

LAKELAND BANCORP INC
Form S-8
June 20, 2018

As filed with the Securities and Exchange Commission on June 20, 2018

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

LAKELAND BANCORP, INC.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

250 Oak Ridge Road,

22-2953275
(I.R.S. Employer

Identification No.)

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Oak Ridge, New Jersey 07438

(Address of Principal Executive Offices) (Zip Code)

Lakeland Bancorp, Inc. 2018 Omnibus Equity Incentive Plan

(Full title of the plan)

Thomas J. Shara

President and Chief Executive Officer

Lakeland Bancorp, Inc.

250 Oak Ridge Road, Oak Ridge, New Jersey 07438

Telephone: (973) 697-2000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Please send copies of all communications to:

**Timothy J. Matteson, Esq.
Executive Vice President, Chief Administrative Officer,
General Counsel and Corporate Secretary
Lakeland Bancorp, Inc.
250 Oak Ridge Road
Oak Ridge, New Jersey 07438
(973) 697-2000**

**Peter H. Ehrenberg, Esq.
Laura R. Kuntz, Esq.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068
(973) 597-2500**

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

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

Title of Securities	Amount	Proposed Maximum	Proposed Maximum	Amount of
To Be Registered	To Be	Offering Price	Aggregate	Registration Fee
To Be Registered	Registered (1)(2)	Per Share (3)	Offering Price (3)	Registration Fee
Common stock, no par value	2,000,000 shares	\$20.45	\$40,900,000	\$5,092.05

- (1) Covers an aggregate of 2,000,000 shares of common stock, no par value (Lakeland Common Stock), of Lakeland Bancorp, Inc. (the Registrant), issuable under the Lakeland Bancorp, Inc. 2018 Omnibus Equity Incentive Plan (the 2018 Plan).
- (2) In accordance with Rule 416 under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers such indeterminate number of additional shares of Lakeland Common Stock as may be issuable pursuant to the anti-dilution provisions of the employee benefit plan described herein as a result of any equity restructuring or change in capitalization of the Registrant, including, but not limited to, spin-offs, stock dividends, large non-recurring dividends, rights offerings, stock splits or similar transactions.
- (3) Estimated, in accordance with Rule 457(c) and Rule 457(h)(1) of the Securities Act, solely for the purpose of calculating the registration fee. The proposed maximum offering price per share and the proposed maximum aggregate offering price are based on the average of the high and low prices for a share of Lakeland Common Stock as reported on the NASDAQ Global Select Market on June 18, 2018, which is within five business days prior to the date of this Registration Statement.

PART I

Information Required in the Section 10(a) Prospectus

Item 1. Plan Information.

The information called for by Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (the *Registration Statement*) and has been or will be sent or given to participating service providers in accordance with Rule 428 of the Securities Act of 1933, as amended (the *Securities Act*), and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the *Commission*) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

Lakeland Bancorp, Inc. (the *Company* or the *Registrant*) will furnish without charge to each person to whom the prospectus is delivered, upon the written or oral request of such person, a copy of any and all of the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II hereof, other than exhibits to such documents (unless such exhibits are specifically incorporated by reference in such documents that are incorporated), and the other documents required to be delivered to eligible participants in the Lakeland Bancorp, Inc. 2018 Omnibus Equity Incentive Plan pursuant to Rule 428(b) under the Securities Act. Those documents are incorporated by reference in the Section 10(a) prospectus. Requests should be directed to:

Lakeland Bancorp, Inc.

Attention: Timothy J. Matteson, Esq.

Executive Vice President, Chief Administrative Officer, General Counsel and Corporate Secretary

250 Oak Ridge Road

Oak Ridge, New Jersey 07438

(973) 697-2000

PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Company with the Commission pursuant to the Securities Act and the Securities Exchange Act of 1934, as amended (the *Exchange Act*), are incorporated herein by reference:

(a)

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the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, as filed with the Commission on February 28, 2018;

- (b) the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, as filed with the Commission on May 8, 2018;
- (c) The Company's Current Reports on Form 8-K filed with the Commission on January 26, 2018, April 25, 2018 and May 11, 2018 (except for the disclosures made under Item 2.02 or Item 7.01 of any such Current Report on Form 8-K, including the related exhibits, which are deemed furnished, and not filed, in accordance with the Commission's regulations); and
- (d) the description of the Company's common stock contained in the Company's Registration Statement on Form 8-A filed with the Commission on February 18, 2000, including any amendments or reports filed for the purpose of updating such description.

All documents filed by the Company pursuant to Section 13(a), 13(c), 14, or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment, which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing such documents, except as to specific sections of such documents as set forth therein. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document, which also is deemed to be incorporated by reference herein, modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's Bylaws contain the following provisions regarding indemnification:

Any person and his or her heirs, executors, or administrators, may be indemnified or reimbursed by the Corporation for reasonable expenses actually incurred in connection with any threatened, pending or completed action, suit or proceeding, civil, administrative, investigative or criminal, in which any of them shall have been made a party by reason of a person being or having been a director, officer, or employee of the Corporation or of any firm, corporation, or organization which that person served in any such capacity at the request of the Corporation; provided, that person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Corporation and with respect to criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful and, provided further, that no such person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding which has been made the subject of a compromise settlement except with the approval of a court of competent jurisdiction, or the holders of record of a majority of the outstanding shares of the Corporation, or the Board of Directors, acting by vote of Directors not parties to the same or substantially the same action, suit, or proceeding constituting a majority of the whole number of Directors. The foregoing right of indemnification or reimbursement shall not be exclusive of other rights to which such a person and his or her heirs, executors, or administrators may be entitled as a matter of law.

The Corporation may, upon the affirmative vote of a majority of its Board of Directors, purchase insurance for the purpose of indemnifying its Directors, officers, and other employees to the extent that such indemnifications are allowed in the preceding paragraph. Such insurance may, but need not, be for the benefit of all Directors, officers, or employees.

Subsection (2) of Section 3-5, Title 14A of the New Jersey Business Corporation Act empowers a corporation to indemnify a corporate agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (other than an action by or in the right of the corporation) against reasonable costs (including attorneys' fees), judgments, fines, penalties and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation,

and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful. For purposes of the Act, a corporate agent means any person who is or was a director, officer, employee or agent of the corporation or a person serving at the request of the corporation as a director, officer, trustee, employee or agent of another corporation or enterprise, or the legal representative of any director, officer, employee or agent.

Subsection (3) of Section 3-5 empowers a corporation to indemnify a corporate agent against reasonable costs (including attorneys' fees) incurred by him in connection with any proceeding by or in the right of the corporation to procure a judgment in its favor which involves such corporate agent by reason of the fact that he is or was a corporate agent if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such corporate agent shall have been adjudged to be liable to the corporation unless and only to the extent that the Superior Court of New Jersey or the court in which such action or suit was brought shall determine that despite the adjudication of liability, such corporate agent is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Subsection (4) of Section 3-5 provides that to the extent that a corporate agent has been successful in the defense of any action, suit or proceeding referred to in subsections (2) and (3) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) incurred by him in connection therewith.

Subsection (5) of Section 3-5 provides that a corporation may indemnify a corporate agent in a specific case if it is determined that indemnification is proper because the corporate agent met the applicable standard of conduct in subsections (2) and (3), and such determination is made by any of the following: (a) the board of directors or a committee thereof, acting by a majority vote of a quorum consisting of disinterested directors; (b) independent legal counsel, if there is no quorum of disinterested directors or if the disinterested directors empowers counsel to make the determination; or (c) the shareholders.

Subsection (8) of Section 3-5 provides that the indemnification provisions in the law shall not exclude any other rights to indemnification that a corporate agent may be entitled to under a provision of the certificate of incorporation, a by-law, an agreement, a vote of shareholders, or otherwise. That subsection explicitly permits indemnification for liabilities and expenses incurred in proceedings brought by or in the right of the corporation (derivative proceedings). The only limit on indemnification of a corporate agent imposed by that subsection is that a corporation may not indemnify a corporate agent if a judgment has established that the corporate agent's acts or omissions were a breach of his or her duty of loyalty, not in good faith, involved a knowing violation of the law, or resulted in receipt by the corporate agent of an improper personal benefit.

Subsection (9) of Section 3-5 provides that a corporation is empowered to purchase and maintain insurance on behalf of a corporate agent against any expenses or liabilities incurred in any proceeding by reason of that person being or having been a director or officer, whether or not the corporation would have the power to indemnify that person against expenses and liabilities under other provisions of the law.

The Registrant's Restated Certificate of Incorporation, as amended, contains the following provision:

A director or an officer of the corporation shall not be personally liable to the corporation or its shareholders for the breach of any duty owed to the corporation or its shareholders except to the extent that an exemption from personal liability is not permitted by the New Jersey Business Corporation Act. Any expenses incurred by a director or officer of the corporation in connection with a proceeding involving the director or officer may be paid by the corporation in advance of final disposition of the proceeding, provided the director or officer undertakes to repay such amount unless it shall ultimately be determined that he or she is entitled to indemnification.

The Registrant currently maintains directors' and officers' liability coverage which will insure the Registrant's directors and officers and the directors and officers of its subsidiaries in certain circumstances.

See also the undertakings set out in response to Item 9 of this Registration Statement.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

For a list of exhibits, see the Exhibit Index in this Registration Statement, which is incorporated into this Item by reference.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

Provided, however, that Paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof:

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification

is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

Exhibit No.	Description
4.1	<u>The Registrant's Restated Certificate of Incorporation, dated May 19, 2005, including Certificate of Amendment dated February 4, 2009 to the Registrant's Restated Certificate of Incorporation, is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the SEC on February 9, 2009.</u>
4.2	<u>Certificate of Amendment, dated January 29, 2009, to the Registrant's Restated Certificate of Incorporation is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the SEC on February 3, 2009.</u>
4.3	<u>Certificate of Amendment, dated May 8, 2013, to the Registrant's Restated Certificate of Incorporation is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 14, 2013.</u>
4.4	<u>Certificate of Amendment to the Registrant's Restated Certificate of Incorporation, filed with the New Jersey Department of Treasury on May 10, 2018, is incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 11, 2018.</u>
4.5	<u>The Registrant's Amended and Restated Bylaws are incorporated by reference to Exhibit 3.3 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2012.</u>
4.6	<u>Lakeland Bancorp, Inc. 2018 Omnibus Equity Incentive Plan is incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 11, 2018.</u>
4.7	<u>Form of Restricted Stock Award Agreement.</u>
4.8	<u>Form of Performance-Based Restricted Stock Unit Award Agreement.</u>
4.9	<u>Form of Time-Based Restricted Stock Unit Award Agreement.</u>
5.1	<u>Opinion of Lowenstein Sandler LLP.</u>
23.1	<u>Consent of KPMG LLP.</u>
23.2	<u>Consent of Lowenstein Sandler LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on the signature page to this Registration Statement).</u>

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 Township of Oak Ridge, State of New Jersey, on June 20, 2018.

LAKELAND BANCORP, INC.By: */s/ Thomas J. Shara*

Thomas J. Shara
President and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned officers and directors of Lakeland Bancorp, Inc., a New Jersey corporation, do hereby constitute and appoint Thomas J. Shara and Thomas F. Splaine, Jr., and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments to this Registration Statement on Form S-8), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on behalf of the registrant in the capacities and on the dates indicated.

Person	Capacity	Date
<i>/s/ Thomas J. Shara</i> Thomas J. Shara	President and Chief Executive Officer and Director (Principal Executive Officer)	June 20, 2018
<i>/s/ Thomas F. Splaine, Jr.</i> Thomas F. Splaine, Jr.	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June 20, 2018
Bruce D. Bohuny	Director	
<i>/s/ Mary Ann Deacon</i> Mary Ann Deacon	Chairman of the Board	June 20, 2018
<i>/s/ Brian Flynn</i>		

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Brian Flynn	Director	June 20, 2018
<i>/s/ Mark J. Fredericks</i> Mark J. Fredericks	Director	June 20, 2018
<i>/s/ Janeth C. Hendershot</i> Janeth C. Hendershot	Director	June 20, 2018

/s/ Lawrence R. Inserra, Jr.

Lawrence R. Inserra, Jr.

Director

June 20, 2018

/s/ Thomas J. Marino

Thomas J. Marino

Director

June 20, 2018

/s/ Robert E. McCracken

Robert E. McCracken

Director

June 20, 2018

/s/ Robert B. Nicholson III

Robert B. Nicholson III

Director

June 20, 2018