (incorporated herein by reference to Exhibit 3.2 to our annual report on Form 10-K for the year ended December 31, 2016 and filed on March 7, 2017)

Exhibit  
4.3 Independent Bank Corporation Long-Term Incentive Plan, as amended through January 24, 2017\*

Exhibit 5 Opinion of Varnum LLP with respect to the legality of the securities being registered\*

Exhibit  
23.1 Consent of Crowe Horwath LLP, Independent Registered Public Accounting Firm\*

Exhibit  
23.2 Consent of Varnum LLP (included with the opinion filed as Exhibit 5)\*

Exhibit  
24 Power of Attorney (included in the signature page hereto)\*

\* Filed herewith