

HERITAGE COMMERCE CORP  
Form S-8  
July 15, 2013

As Filed with the Securities And Exchange Commission on July 15, 2013

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**HERITAGE COMMERCE CORP**

(Exact Name Of Registrant As Specified In Its Charter)

**California**

(State or other jurisdiction of incorporation or organization)

**77-0469558**

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

**150 Almaden Boulevard  
San Jose, California 95113**

(Address of Registrant's Principal Executive Offices) (Zip Code)

**2013 EQUITY INCENTIVE PLAN**

(Full title of the plan)

**Lawrence D. McGovern**

**Executive Vice President**

**Chief Financial Officer**

**150 Almaden Boulevard**

**San Jose, California 95113**

**(408) 947-6900**

(Name, address and telephone number of agent for service)

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**With a copy to:**

**Mark A. Bonenfant, Esq.**

Buchalter Nemer

A Professional Corporation

1000 Wilshire Boulevard, Suite 1500

Los Angeles, California 90017

(213) 891-0700

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

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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 (3)
Common Stock, no par value	1,750,000		7.20		12,600,000		1,719

(1) Pursuant to Rule 416(a), this Registration Statement also covers additional securities that may be offered under the 2013 Equity Incentive Plan, as a result of stock splits, stock dividends or similar transactions.

(2) Estimated solely for the purpose of determining the registration fee.

(3) Calculated pursuant to Rule 457(c) and Rule 457(h) based upon the average of the high and low sales prices of the Common Stock as reported on the Nasdaq Global Select Market on July 11, 2013 which was \$7.20.

**HERITAGE COMMERCE CORP**

This Registration Statement on Form S-8 is being filed by Heritage Commerce Corp, a California corporation (the Corporation or the Registrant ) to register 1,750,000 shares of common stock, no par value (the Common Stock ) which may be acquired pursuant to the Corporation s 2013 Equity Incentive Plan (the Plan ).

**PART I  
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

**Item 1. Plan Information.**

The documents containing the information specified in this Item 1 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. 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.**

The documents containing the information specified in this Item 2 will be sent or given to employees, officers, directors or others as specified by Rule 428(b)(1) under the Securities Act. In accordance with the rules and regulations of 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. Such documents, together with the documents incorporated by reference herein pursuant to Item 3 of Part II of this Registration Statement on Form S-8, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act, and are available upon written request to: Corporate Secretary, Heritage Commerce Corp. 150 Almaden Boulevard, San Jose, California 95113.

**PART II  
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents of the Registrant heretofore filed with the Securities and Exchange Commission (the Commission ) are hereby incorporated in this Registration Statement by reference:

- (1) The Registrant s Annual Report on Form 10-K for the fiscal year ended December 31, 2012;

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- (2) The Registrant's Quarterly Report on Form 10-Q for the three months ended March 31, 2013;
- (3) The Registrant's Current Report on Form 8-K filed with the Commission on May 24, 2013;
- (4) The Registrant's Current Report on Form 8-K filed with the Commission on June 28, 2013; and
- (5) The description of the Common Stock set forth in the Registrant's Registration Statement on Form 8-A filed with the Commission on March 5, 1998, together with any amendment or report filed with the Commission for the purpose of updating such description.

All reports and other documents subsequently filed by the Registrant pursuant to Sections 13(a) and (c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereunder have been sold or which deregisters all such securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the respective dates of filing of such reports and documents.

Any statement contained herein or 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 herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such earlier 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 4. Description of Securities.**

Not Applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not Applicable.

**Item 6. Indemnification of Directors and Officers.**

Section 317 of the California General Corporation Law permits indemnification of directors, officers and employees of corporations under certain conditions and subject to certain limitations. Article V of the Articles of Incorporation of the Company contains provisions limiting the monetary liability of directors for breaches of the duty of care. Article VII of the Articles of Incorporation of the Company contains provisions that authorize the Registrant to indemnify its directors, officers and employees to the fullest extent permitted, and in excess of that authorized, under Section 317. Section 12 of the Company's By-Laws provides for the indemnification of directors and officers to the fullest extent permitted by law. The foregoing summaries are necessarily subject to the complete text of the statute and the Articles and the By-Laws referred to above and are qualified in their entirety by reference thereto.

The Company also maintains insurance policies which insure its officers and directors against certain liabilities.

The Company has entered into agreements with its directors and its executive officers that require the Company to indemnify such persons to the fullest extent permitted under California law against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or an executive officer of the Company or any of its affiliated enterprises. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. The Company intends to enter into indemnification agreements with any new directors and executive officers in the future.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

See Exhibit Index following the signature page.

**Item 9. Undertakings.**

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 that includes 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.
- (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.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to 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.

Insofar as indemnification for liabilities arising under the Securities Act 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 Securities 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 Securities Act and will be governed by the final adjudication of such issue.



**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 San Jose, State of California on this 15th day of July, 2013.

HERITAGE COMMERCE CORP

By: */s/ Walter T. Kaczmarek*  
Walter T. Kaczmarek  
*Chief Executive Officer*

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Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on this 15th day of July, 2013 in the capacities indicated:

<b>Signature</b>	<b>Title</b>
/s/ FRANK G. BISCEGLIA Frank G. Bisceglia	Director
/s/ JACK W. CONNER Jack W. Conner	Director and Chairman of the Board
/s/ JOHN M. EGGEMEYER III John M. Eggemeyer III	Director
/s/ CELESTE V. FORD Celeste V. Ford	Director
/s/ STEVEN L. HALLGRIMSON Steven L. Hallgrimson	Director
/s/ WALTER T. KACZMAREK Walter T. Kaczmarek	Director and Chief Executive Officer and President (Principal Executive Officer)
/s/ LAWRENCE D. MCGOVERN Lawrence D. McGovern	Executive Vice President and Chief Financial Officer (Principal Financial and Account Officer)
/s/ ROBERT T. MOLES Robert T. Moles	Director
/s/ HUMPHREY P. POLANEN Humphrey P. Polanen	Director
/s/ LAURA RODEN Laura Roden	Director
/s/ CHARLES T. TOENISKOETTER Charles T. Toeniskoetter	Director
/s/ RANSON W. WEBSTER Ranson W. Webster	Director
/s/ W. KIRK WYCOFF W. Kirk Wycoff	Director



**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.1	Heritage Commerce Corp Restated Articles of Incorporation (incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2009).
4.2	Certificate of Amendment of Articles of Incorporation of Heritage Commerce Corp, as filed with the California Secretary of State on June 1, 2010 (incorporated by reference from the Registration Statement on Form S-1 filed with the Commission on July 23, 2010).
4.3	Heritage Commerce Corp By-Laws (incorporated by reference from the Current Report on Form 8-K filed with the Commission on July 28, 2013).
4.4	2013 Equity Incentive Plan
5.1	Opinion of Counsel as to the legality of securities being registered
10.1	Form of Restricted Stock Agreement
10.2	Form of Stock Option Agreement
23.1	Consent of Independent Registered Public Accounting Firm
24.1	Consent of Counsel (included in Exhibit 5.1)

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