

INDEPENDENT BANK CORP

Form S-8

April 17, 2006

Table of Contents

As filed with the Securities and Exchange Commission on April 17, 2006.

Registration No. 333-_____

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933
INDEPENDENT BANK CORP.
(Exact name of registrant as specified in its charter)**

Massachusetts
(State or other jurisdiction of incorporation or
organization)

04-2870273
(I.R.S. Employer Identification No.)

288 Union Street, Rockland, Massachusetts
(Address of Principal Executive Offices)

02370
(Zip Code)

Independent Bank Corp. 2006 Non-Employee Director Stock Plan
(Full Title of the Plan)

Edward H. Saksay
General Counsel
Independent Bank Corp.
288 Union Street

Rockland, Massachusetts 02370
(Name, address of agent for service)

(781) 878-6100
(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

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, par value \$0.01 per share(3)	50,000	\$ 31.66	\$ 1,583,000	\$ 169.38

- (1) Plus such additional number of shares as may be required pursuant to the plan set forth above in the event of a stock dividend, split-up of shares, recapitalization or other similar change in the Common Stock.
- (2) Estimated solely for the purpose of calculating the registration fee, in accordance with Rule 457(h)(1), on the basis of the average of the high and low prices of the Common Stock, as reported on the National Market System of the National Association of Securities Dealers Automated Quotation System (NASDAQ) on April 13, 2006.
- (3) There are also registered hereunder the Preferred Stock Purchase Rights issued and attached to the Common Stock pursuant to the Renewal Rights Agreement dated as of September 14, 2000 between Independent Bank

Corp. and Rockland Trust Company, as rights agent.

TABLE OF CONTENTS

EXPLANATORY NOTE

PART I

PART II

Item 3. Incorporation of Documents by Reference

Item 4. Description of Securities

Item 5. Interests of Named Experts and Counsel

Item 6. Indemnification of Officers and Directors

Item 7. Exemption from Registration Claimed

Item 8. Exhibits

Item 9. Undertakings

POWER OF ATTORNEY

INDEX TO EXHIBITS

EX-5.1 Opinion of Choate, Hall & Stewart LLP

EX-23.1 Consent of KPMG LLP

EX-99.1 2006 Non-Employee Director Stock Plan

Table of Contents

EXPLANATORY NOTE

This Registration Statement has been prepared in accordance with the requirements of Form S-8, as amended, and relates to 50,000 shares of Common Stock, \$0.01 par value per share, of Independent Bank Corp. (the Company), which represent shares issuable under the Company's 2006 Non-Employee Director Stock Plan (the 2006 Plan).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information required in Part I of this registration statement on Form S-8 (the Registration Statement) will be sent or given to participants in the 2006 Plan, in accordance with Rule 428 under the Securities Act of 1933, as amended (hereinafter, the Securities Act), and the Note to Part I of Form S-8. Such documents and the documents incorporated by reference herein pursuant to Item 3 Part II hereof, taken together constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. Accordingly, the information is not being filed as part of this Registration Statement pursuant to the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents are hereby incorporated by reference into this Registration Statement:

- a. The Company's Annual Report on Form 10-K for the fiscal year ending December 31, 2005, filed March 3, 2006;
- b. The Company's Current Reports on Form 8-K filed on April 13, 2006, April 11, 2006, March 20, 2006, March 16, 2006, March 1, 2006, February 21, 2006, January 23, 2006, January 19, 2006, and January 13, 2006; and
- c. The description of the Company's Common Stock included in its registration statement on Form 8-A filed with the Commission on January 21, 1986 and the description of the Company's Renewal Rights Agreement dated as of September 14, 2000, as set forth on its Form 8-A dated September 23, 2000, including all amendments and reports amending such descriptions.

In addition, all documents filed by the Company after the initial filing date of this Registration Statement pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and prior to the filing of a post-effective amendment with indicates that all shares registered hereunder have been sold or which

Table of Contents

deregisters all shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

You should rely only on information contained or incorporated by reference in this Registration Statement. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

You may request a copy of any filings referred to above (excluding exhibits), at no cost, by contacting us at the following address: Investor Relations, Attention: Jennifer Kingston, Independent Bank Corp., 288 Union Street, Rockland, Massachusetts 02370, Telephone: (781) 878-6100.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Officers and Directors

Section 2.02(b)(4) of Chapter 156D of the Massachusetts General Laws allows a corporation to eliminate or limit the personal liability of a director of a corporation to the corporation or its shareholders for monetary damages for a breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of an improper distribution or obtained an improper personal benefit. The Company has included a similar provision in its Restated Articles of Organization and Amended and Restated Bylaws.

Section 8.51(a) of Chapter 156D of the Massachusetts General Laws provides that a corporation may indemnify its directors against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement reasonably incurred in connection with any litigation or other legal proceeding brought against any director by virtue of his or her position as a director of the corporation unless he or she is deemed to have not acted in good faith in the reasonable belief that his or her action was in the best interests of the corporation or was at least not opposed to the best interests of the corporation, and, in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. As noted below, the Company has provided for director indemnification in its Restated Articles of Organization and Amended and Restated Bylaws.

Section 8.52 of Chapter 156D of the Massachusetts General Laws provides that a corporation must indemnify a director who is wholly successful, on the merits or otherwise, in

Table of Contents

the defense of any proceeding to which the director was a party because he or she was a director of the corporation against reasonable expenses incurred by him or her in connection with the proceeding.

Section 8.56(a) of Chapter 156D of the Massachusetts General Laws provides that a corporation may indemnify and advance expenses to its officers to the same extent as its directors and, for officers that are not directors, to the extent provided by (i) the articles of organization, (ii) the bylaws, (iii) a vote of the board of directors or (iv) a contract. In all instances, the extent to which a corporation provides indemnification to its officers under Section 8.56 is optional. As noted below, the Company has provided for officer indemnification in its Restated Articles of Organization and Amended and Restated Bylaws.

The Company's Amended and Restated Bylaws provide that, except as limited by law or otherwise provided in the Amended and Restated Bylaws, each director or officer of the Company, including any person serving at the Company's request as a director, officer or trustee of another organization in which the Company has any interest as a shareholder, creditor or otherwise (and including such person's respective heirs, executors and administrators), shall be indemnified by the Company against any liability or expense incurred in connection with a proceeding in which he or she is a party because he or she is a director or officer if: (1)(i) he or she conducted himself or herself in good faith, and (ii) he or she reasonably believed that his or her conduct was in the best interests of the corporation or was at least not opposed to the best interests of the corporation, and (iii) in the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful; or (2) he or she engaged in conduct for which liability has been eliminated by Article 6 of the Restated Articles of Organization.

The Company will pay sums on account of indemnification in advance of a final disposition of a proceeding upon receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the relevant standard of conduct or that the proceeding involves conduct for which liability has been eliminated under the Restated Articles of Organization and (b) an undertaking by the director or officer to repay such sums if it is subsequently established that he or she is not entitled to indemnification. The determination of whether a director has met the relevant standard of conduct for indemnification under the Amended and Restated Bylaws shall be made by (a) a majority vote of the disinterested directors (if there are two or more), (b) special legal counsel or (c) a vote of the shareholders (excluding the vote of any shares owned by or voted under the control of a director who is not a disinterested director).

The Amended and Restated Bylaws do not limit the power of the Board of Directors to authorize the purchase and maintenance of insurance on behalf of any director or officer against any expense whether or not the Company would have the power to indemnify such director or officer against such expense under the Amended and Restated Bylaws. The Company maintains directors' and officers' liability insurance.

Item 7. Exemption from Registration Claimed

Not applicable.

Table of Contents

Item 8. Exhibits

The following is an index of all exhibits filed as part of this Registration Statement.

- 4.1 Form of Common Stock Certificate (filed as Exhibit 4.1 to our annual report on Form 10-K for the fiscal year ended December 31, 1992).⁺
- 4.2 Form of Rights Certificate (filed as Exhibit B to Exhibit 1 to our Registration Statement on Form 8-A, filed with the Commission on October 23, 2000).⁺
- 4.3 Restated Articles of Organization of Independent Bank Corp. (filed as Exhibit 99.1 to our Current Reports on Form 8-K filed with the Commission on May 18, 2005).⁺
- 4.4 Amended and Restated By-laws of Independent Bank Corp. (filed as Exhibit 99.2 to our Current Reports on Form 8-K filed with the Commission on May 18, 2005).⁺
- 5.1 Opinion of Choate, Hall & Stewart LLP as to the legality of the shares being registered.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Choate, Hall & Stewart LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included in page II-7)
- 99.1 Independent Bank Corp. 2006 Non-Employee Director Stock Plan

⁺ Previously filed
and
incorporated by
reference.

Item 9. Undertakings

(a) The Company hereby undertakes:

- (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement 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;
- (2) that, for the purpose of determining any liability under the Securities Act, 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; and

Table of Contents

(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 Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of our annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act 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 may be permitted to directors, officers and controlling persons of Independent Bank Corp. pursuant to the foregoing provisions, or otherwise, Independent Bank Corp. has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of Independent Bank Corp. 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, we will, unless in the opinion of 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 Securities Act and will be governed by the final adjudication of such issue.

II-5

Table of Contents

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Independent Bank Corp. 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 Rockland, The Commonwealth of Massachusetts, on April 17, 2006.

INDEPENDENT BANK CORP.

By: /s/ EDWARD H. SEKSAY

Edward H. Seksay

General Counsel

II-6

Table of Contents**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Edward H. Seksay his or her true and lawful attorney-in-fact and agent with respect to the execution and filing of a Securities and Exchange Commission Form S-8 Registration Statement for the Independent Bank Corp. 2006 Non-Employee Director Stock Plan with full powers of 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 (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be 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 thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below on April 13, 2006, by the following persons in the capacities indicated.

<u>NAME</u>	<u>CAPACITY</u>
/s/ RICHARD S. ANDERSON Richard S. Anderson	Director
/s/ W. PAUL CLARK W. Paul Clark	Director
/s/ ALFRED L. DONOVAN Alfred L. Donovan	Director
/s/ BENJAMIN A. GILMORE II Benjamin A. Gilmore II	Director
/s/ E. WINTHROP HALL E. Winthrop Hall	Director
/s/ KEVIN J. JONES Kevin J. Jones	Director
/s/ DONNA ABELLI LOPOLITO Donna Abelli Lopolito	Director
/s/ EILEEN C. MISKELL Eileen C. Miskell	Director

Table of Contents

<u>NAME</u>	<u>CAPACITY</u>
/s/ CHRISTOPHER ODDLEIFSON Christopher Oddleifson	Director and Chief Executive Officer and President (<i>Principal Executive Officer</i>)
/s/ RICHARD H. SGARZI Richard H. Sgarzi	Director
/s/ JOHN H. SPURR JR. John H. Spurr Jr.	Director
/s/ ROBERT D. SULLIVAN Robert D. Sullivan	Director
/s/ BRIAN S. TEDESCHI Brian S. Tedeschi	Director
/s/ THOMAS J. TEUTEN Thomas J. Teuten	Director and Chairman of the Board
/s/ DENIS K. SHEAHAN Denis K. Sheahan	Chief Financial Officer and Treasurer (<i>Principal Financial and Accounting Officer</i>)

II-8

Table of Contents

INDEX TO EXHIBITS

Exhibit Number

- 4.1 Form of Common Stock Certificate (filed as Exhibit 4.1 to our annual report on Form 10-K for the fiscal year ended December 31, 1992).⁺
- 4.2 Form of Rights Certificate (filed as Exhibit B to Exhibit 1 to our Registration Statement on Form 8-A, filed with the Commission on October 23, 2000).⁺
- 4.3 Restated Articles of Organization of Independent Bank Corp. (filed as Exhibit 99.1 to our Current Reports on Form 8-K filed with the Commission on May 18, 2005).⁺
- 4.4 Amended and Restated By-laws of Independent Bank Corp. (filed as Exhibit 99.2 to our Current Reports on Form 8-K filed with the Commission on May 18, 2005).⁺
- 5.1 Opinion of Choate, Hall & Stewart LLP as to the legality of the shares being registered.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Choate, Hall & Stewart LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included in page II-7)
- 99.1 Independent Bank Corp. 2006 Non-Employee Director Stock Plan

⁺ Previously filed
and
incorporated by
reference.