

INTERCONTINENTALEXCHANGE INC

Form S-4

October 31, 2006

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As filed with the Securities and Exchange Commission on October 31, 2006

Registration No. 333-[•]

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

INTERCONTINENTALEXCHANGE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

6200
(Primary Standard Industrial
Classification Code Number)

58-2555670
(I.R.S. Employer
Identification No.)

c/o IntercontinentalExchange, Inc.

2100 RiverEdge Parkway, Suite 500

Atlanta, Georgia 30328

(770) 857-4700

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Johnathan H. Short, Esq.
Senior Vice President and General Counsel
IntercontinentalExchange, Inc.
2100 RiverEdge Parkway, Suite 500
Atlanta, Georgia 30328

(770) 857-4700

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

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Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this Registration Statement becomes effective and all other conditions to the consummation of the proposed merger described herein have been satisfied or waived.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Calculation of registration fee

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Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(2)
Common Stock, par value \$0.01 per share	10,400,000 shares	N/A	\$0	\$0
<p>(1) Represents the maximum number of shares of common stock of IntercontinentalExchange, Inc. (ICE) estimated to be issuable upon completion of the merger described herein in exchange for the membership interests of Board of Trade of the City of New York, Inc. (NYBOT).</p> <p>(2) Estimated solely for the purpose of calculating the amount of registration fee pursuant to Rule 457(f)(2) under the Securities Act of 1933, as amended. Since there is no market for NYBOT s membership interests, the proposed maximum aggregate offering price is based upon (i) \$39,176,970, the book value as of September 30, 2006 of NYBOT membership interests to be cancelled in the merger, less (ii) \$400,000,000, the cash consideration payable by ICE to holders of NYBOT securities in the merger, pursuant to Rule 457(f)(3) under the Securities Act.</p>				

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information contained in this document is subject to completion or amendment. A registration statement relating to these securities has been filed with the United States Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document is not an offer to sell these securities and it is not soliciting an offer to buy these securities, nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

SUBJECT TO COMPLETION, DATED OCTOBER 31, 2006

PROSPECTUS OF ICE

PROXY STATEMENT OF NYBOT

TO THE MEMBERS OF BOARD OF TRADE OF THE CITY OF NEW YORK, INC.

MERGER PROPOSALS YOUR VOTE IS VERY IMPORTANT

Board of Trade of the City of New York, Inc. (NYBOT) and IntercontinentalExchange, Inc. (ICE) have entered into a merger agreement providing for the merger of NYBOT with and into CFC Acquisition Co. (merger sub), with merger sub surviving the merger as a wholly-owned subsidiary of ICE.

In the proposed merger, NYBOT members will be entitled to receive either \$1,074,719 in cash (Cash Consideration) or 17,025 shares of common stock, par value \$0.01 per share, of ICE (Stock Consideration), or a combination of cash consideration and stock consideration as described below, for each NYBOT membership interest. NYBOT members will be able to specify (i) the number of membership interests, or the percentage of one or more membership interests, held by such member with respect to which such member elects to receive cash consideration (the Cash Election) and/or (ii) the number of membership interests, or the percentage of one or more membership interests, held by such member with respect to which such member elects to receive stock consideration (the Stock Election). These elections, however, are subject to proration (as described below) to ensure that the total amount of cash paid by ICE in the merger is approximately \$400 million.

The precise consideration that NYBOT members will receive if they make the Cash Election or the Stock Election will depend on the specific elections made by other NYBOT members. This information (and therefore the precise consideration that NYBOT members will receive if they make the Cash Election or the Stock Election) will not be available at the time that NYBOT members make an election. The merger agreement contains no provision that permits either party to terminate the merger agreement, or that alters the Stock Consideration, simply because the stock price of ICE common stock has fallen below any agreed-upon minimum price or has risen above an agreed-upon maximum price. For a description of the consideration that NYBOT members will receive if they make the Cash Election or the Stock Election, and the potential adjustments to this consideration, see The Merger Agreement Merger Consideration To Be Received by NYBOT Members.

Following the consummation of the merger, and based upon ICE s present capitalization, NYBOT members will own approximately 15% of the issued and outstanding share capital of ICE on a fully-diluted basis as set forth under The Merger General. We estimate ICE will issue approximately 10,296,703 shares of ICE common stock, in the aggregate, in the merger. ICE intends to apply to list these shares of common stock on the New York Stock Exchange (NYSE), subject to official notice of issuance of the stock in the merger. Shares of ICE common stock are currently listed on the NYSE for trading under the symbol ICE.

Completion of the merger requires the approval of NYBOT members. To obtain the required approval, NYBOT will hold a special meeting of NYBOT members on [•], 200[•], at which NYBOT will ask its members to approve and adopt the merger agreement (and consider any other matters properly brought before the special meeting). Information about the special meeting, the merger and other business to be considered by NYBOT members is contained in this document, which we urge you to read. **In particular, see Risk Factors beginning on page 12.**

Your vote is very important. Whether or not you plan to attend the special meeting of NYBOT members, please vote as soon as possible to make sure your NYBOT membership interest is represented at the special meeting. Approval and adoption of the merger agreement requires the affirmative vote of two-thirds of the votes cast by NYBOT members at the special meeting where a quorum is present. Each NYBOT member of record on [•] is entitled to one vote on each proposal set forth at the NYBOT special meeting (irrespective of the number of membership interests held by such member). The affirmative vote must also represent a quorum, which is 10% of NYBOT members entitled to vote on the proposal. Your failure to vote may cause a quorum not to be present, which may have the same effect as

voting against the approval and adoption of the merger agreement.

NYBOT's board of governors overwhelmingly recommends, by a 22-1 vote, that NYBOT members vote FOR the approval and adoption of the merger agreement. I join our board of governors in their recommendations.

C. Harry Falk
President and Chief Executive Officer
Board of Trade of the City of New York, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued in connection with the merger or determined if this document is accurate or complete. Any representation to the contrary is a criminal offense.

This prospectus/proxy statement is dated [•], 2006, and is first being mailed to NYBOT members on or about [•], 2006.

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CERTAIN FREQUENTLY USED TERMS

Unless otherwise specified or if the context so requires:

ICE refers to IntercontinentalExchange, Inc., a Delaware corporation, and its wholly-owned subsidiaries.

NYBOT or the New York Board of Trade refers to Board of Trade of the City of New York, Inc., a New York member-owned not-for-profit corporation.

Merger sub refers to CFC Acquisition Co., a Delaware corporation and wholly-owned subsidiary of ICE.

Surviving corporation refers to the wholly-owned subsidiary of ICE resulting from the merger of NYBOT with and into merger sub.

We, us or our refers to (1) prior to the completion of the merger, ICE and NYBOT and (2) after the completion of the merger, ICE and its wholly-owned subsidiaries.

NYBOT membership interest refers to an equity membership of NYBOT, and NYBOT member or member of NYBOT refers to a holder of an equity membership.

ICE common stock refers to the common stock, par value \$0.01 per share, of ICE.

Merger agreement refers to the Agreement and Plan of Merger, dated as of September 14, 2006, as amended on October 30, 2006, by and among ICE, merger sub and NYBOT.

SEC refers to the United States Securities and Exchange Commission.

IMPORTANT

This document, which is referred to as the prospectus/proxy statement, constitutes a prospectus of ICE for the shares of common stock that ICE will issue to NYBOT members in the merger and a proxy statement for NYBOT.

In the Questions and Answers about Voting Procedures for the NYBOT Special Meeting below and in the Summary, we highlight selected information from this prospectus/proxy statement but have not included all of the information that may be important to you. To better understand the merger agreement and the merger, and for a complete description of their legal terms, you should read carefully this entire prospectus/proxy statement, including the annexes.

REGISTERED TRADEMARKS

ICE®, IntercontinentalExchange®, ICEMAKER®, 10-X®, ICEBLOCK®, Internet Commodity Exchange®, IPN ICE Private Network®, The ICE®, Trade the World®, the ICE logo, the IntercontinentalExchange logo, the 10-X logo and the IPN ICE Private Network logo are registered trademarks of IntercontinentalExchange, Inc.

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ADDITIONAL INFORMATION

Please note that copies of the documents provided to you will not include exhibits. In order to receive timely delivery of requested documents in advance of the NYBOT special meeting, you should make your request to ICE in the manner specified above or to NYBOT by calling the NYBOT Member Services Department at (212) 748-4164 no later than [●], 2006.

No person is authorized to give any information or to make any representation with respect to the matters that this document describes other than those contained in this document, and, if given or made, the information or representation must not be relied upon as having been authorized by ICE or NYBOT. This document does not constitute an offer to sell or a solicitation of an offer to buy securities or a solicitation of a proxy in any jurisdiction where, or to any person to whom, it is unlawful to make such an offer or a solicitation. Neither the delivery of this document nor any distribution of securities made under this document shall, under any circumstances, create an implication that there has been no change in the affairs of ICE or NYBOT since the date of this document or that the information contained herein is correct as of any time subsequent to the date of this document.

Each of ICE and NYBOT maintains an Internet site. ICE's Internet site is at the URL <http://www.theice.com>. NYBOT's Internet site is at the URL <http://www.nybot.com>. Information contained in or otherwise accessible through these Internet sites is not a part of this prospectus/proxy statement. All references in this prospectus/proxy statement to these Internet sites are inactive textual references to these URLs and are for your information only.

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BOARD OF TRADE OF THE CITY OF NEW YORK, INC.

Notice of Special Meeting of Members

To Be Held on

[•]

To the Members of Board of Trade of the City of New York, Inc.:

A special meeting of the members of Board of Trade of the City of New York, Inc. will be held on [•], 200[•] in the Pat O Shea Boardroom located on the 13th floor of NYBOT's offices at World Financial Center, One North End Avenue, New York, New York 10282, at [•] p.m., local time, for the following purposes:

1. To consider and vote on a proposal to approve and adopt the merger agreement and the transactions contemplated by the merger agreement, pursuant to which, among other things, NYBOT has agreed to be merged with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE and a for-profit Delaware corporation;
2. To consider and vote on any proposal that may be made by NYBOT's President to adjourn or postpone the NYBOT special meeting for the purpose of soliciting proxies with respect to the proposal to approve and adopt the merger agreement; and
3. To transact any other business as may properly come before the NYBOT special meeting or any adjournment or postponement of the NYBOT special meeting.

Approval and adoption of the merger agreement by NYBOT members requires the affirmative vote of two-thirds of the votes cast by NYBOT members at the NYBOT special meeting where a quorum is present. Each NYBOT member of record is entitled to one vote on each proposal set forth at the NYBOT special meeting (irrespective of the number of membership interests held by such member). The affirmative vote must also represent a quorum, which is 10% of NYBOT members entitled to vote on the proposal.

The approval of any other proposal presented at the NYBOT special meeting requires the affirmative vote of a majority of the votes cast by NYBOT members at a special meeting where a quorum is present. If no quorum of NYBOT members is present in person or by proxy at the NYBOT special meeting, the NYBOT special meeting may be adjourned by the members present and entitled to vote at that meeting.

NYBOT's board of governors overwhelmingly recommends, by a 22-1 vote, that you vote FOR the approval and adoption of the merger agreement, and FOR any proposal that may be made by NYBOT's President to adjourn or postpone the NYBOT special meeting for the purpose of soliciting proxies.

Only NYBOT equity members of record on [•], 2006 will be entitled to vote at the special meeting. To vote your NYBOT membership interest, please complete and return the enclosed proxy card per the instructions below. You may also cast your vote in person at the NYBOT special meeting. **Please vote promptly whether or not you expect to attend the NYBOT special meeting.**

By order of the board of governors,

Frederick W. Schoenhut, Chairman

On behalf of the board

[•], 200 [•]

PLEASE VOTE YOUR NYBOT MEMBERSHIP INTERESTS PROMPTLY. To ensure that you are represented at the NYBOT special meeting, please vote in one of these ways:

- 1) **VISIT THE WEBSITE** noted on your proxy card to vote through the Internet;
- 2) **CALL THE NUMBER** noted on your proxy card to vote telephonically;
- 3) **MARK, SIGN, DATE AND PROMPTLY RETURN** the enclosed proxy card in the postage-paid envelope to Corporate Election Services, P.O. Box 1150, Pittsburgh, PA 15230;
- 4) **FAX** the enclosed proxy card to the attention of Corporate Election Services, at (412) 299-9191; or
- 5) **VOTE IN PERSON** by appearing at the NYBOT special meeting and submitting a ballot.

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QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING

The questions and answers below highlight only selected procedural information from this document. They do not contain all of the information that may be important to you. You should read carefully this entire document, including its annexes, to fully understand the proposed transaction, the voting procedures for the special meeting and the procedures for making cash and share elections.

Q: What is the proposed transaction for which I am being asked to vote?

A: As a NYBOT member, you are being asked to vote to approve and adopt the merger agreement, by which NYBOT will be merged with and into merger sub. Merger sub, which will conduct NYBOT's operations after the closing of the merger, will survive the merger as a wholly-owned subsidiary of ICE and a for-profit Delaware corporation. For a description of this merger, see The Merger.

NYBOT's board of governors overwhelmingly recommends, by a 22-1 vote, that NYBOT members vote FOR the proposal to approve and adopt the merger agreement. For a discussion of the board of governors' reasons for this recommendation, see The Merger NYBOT's Reasons for the Merger; Recommendation of the Merger by NYBOT's Board of Governors.

You are also being asked to vote to approve any proposal that may be made by NYBOT's President to adjourn or postpone the NYBOT special meeting for the purpose of soliciting proxies with respect to the proposal to approve and adopt the merger agreement. NYBOT's board of governors overwhelmingly recommends, by a 22-1 vote, that NYBOT members vote to approve this proposal (if made by the chairman) as well.

Q: What will I receive in the merger?

A: In the merger, each outstanding NYBOT membership interest (or portion thereof) will be converted into either (1) 17,025 shares of ICE common stock or (2) cash equal to \$1,074,719 or a pro rata share thereof if an election is made with respect to a portion (which must represent a percentage of a membership interest equal to 10% or any whole multiple thereof), subject to proration as described in The Merger Agreement Merger Consideration To Be Received by NYBOT Members Proration and Allocation Procedure. Additionally, each outstanding NYBOT membership interest (or portion thereof) will be converted into the right to receive a pro rata share of any bonus pool amounts not paid to NYBOT officers and governors as described in The Merger Agreement Bonus Pool and a pro rata share of NYBOT's excess working capital as of the effective time of the merger, if any, as described in The Merger Agreement Merger Consideration To Be Received by NYBOT Members Excess Working Capital.

Each NYBOT member will be provided with the opportunity to make an election to receive either cash or ICE common stock, or a combination of cash and ICE common stock, as consideration for his or her NYBOT membership interest (or portion thereof). These elections, however, are subject to proration to ensure that the amount of cash payable by ICE as merger consideration (excluding the excess working capital) and in connection with the bonus pool is approximately \$400,000,000.

For a description of the consideration that NYBOT members will receive if they make the cash election or the stock election, and the potential adjustments to this consideration, see The Merger Agreement Merger Consideration To Be Received by NYBOT Members.

Q. How would any proration work?

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- A. If the cash election is oversubscribed, (1) NYBOT membership interests (or portions thereof) for which a stock election has been made and NYBOT membership interests (or portions thereof) for which no election has been made will be converted into stock consideration, (2) a pro rata portion of NYBOT membership interests (or portions thereof) for which a cash election has been made will receive stock consideration and (3) the remainder of NYBOT membership interests (or portions thereof) for which a cash election has been made that have not been designated to receive stock consideration on a pro rata basis, will receive cash consideration.

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If the stock election is oversubscribed, (1) NYBOT membership interests (or portions thereof) for which a cash election has been made will be converted into cash consideration, (2) a pro rata portion of NYBOT membership interests (or portions thereof) for which no election has been made and (if necessary) a pro rata portion of the membership interests for which a stock election has been made will receive cash consideration and (3) the remainder of NYBOT membership interests (or portions thereof) for which a stock election has been made which have not been designated to receive cash consideration on a pro rata basis will receive stock consideration.

If both the stock election and the cash election are undersubscribed, (1) NYBOT membership interests for which a cash election has been made will be converted into cash consideration, (2) NYBOT membership interests for which a stock election has been made will be converted into stock consideration and (3) NYBOT membership interests for which no election has been made will be converted, on a pro rata basis, into stock consideration and cash consideration in such proportions that the aggregate amount of cash payable by ICE as merger consideration (excluding the excess working capital) and in connection with the bonus pool is approximately \$400,000,000.

The precise consideration that NYBOT members will receive if they make the cash election or the stock election will depend on the total number of NYBOT membership interests (or portions thereof) with respect to which NYBOT members make the cash election or the stock election. This information (and therefore the precise consideration that NYBOT members will receive if they make the cash election or the stock election) will not be available at the time that NYBOT members make an election. The exchange agent will determine the allocations of merger consideration within ten days after the merger is completed, and NYBOT members will receive additional information about the allocation thereafter. For a description of the consideration that NYBOT members will receive if they make the cash election or the stock election, and the potential adjustments to this consideration, see *The Merger Agreement Merger Consideration To Be Received by NYBOT Members*.

Q: Will I be able to transfer the ICE common stock that I receive in the merger?

A: Yes. The shares of ICE common stock that you will receive in the merger will not be subject to transfer restrictions. However, under the bylaws of the surviving corporation that will be effective after the completion of the merger as described in *The Bylaws*, a former NYBOT member who holds trading rights in the surviving corporation will be required to hold 3,162 shares of ICE common stock (as adjusted for reclassifications, stock splits, stock dividends or distributions, recapitalizations or similar transactions) for each former NYBOT membership interest held by such former member in order to retain the trading rights the former member received in respect of such membership interest. Additionally, in order to be eligible to be a clearing member of New York Clearing Corporation, or NYCC, a wholly-owned subsidiary of NYBOT, after the completion of the merger, a firm must hold at least 21,078 shares of ICE common stock (as adjusted for reclassifications, stock splits, stock dividends or distributions, recapitalizations or similar transactions).

Q: How do I vote?

A: After carefully reading and considering the information contained in this document (including the annexes), please vote by returning your signed and dated proxy card by mail or fax or granting your proxy through the Internet or telephonically, as soon as possible, so that your NYBOT membership interest is represented and voted at the special meeting. Alternatively, you may vote in person at the special meeting by ballot.

Q: Who is entitled to vote?

A: All holders of record of NYBOT membership interests on [●] are entitled to vote at the special meeting. Each NYBOT member of record on [●] is entitled to one vote on each proposal set forth at the NYBOT special meeting (irrespective of the number of membership interests held by such member). As of the record date, there were [●] NYBOT members entitled to vote at the special meeting.

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You should be aware that, as of [●], the record date, there are 20 NYBOT governors that own membership interests, and are therefore entitled to 20 votes at the NYBOT special meeting.

Q: What is the required vote to approve the merger agreement, and what happens if I do not vote or if I abstain from voting?

A: Approval and adoption of the merger agreement by NYBOT members requires the affirmative vote of two-thirds of the votes cast by NYBOT members at the NYBOT special meeting where a quorum is present. A quorum is present if at least ten percent (10%) of NYBOT members entitled to vote at the meeting are present, whether present in person or by proxy. As a result, any failure to vote will have the same effect as a vote against the approval and adoption of the merger agreement, until the affirmative vote for the approval and adoption of the merger agreement equals or exceeds ten percent (10%) of NYBOT members entitled to vote at the meeting and an abstention will have no effect on this vote.

The approval of any other proposal presented at the NYBOT special meeting only requires the affirmative vote of a majority of the votes cast by NYBOT members at the NYBOT special meeting at which a quorum is present. A quorum is present if at least ten percent (10%) of NYBOT members entitled to vote at the meeting are present, whether present in person or by proxy. As a result, any failure to vote will have the same effect as a vote against such proposal, until the affirmative vote for the approval of such proposal equals or exceeds ten percent (10%) of NYBOT members entitled to vote at the meeting and an abstention will have no effect on this vote.

If a NYBOT member completes a proxy and abstains from voting on a proposal, the abstention will count for purposes of determining whether a quorum is present but will have no effect on the vote for the proposal. If no quorum of NYBOT members is present in person or by proxy at the NYBOT special meeting, the NYBOT special meeting may be adjourned by the members present and entitled to vote at that meeting.

If you complete a proxy and do not indicate how you want to vote on a particular proposal, your proxy will be voted in accordance with the recommendation of NYBOT's board of governors (and, therefore, will be voted in favor of the approval and adoption of the merger agreement).

Q: Can I change my vote after I have delivered my proxy?

A: Yes. There are three ways to change your vote after you have submitted a proxy:

you may submit a written revocation dated after the date of the proxy that is being revoked to Corporate Election Services, P.O. Box 1150, Pittsburgh, PA 15230; or

you may submit a later-dated proxy by mail, fax or through the Internet or telephonically; or

you may attend the NYBOT special meeting and vote by paper ballot in person.

Simply attending the special meeting without voting will not revoke your proxy. NYBOT proxy cards can be sent by mail to Corporate Election Services, P.O. Box 1150, Pittsburgh, PA 15230 or faxed to Corporate Election Services at (412) 299-9191.

Q. When and where is the special meeting?

- A. The NYBOT special meeting will be held on [●], 200[●] in the Pat O Shea Boardroom located on the 1st floor of NYBOT's offices at World Financial Center, One North End Avenue, New York, New York 10282, at [●] p.m., local time.

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Q: Who can help answer my questions?

A: If you have any questions about how to submit your proxy, or if you need additional copies of this document, the form of election or the enclosed proxy card, you should contact:

Corporate Election Services

P.O. Box 1150

Pittsburgh, PA 15230

Tel: (412) 262-1100

Fax: (412) 299-9191

Email: *Info@ProxyTabulation.com*

If you have any questions about the merger or how to make elections of merger consideration, you should contact:

Member Services Department

Board of Trade of the City of New York, Inc.

World Financial Center

One North End Avenue

New York, NY 10282

Tel: (212) 748-4164

Fax: (212) 748-4088

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SUMMARY

This brief summary highlights selected information from this prospectus/proxy statement. It does not contain all of the information that is important to you. You should carefully read this entire document, including its exhibits, and the other documents to which this prospectus/proxy statement refers you to fully understand the merger. Each item in this summary refers to the page where that subject is discussed in more detail.

Information Regarding IntercontinentalExchange, Inc. (see page 104)

ICE operates the leading global, electronic marketplace for trading both futures and over-the-counter, or OTC, energy contracts. ICE offers a range of contracts based on crude oil and refined products, natural gas, power and emissions. ICE conducts its OTC business directly, and its futures business through its regulated subsidiary, ICE Futures. ICE Futures is the largest energy futures exchange outside of North America, as measured by 2005 traded contract volumes. ICE also offers a range of risk management and trading support services, including customized energy market data offerings through ICE Data, its market data subsidiary.

Headquartered in Atlanta, ICE also has offices in Calgary, Chicago, Houston, London, New York and Singapore, with regional telecommunications hubs in Chicago, New York, London and Singapore. ICE's principal executive offices are located at 2100 RiverEdge Parkway, Suite 500, Atlanta, Georgia 30328, and its telephone number is (770) 857-4700.

Information Regarding Board of Trade of the City of New York, Inc. (see page 146)

NYBOT operates a leading futures and options exchange for trading in a broad array of soft agricultural commodities, including cocoa, coffee, cotton, frozen concentrated orange juice and sugar. NYBOT's exchange also provides trading in futures and option contracts for a variety of financial products, including its exclusive futures and options contracts based on the U.S. Dollar Index, as well as currency and index-based products. As an open-outcry exchange, NYBOT provides floor-based trading for all of its agricultural and financial products. NYBOT's exchange is supported by its clearing house, New York Clearing Corporation, or NYCC, a wholly-owned subsidiary of NYBOT, which clears and provides financial security for contracts traded on its exchange.

NYBOT's principal executive offices are located at World Financial Center, One North End Avenue, New York, NY 10282, and its telephone number is (212) 748-4000.

The Merger (see page 40)

NYBOT and ICE have entered into a merger agreement, which provides that NYBOT will be merged with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE. Immediately, following the merger, NYBOT members will own approximately 15% of the issued and outstanding share capital of ICE.

The NYBOT Special Meeting (see page 38)

The NYBOT special meeting will be held on [●], 200[●] in the Pat O'Shea Boardroom located on the 13th floor of NYBOT's offices at World Financial Center, One North End Avenue, New York, New York 10282, at [●] p.m., local time. You may vote at the NYBOT special meeting on the proposal to approve and adopt the merger agreement if you are a NYBOT equity member of record on [●]. Each NYBOT member of record on [●] is entitled to one vote on each proposal set forth at the NYBOT special meeting (irrespective of the number of membership interests held by such member). As of the record date, there were [●] members entitled to vote at the special meeting.

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The affirmative vote of two-thirds of the votes cast by NYBOT members at the NYBOT special meeting where a quorum is present is required for the approval and adoption of the merger agreement. The affirmative vote must also represent a quorum. Ten percent (10%) of NYBOT members entitled to vote at the meeting, whether present in person or by proxy, constitutes a quorum.

With respect to any proposal other than the proposal to approve and adopt the merger agreement, the affirmative vote of a majority of the votes cast by NYBOT members at the NYBOT special meeting at which a quorum is present is required for the approval of the proposal.

What NYBOT Members Will Receive in the Merger (see page 77)

In the merger, each outstanding NYBOT membership interest will be converted into either (1) 17,025 shares of ICE common stock, (2) cash equal to \$1,074,719, subject in either case to proration as described in The Merger Agreement Merger Consideration To Be Received by NYBOT Members Proration and Allocation Procedure or (3) a combination of ICE common stock and cash. Additionally, each outstanding NYBOT membership interest will be converted into the right to receive a pro rata share of any bonus pool amounts not paid to NYBOT officers and governors as described in The Merger Agreement Bonus Pool and a pro rata share of NYBOT's excess working capital as of the effective time of the merger, if any, as described in The Merger Agreement Merger Consideration To Be Received by NYBOT Members Excess Working Capital.

Each NYBOT member will be provided with the opportunity to make an election to receive either cash or ICE common stock as consideration for his or her NYBOT membership interest. These elections, however, are subject to proration to ensure that the amount of cash payable by ICE as merger consideration (excluding the excess working capital) and in connection with the bonus pool is approximately \$400,000,000.

For a description of the consideration that NYBOT members will receive if they make the cash election or the stock election, and the potential adjustments to this consideration, see The Merger Agreement Merger Consideration To Be Received by NYBOT Members.

The shares of ICE common stock that you will receive in the merger will not be subject to transfer restrictions. However, under the bylaws of the surviving corporation that will be effective after the completion of the merger as described in The Bylaws, a former NYBOT member who holds trading rights in the surviving corporation's exchange will be required to hold 3,162 shares of ICE common stock (as adjusted for reclassifications, stock splits, stock dividends or distributions, recapitalizations or similar transactions) for each NYBOT membership interest held by such former member in order to retain these trading rights. Additionally, in order to be eligible to be a clearing member of NYCC after the completion of the merger, a firm must hold at least 21,078 shares of ICE common stock (as adjusted for reclassifications, stock splits, stock dividends or distributions, recapitalizations or similar transactions).

NYBOT's Board Recommendations (see page 49)

Based on NYBOT's board of governors' reasons for the merger described in this document (see The Merger NYBOT's Reasons for the Merger; Recommendation of the Merger by NYBOT's Board of Governors), NYBOT's board of governors overwhelmingly recommends, by a 22-1 vote, that you vote FOR the approval and adoption of the merger agreement, and FOR any proposal that may be made by NYBOT's President to adjourn or postpone the NYBOT special meeting for the purpose of soliciting proxies.

Interests of NYBOT's Governors and Executive Officers in the Merger (see page 60)

NYBOT members should be aware that members of NYBOT's board of governors and its executive management have relationships, agreements or arrangements that provide them with interests in the merger that may be in addition to or different from those of NYBOT members. These interests may include, but are not

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limited to, the interests in the bonus pool, the continued employment of certain executive officers of NYBOT after the merger, the membership of certain governors of NYBOT on the board of directors of the surviving corporation and/or ICE after the merger, the treatment in the merger of employment agreements and NYBOT's change-in-control severance policy and the indemnification of former NYBOT governors and officers by the surviving corporation.

Opinion of Financial Advisor (see page 52)

In connection with the proposed merger, NYBOT retained Houlihan Lokey Howard & Zukin Financial Advisors, Inc., or Houlihan Lokey, as its independent financial advisor. Houlihan Lokey delivered an opinion that, as of September 13, 2006 and subject to the assumptions and qualifications stated in the opinion, the consideration to be received in the merger by NYBOT members under the merger agreement in exchange for their membership interests was fair to such members from a financial point of view.

Structure of the Merger (see page 40)

Under the merger agreement, NYBOT agreed to merge with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE and a for-profit Delaware corporation.

In the merger, each NYBOT membership interest will be converted into the type and amount of consideration described in [What NYBOT Members Will Receive in the Merger](#) above.

Material United States Federal Income Tax Consequences (see page 62)

It is a condition to the completion of the merger that NYBOT and ICE receive private letter rulings from the Internal Revenue Service to the effect that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. It is a condition to the obligation of NYBOT to consummate the merger that it receive a private letter ruling from the Internal Revenue Service to the effect that NYBOT members and holders of NYBOT trading permits will not recognize gain in connection with the merger other than with respect to any cash consideration received. NYBOT and ICE jointly filed a private letter ruling request in respect of the merger with the Internal Revenue Service.

Subject to the limitations and qualifications described under [The Merger Material United States Federal Income Tax Consequences](#) and provided that the merger qualifies as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code:

If you receive solely ICE common stock in exchange for your NYBOT membership interest, then you generally will not recognize any gain or loss, except with respect to cash you receive in lieu of fractional shares of ICE common stock.

If you receive cash and ICE common stock in exchange for your membership interest in NYBOT, you will recognize gain in an amount equal to the lesser of (1) the sum of the amount of cash and the fair market value of the ICE common stock received, minus the allocable tax basis of the NYBOT membership interest surrendered in exchange therefor, and (2) the amount of cash received by the holder in the merger. The cash that you receive generally will be treated as merger consideration.

If you receive solely cash in exchange for your NYBOT membership interest, then you generally will recognize gain or loss equal to the difference between the amount of cash you receive and the allocable tax basis in your NYBOT membership interest. You should read [The Merger Material United States Federal Income Tax Consequences](#) for a more complete discussion of the U.S. federal income tax consequences of the merger and the conversion of NYBOT members' trading rights and NYBOT trading permits into rights to trade on the surviving corporation's exchange. We urge you to consult with your tax advisor for a full understanding of the tax consequences of the merger to you.

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Accounting Treatment

The merger will be accounted for as an acquisition of NYBOT by ICE under the purchase method of accounting of U.S. generally accepted accounting principles.

Regulatory Approvals and Conditions to Completion of the Merger (see page 65)

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or the HSR Act, and the rules promulgated under the HSR Act by the Federal Trade Commission, or the FTC, we may not complete the merger until notifications have been given and certain information has been furnished to the FTC and the Antitrust Division of the United States Department of Justice and specified waiting period requirements have been satisfied. Each of NYBOT and ICE submitted the applicable notifications under the HSR Act on October 20, 2006.

The merger is also subject to the approval of the Commodity Futures Trading Commission, or CFTC, under the Commodity Exchange Act, or CEA. The completion of the transaction is subject to receipt of CFTC approval to transfer the contract market designations of each of the futures contracts and options traded on NYBOT to the surviving corporation. See [The Merger Regulatory Approvals](#).

Absence of Appraisal Rights (see page 67)

Under the New York Not-for-Profit Corporation Law, NYBOT members are not entitled to any appraisal rights in connection with the merger.

Directors and Management of ICE and the Surviving Corporation Following the Merger (see page 98)

The directors and officers of ICE following the completion of the merger will be the current directors and officers of ICE identified under [Information About ICE Directors and Executive Officers](#), except that two existing NYBOT directors will be appointed to ICE's board of directors. The ICE board currently has authorized nine directors to sit on the board. As a result, following the completion of the merger, the number of directors authorized for the ICE board will be eleven.

The officers of the surviving corporation, other than the chief executive officer, will be the officers of NYBOT prior to the completion of the merger. Until the second anniversary of the completion of the merger, the surviving corporation's board of directors will be comprised of nine directors, including the chief executive officer and chief financial officer of ICE, the chief executive officer of the surviving corporation (who, pursuant to the merger agreement, will be designated by ICE), the two members of the current NYBOT board of governors who are designated by ICE to serve on ICE's board, and four directors who qualify as public directors and who, to the extent possible, will be initially selected from the current public governors on NYBOT's board of governors. Until the fourth anniversary of the completion of the merger, the surviving corporation's board will consist of at least four public directors.

Termination of the Merger Agreement; Fees Payable (see pages 86 and 90)

NYBOT and ICE may jointly agree to terminate the merger agreement at any time. Either of NYBOT or ICE may also terminate the merger agreement in various circumstances, including failure to receive the necessary NYBOT member approval, and upon the breach by the other party of certain of its obligations under the merger agreement.

In several circumstances involving a change in the recommendation of NYBOT's board of governors in favor of the approval and adoption of the merger agreement or certain actions of NYBOT with respect to a third-party acquisition proposal, NYBOT may become obligated to pay to ICE up to \$44.0 million in termination fees and expense reimbursement. See [The Merger Agreement Termination](#).

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No Solicitation (see page 84)

Subject to certain important exceptions, the merger agreement generally restricts the ability of NYBOT to solicit or engage in discussions or negotiations with a third party regarding a proposal to acquire a significant interest in NYBOT.

Bylaws of the Surviving Corporation (see page 92)

Pursuant to the merger agreement, ICE agreed to cause the surviving corporation to adopt bylaws in the form attached as Annex C to this prospectus/proxy statement.

The proposed bylaws of the surviving corporation provide for, among other things: composition of the board of directors of the surviving corporation; the issuance of trading rights to former NYBOT members and trading permits to former NYBOT permit holders; certain matters pertaining to the fees to be charged to former NYBOT members and former NYBOT permit holders; and the conditions under which open-outcry trading of current NYBOT products can be terminated. See The Bylaws.

Stock Exchange Listing and Stock Prices (see page 66)

NYBOT membership interests are not traded or quoted on a stock exchange or quotation system.

Shares of ICE common stock are listed on the New York Stock Exchange under the symbol ICE.

Certain Differences in the Rights Before and After the Merger (see pages 67 and 250)

The primary differences between the ownership rights of NYBOT members prior to the merger and ICE stockholders after the merger relate to (1) the fact that NYBOT is a New York not-for-profit corporation, whereas ICE is a Delaware for-profit corporation, and (2) the differences between the governing documents of NYBOT and ICE. After the completion of the merger, NYBOT members that receive ICE common stock as merger consideration will have the same rights as ICE stockholders. However, NYBOT members that receive cash in the merger will not have the same rights as ICE stockholders to the extent of any cash received instead of ICE shares.

These rights relate to equity interests, dividends and distributions, annual and special meetings, voting rights, trading rights, transfer restrictions and other matters. The differences relating to equity ownership in either NYBOT or ICE are described more fully in Comparison of Rights Prior to and After the Merger. The differences between the rights of NYBOT members before and after the merger with respect to trading and other rights are described more fully in The Merger Effect of the Merger on NYBOT Members.

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**Comparative Historical and Unaudited Pro Forma Per Share
and Per Membership Interest Data**

The following table sets forth (i) historical basic and diluted earnings per common share, historical cash dividends per common share and historical book value per common share of ICE, (ii) historical basic earnings per NYBOT membership interest and historical book value per NYBOT membership interest, (iii) unaudited pro forma condensed combined basic and diluted earnings per common share, unaudited pro forma condensed combined cash dividends per common share and unaudited condensed combined book value per common share of ICE after giving effect to the merger and (iv) unaudited pro forma equivalent basic and diluted earnings per common share, unaudited pro forma equivalent cash dividends per common share and unaudited equivalent book value per common share of NYBOT based on a merger exchange rate of 10,539 shares of ICE common stock for each NYBOT membership interest. The exchange rate of 10,539 shares of ICE common stock for each NYBOT membership interest is based upon ICE issuing a total of approximately 10,296,703 shares of ICE common stock divided by the total of 977 NYBOT membership interests. The pro forma amounts were derived using the purchase method of accounting for business combinations as described under Unaudited Pro Forma Condensed Combined Financial Data for ICE After the Merger.

You should read the information below together with the financial statements and related notes of ICE and NYBOT that appear elsewhere in this document. The unaudited pro forma condensed combined data below is for illustrative purposes only. The financial results may have been different had the companies always been combined. You should not rely on this information as being indicative of the historical results that would have been achieved had the companies always been combined or of the future results of the combined companies. You should read the pro forma information below together with the unaudited pro forma condensed combined financial data included under Unaudited Pro Forma Condensed Combined Financial Data for ICE After the Merger.

	Six months ended June 30, 2006	Year ended December 31, 2005
ICE Historical Comparative Per Share Data		
Basic earnings per common share	\$ 0.91	\$ (0.39)
Diluted earnings per common share	\$ 0.86	\$ (0.39)
Cash dividends per common share	\$	\$
Book value per common share at end of period	\$ 5.62	\$ 4.19
NYBOT Historical Comparative Membership Interest Data		
Basic earnings per NYBOT membership interest	\$ 11,284	\$ 13,363
Book value per NYBOT membership interest at end of period	\$ 37,562	\$ 26,269
Unaudited Pro Forma Condensed Combined Comparative Per Share Data		
Basic earnings per common share	\$ 0.81	\$ (0.42)
Diluted earnings per common share	\$ 0.77	\$ (0.42)
Cash dividends per common share	\$	\$
Book value per common share at end of period	\$ 15.35	
Unaudited Pro Forma Equivalent Per Share Data for NYBOT		
Basic earnings per common share	\$ 8,537	\$ (4,426)
Diluted earnings per common share	\$ 8,115	\$ (4,426)
Cash dividends per common share	\$	\$
Book value per common share as of end of period	\$ 161,774	

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The following table sets forth the last price at which a NYBOT membership interest was sold and the closing market price per share of ICE common stock, as of September 13, 2006 (the last business day prior to the date of public announcement of the merger) and as of [•] (the last practicable trading date prior to the date of this document). The table also presents the cash or implied value of each NYBOT membership interest based on the receipt of 100% cash merger consideration for a NYBOT membership interest and 100% stock merger consideration for a NYBOT membership interest, respectively.

See The Merger Agreement Merger Consideration To Be Received by NYBOT Members for an explanation of how NYBOT members may elect to receive cash or ICE common stock in consideration for their NYBOT membership interests and how proration may affect these elections.

For purposes of calculating the implied value of a NYBOT membership interest, each share of ICE common stock was assumed to have a value of \$63.127 per share, which is equal to the average closing price per share of ICE common stock during the 10 consecutive trading days up to and including September 7, 2006.

You are urged to obtain current bid and offer prices for NYBOT membership interests and market quotations for ICE common stock before making your decision with respect to the approval and adoption of the merger agreement.

The price at which a NYBOT membership interest could be sold and the market price of ICE common stock could each change significantly. Because the exchange ratio will not be adjusted for changes in the prices at which NYBOT membership interests are purchased and sold, or for changes in the market price of ICE common stock, the value of the shares of ICE common stock that you may receive at the time of completion of the merger may vary significantly from the market value of ICE common stock that you would have received if the merger was consummated on the date of the merger agreement or the date of this document.

	ICE common stock	NYBOT Membership Interest	Cash Value of NYBOT Membership Interest based on 100% cash merger consideration	Implied Value of NYBOT Membership Interest based on 100% stock merger consideration
September 13, 2006	\$ 64.72	\$ 950,000	\$ 1,074,719	\$ 1,101,858
[•], 2006	\$ [•]	\$ [•]	\$ [•]	\$ [•]

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RISK FACTORS

Risks Relating to the Merger

Because the merger consideration is fixed, the market value of ICE common stock and cash issued to you may be less than the value of your NYBOT membership interest.

NYBOT members that receive shares of ICE common stock in the merger will receive a fixed number of shares rather than a number of shares with a particular fixed market value. The market value of ICE common stock at the time of the closing of the merger may vary significantly from its value on the date the merger agreement was executed, the date of this document or the date on which NYBOT members vote on the merger. Because the merger consideration will not be adjusted to reflect any changes in the market price of ICE common stock, the market value of ICE common stock issued in the merger may be higher or lower than its value on earlier dates.

Changes in stock price may result from a variety of factors that are beyond the control of ICE and NYBOT, including changes in ICE's business, operations and prospects, regulatory considerations, governmental actions, and legal proceedings and developments. Market assessments of the benefits of the merger and of the likelihood that the merger will be completed and general and industry-specific market and economic conditions may also have an effect on price. Neither ICE nor NYBOT is permitted to terminate the merger agreement solely because of changes in the market price of either party's respective membership interest or common stock.

In addition, the merger may not be completed until a significant period of time has passed after the special meeting of NYBOT's members. As a result, the market value of ICE common stock may vary significantly from the date of the special meeting to the date of the completion of the merger. You are urged to obtain up-to-date prices for ICE common stock. See "The Merger" Stock Exchange Listing and Stock and Membership Interest Prices for ranges of historic prices of shares of ICE common stock.

We may fail to realize the anticipated cost savings, growth opportunities and synergies and other benefits anticipated from the merger, which could adversely affect the value of ICE common stock.

ICE and NYBOT currently operate as separate companies. The success of the merger will depend, in part, on our ability to realize the anticipated synergies and growth opportunities from combining the businesses, as well as the projected stand-alone cost savings and revenue growth trends identified by each company. On a combined basis, ICE expects to benefit from operational synergies resulting from the consolidation of capabilities and elimination of redundancies, the use of NYBOT's clearing capabilities, as well as greater efficiencies from increased scale, market integration and increased automation. Management also expects the combined entity will enjoy revenue synergies, including by additional clearing alternatives; expense sharing; increased access, volume and liquidity to the products traded on ICE Futures and NYBOT; and expanded product offerings and increased geographic reach of ICE Futures and NYBOT. However, we must successfully combine the businesses of ICE and NYBOT in a manner that permits these cost savings and synergies to be realized. In addition, we must achieve the anticipated savings and synergies without adversely affecting current revenues and our investments in future growth. If we are not able to successfully achieve these objectives, the anticipated cost savings, revenue growth and synergies may not be realized fully or at all, or may take longer to realize than expected.

The failure to integrate successfully the businesses and operations of ICE and NYBOT in the expected time frame may adversely affect ICE's future results.

Historically, ICE and NYBOT have operated as independent companies, and they will continue to do so until the completion of the merger. The management of ICE may face significant challenges in consolidating the functions (including regulatory functions) of ICE and NYBOT, integrating their technologies, organizations, procedures, policies and operations, as well as addressing differences in the business cultures of the two companies and retaining key NYBOT personnel. The integration may also be complex and time consuming, and require

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substantial resources and effort. The integration process and other disruptions resulting from the merger may also disrupt each company's ongoing businesses or cause inconsistencies in standards, controls, procedures and policies that adversely affect our relationships with market participants, employees, regulators and others with whom we have business or other dealings or to achieve the anticipated benefits of the merger. In addition, difficulties in integrating the businesses or regulatory functions of ICE and NYBOT could harm the reputation of ICE.

The ability of NYBOT members to receive either cash or shares of ICE common stock pursuant to the cash election or stock election, respectively, will be subject to proration in the event of an oversubscription or undersubscription of the cash election.

The cash election and stock election available to NYBOT members in the merger is subject to proration to ensure that the total amount of cash paid by ICE will equal approximately \$400,000,000. As a result, the consideration that any particular NYBOT member receives if he or she makes the cash election or the stock election will not be known at the time that he or she makes the election because the consideration will depend on the total number of NYBOT members who make the cash election and stock election. If the cash election is oversubscribed, then NYBOT members who have made the cash election will receive some shares of ICE common stock in lieu of the full amount of cash sought for their NYBOT membership interests. Likewise, if the cash election is undersubscribed, then NYBOT members who have made the stock election will receive some cash in lieu of the full number of shares of ICE common stock sought for their NYBOT membership interests. Accordingly, if NYBOT members make the cash election or the stock election with respect to their NYBOT membership interest, they may not receive exactly the amount and type of consideration that they elected to receive in the merger, which could result in, among other things, tax consequences that differ from those that would have resulted if they had received the form of consideration that they had elected (including the potential recognition of gain for federal income tax purposes if they receive cash).

Because there is no way to predict the value of shares of ICE common stock after the merger, the value of the consideration that NYBOT members will receive in the merger may vary depending on the type of election that they make. For a discussion of the election mechanism and possible adjustments to the consideration paid to those who make the cash election or stock election, see [The Merger Agreement Merger Consideration To Be Received by NYBOT Members](#). For a discussion of the material federal income tax consequences of the merger, see [The Merger Material United States Federal Income Tax Consequences](#).

The combined company will incur significant transaction and merger-related costs in connection with the merger.

ICE and NYBOT expect to incur a number of non-recurring costs associated with combining the operations of the two companies. ICE and NYBOT will also incur investment advisors, legal, accounting and other transaction fees and other costs related to the merger, anticipated to be between \$32 million and \$33 million. Some of these costs are payable regardless of whether the merger is completed. Moreover, under specified circumstances, NYBOT may be required to pay termination fees and reimburse certain expenses in connection with the termination of the proposed merger. See [The Merger Agreement Termination Termination Fees and Expense Reimbursement](#). Additional unanticipated costs may be incurred in the integration of the businesses of ICE and NYBOT.

Although we expect that the elimination of duplicative costs, as well as the realization of other efficiencies related to the integration of the businesses, may offset these transaction and merger-related costs over time, this net benefit may not be achieved in the near term, or at all.

Certain NYBOT governors and executive officers may have interests in the merger that are different from, or in addition to or in conflict with, yours.

Executive officers of ICE and NYBOT negotiated the terms of the merger agreement, and the board of directors of ICE and the board of governors of NYBOT each approved the merger agreement. NYBOT's board of

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governors recommends, by a 22-1 vote, that you vote in favor of the approval and adoption of the merger agreement. NYBOT's governors and executive officers may have interests in the merger that are different from, in addition to or in conflict with yours. These interests include the continued employment of certain executive officers of NYBOT by ICE, the membership of certain governors of NYBOT on the boards of directors of ICE and/or of the surviving corporation following the completion of the merger, and the indemnification of former NYBOT governors and executive officers by ICE. With respect to certain NYBOT governors and executive officers, these interests also include the treatment in the merger of employment agreements, bonus pool payments (see The Merger Agreement Bonus Pool), change-of-control severance plans and other rights held by these governors and executive officers. You should be aware of these interests when you consider NYBOT's board of governors' recommendation that you vote in favor of the merger. For a discussion of the interests of NYBOT's governors and executive officers in the merger, see The Merger Interests of Officers and Governors in the Merger.

We expect that, following the merger, ICE will have significantly less cash on hand than the sum of cash on hand of ICE and NYBOT prior to the merger. This reduced amount of cash could adversely affect ICE's ability to grow and perform.

Following an assumed completion of the merger on June 30, 2006, after payment of the merger consideration, the expenses of consummating the merger, and all other pro forma adjustments relating to the merger, ICE is expected to have approximately \$57.5 million in cash, cash equivalents, investment and other securities. Although the managements of ICE and NYBOT believe that this amount will be sufficient to meet ICE's business objectives, this amount is significantly less than the approximately \$228.3 million of combined cash, cash equivalents, investment and other securities of the two companies as of June 30, 2006, prior to the merger and pro forma adjustments, and could constrain ICE's ability to make necessary capital expenditures and other investments necessary to operate and grow its business. ICE's financial position following the merger could also make it vulnerable to general economic downturns and industry conditions, and place it at a competitive disadvantage relative to its competitors that have more cash at their disposal. In the event that ICE does not have adequate capital to maintain or develop its business, additional capital may not be available to ICE on a timely basis, on favorable terms, or at all.

There will be differences between the current ownership rights of NYBOT members and the rights they can expect to have as ICE stockholders.

NYBOT members that receive ICE common stock in the merger will become ICE stockholders, and their rights as stockholders will be governed by ICE's certificate of incorporation and bylaws. In addition, whereas NYBOT is currently a New York Type A not-for-profit corporation, governed by the New York Not-For-Profit Corporation Law, ICE is a for-profit corporation, governed by the Delaware General Corporation Law. As a result, there will be differences between the current rights of NYBOT members as owners of NYBOT membership interests and the rights they can expect to have as ICE stockholders or holders of trading rights on the surviving corporation exchange. For a discussion of other differences, see Comparison of Rights Prior to and After the Merger and The Merger Effect of the Merger on NYBOT Members.

There will be differences between the current trading rights of NYBOT members and the trading rights they will receive from the surviving corporation.

The proposed bylaws of the surviving corporation provide that each NYBOT member will be issued trading rights in the surviving corporation. However, the organizational documents and agreements that govern their trading rights in the surviving corporation are different than those that currently govern the rights and privileges of members of NYBOT. As a result, there will be differences between the current trading rights of NYBOT members and the trading rights they will receive from the surviving corporation, including the fact that the board of directors of the surviving corporation will be permitted to modify or terminate those rights under certain circumstances. For a discussion of certain rights, privileges and limitations of holders of trading rights in the surviving corporation, see The Bylaws and The Merger Effect of the Merger on NYBOT Members.

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NYBOT members will have a reduced ownership and voting interest after the merger and will exercise less influence over management.

After the completion of the merger, NYBOT members will own a smaller percentage of ICE than they currently own of NYBOT. Immediately following completion of the merger, former NYBOT members will own approximately 15%, and other ICE stockholders will own approximately 85% of ICE common stock issued and outstanding immediately following the completion of the merger. Consequently, NYBOT members, as a group, will have reduced ownership and voting power in the combined company compared to their ownership and voting power in NYBOT.

Obtaining required approvals may delay the completion of the merger and/or reduce the anticipated benefits of the merger.

Completion of the merger is conditioned upon, among other things, the receipt of material governmental authorizations, consents, orders and approvals, including the approval of the CFTC, a private letter ruling from the Internal Revenue Service stating that the merger will be treated as a reorganization for U.S. federal income tax purposes and that the members of NYBOT and holders of NYBOT trading permits will not recognize gain in connection with the merger other than with respect to any cash consideration received, and the expiration or termination of the applicable waiting periods, and any extension of the waiting periods, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. ICE and NYBOT intend to pursue all required approvals in accordance with their obligations under the merger agreement. In connection with granting these approvals, the respective governmental or other authorities may impose conditions on, or require divestitures or other changes relating to, the divisions, operations or assets of ICE or NYBOT. Such conditions, divestitures or other changes may delay completion of the merger or may reduce the anticipated benefits of the merger. See [The Merger Agreement Conditions to Completion of the Merger](#) for a discussion of the conditions to the completion of the merger and [The Merger Regulatory Approvals](#) for a description of the regulatory approvals necessary in connection with the merger.

Risks Relating to ICE's Business Following the Merger

We will face intense competition that could materially and adversely affect our business. If we are not able to compete successfully, our business will not survive.

We currently compete with:

regulated futures exchanges that offer trading in a variety of markets, including energy markets, such as the New York Mercantile Exchange, or NYMEX;

energy futures exchanges, such as European Energy Derivatives Exchange, or Endex (formerly known as Amsterdam Power Exchange), Nord Pool, and Powernext;

voice brokers active in the commodities markets, including GFI, ICAP, Prebon Yamane and Tradition (North America);

other electronic energy trading platforms, such as NGX (a subsidiary of the Toronto Stock Exchange) and Houston Street; and

market data vendors, such as Bloomberg, Reuters, Argus and Platts (a division of The McGraw-Hill Companies Inc.).

Upon completion of the merger, we will also compete with the London International Financial Futures and Options Exchange, or LIFFE, which is now a part of Euronext, N.V. for trade execution in futures and options contracts on agricultural products such as sugar, coffee and cocoa. We may also face competition from other regional exchanges, such as the Tokyo Grain Exchange or the Brazilian Mercantile and Futures Exchange, which offer competing contracts for these products.

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We may also face additional competition from new entrants to our markets. Competition in the market for commodities trading could increase if new electronic trading platforms or futures exchanges are established, or if existing platforms or exchanges that currently do not trade energy commodities products decide to do so. Additional competition from new entrants to our markets could negatively impact our trading volumes and profitability.

In addition, some of the exchanges, trading systems, dealers and other companies with which we currently or in the future may compete are or may be substantially larger than us and have or may have substantially greater financial, technical, marketing, personnel and other resources and more diverse revenue streams than we do. Some of these exchanges and other businesses have longstanding, well-established and, in some cases, dominant positions in their existing markets. They may offer a broader range of products and services and may take better advantage of business opportunities than we do.

Our ability to continually maintain and enhance our competitiveness and respond to threats from stronger current and potential competitors will have a direct impact on our results of operations. We cannot assure you that we will be able to compete effectively. If our markets, products and services are not competitive, our business, financial condition and operating results will be materially affected. Our business could also be materially affected if we fail to attract new customers or lose a substantial number of our current customers to competitors. In addition, even if new entrants or existing competitors do not significantly erode our market share, we may be required to reduce significantly the rates we charge for trade execution for certain contracts or market data to remain competitive, which could have a material adverse effect on our profitability.

Our principal competitor, NYMEX, is a regulated futures exchange that offers trading in futures products and options on those futures in the crude oil, gas and metals markets, among other commodities markets. NYMEX has taken several actions in the past year to improve its competitive position, including entering into an agreement with the Chicago Mercantile Exchange, or CME, under which CME exclusively lists NYMEX energy contracts on its electronic trading platform, and NYMEX now offers electronic trading for its products on a side-by-side basis with its open-outcry markets, which may increase the competition for trading in our electronic platform. As a result, ICE's trading volumes may decline and it may lose liquidity in its markets. NYMEX also entered into an alliance with General Atlantic as a strategic partner and announced plans to conduct an initial public offering of NYMEX common stock in late 2006.

NYMEX also operates its own clearing house. With its own clearing house, NYMEX has had greater flexibility than ICE in introducing new products and providing clearing services. While ICE will operate NYCC following the completion of the merger, ICE may continue to rely upon a third-party, LCH.Clearnet, to provide clearing services for the trading of certain futures and cleared OTC contracts in its markets. See

Following the completion of the merger, we may continue to rely on LCH.Clearnet to provide clearing services for the trading of certain futures and cleared OTC contracts in our markets. We cannot operate our futures and cleared OTC businesses without clearing services.

Our business is primarily transaction-based, and declines in trading volumes and market liquidity would adversely affect our business and profitability.

ICE earns transaction fees for transactions executed in its markets and from the provision of electronic trade confirmation services. ICE derived 86.3%, 87.9%, 83.9% and 86.9% of its consolidated revenues for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, from its transaction-based business. NYBOT also has derived a substantial portion of its revenues from transaction fees relating to trading on its exchange. NYBOT derived 75.0%, 73.0%, 69.7% and 62.5% of its consolidated revenues for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, from its transaction-based business.

The success of our business depends on our ability to maintain and increase our trading volumes and the resulting transaction fees. Following the merger, even if we are able to further diversify our product and service

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offerings, our revenues and profitability will continue to depend primarily on our transaction-based business. A substantial portion of our revenues will continue to be derived from transaction fees generated from trades executed on our trading platform or NYBOT's exchange floor, which are based primarily on the volume of contracts traded. Any decline in our trading volumes in the short-term or long-term will negatively impact our transaction fees and, therefore, our revenues. Accordingly, the occurrence of any event that reduces the amount of transaction fees we receive, whether as a result of declines in trading volumes or market liquidity, adverse response to ICE's all electronic market, adverse response to side-by-side electronic trading in NYBOT's core agricultural commodity contracts, reductions in commission rates, regulatory changes, competition or otherwise, will have a significant impact on our operating results and profitability. See also Our business depends in large part on volatility in commodity prices generally and in energy commodities prices in particular, Our revenues have depended heavily upon trading volumes in the markets for ICE Brent Crude and ICE Gas Oil futures contracts and OTC North American natural gas and power contracts. A decline in volumes or in our market share in these contracts would jeopardize our ability to remain profitable and grow, and Our business will also depend on the trading volumes of sugar futures contracts and options on sugar futures contracts.

Our business depends in large part on volatility in commodity prices generally and energy prices in particular.

Participants in the markets for energy commodities trading pursue a range of trading strategies. While some participants trade in order to satisfy physical consumption needs, others seek to hedge contractual price risk or take speculative or arbitrage positions, seeking returns from price movements in different markets. Trading volume is driven primarily by the degree of volatility—the magnitude and frequency of fluctuations—in prices of commodities. Higher volatility increases the need to hedge contractual price risk and creates opportunities for speculative or arbitrage trading. Energy commodities markets historically have experienced significant price volatility and in recent years reached record levels. ICE cannot predict whether this pattern will continue, or for how long, or if this trend will reverse itself. Were there to be a sustained period of stability in the prices of energy commodities, ICE could experience lower trading volumes, slower growth or even declines in revenues as compared to recent periods.

In addition to price volatility, the increase in global energy prices, particularly for crude oil, during the past three years may have had a positive impact on the trading volume of global energy commodities, including trading volumes in ICE's markets. If global crude oil prices decrease or return to the lower levels where they historically have been, it is possible that many market participants could reduce their trading activity or leave the trading markets altogether. Global energy prices are determined by many factors, including those listed below, that are beyond our control and are unpredictable. Consequently, we cannot predict whether global energy prices will remain at their current levels, and we cannot predict the impact that these prices will have on our future revenues or profitability.

Factors that are particularly likely to affect price volatility and price levels, and thus trading volumes, include:

economic, political and market conditions in the United States, Europe, the Middle East and elsewhere in the world;

weather conditions, including hurricanes and other significant weather events that impact production, of commodities, and, in the case of energy commodities, production, refining and distribution facilities for oil and natural gas;

the volatility in production volume of the commodities underlying our energy and agricultural products and markets;

war and acts of terrorism;

legislative and regulatory changes;

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credit quality of market participants;

the availability of capital;

broad trends in industry and finance;

the level and volatility of interest rates;

fluctuating exchange rates and currency values; and

concerns over inflation.

Any one or more of these factors may reduce price volatility or price levels in the markets for commodities trading generally and for energy products in particular. Any reduction in price volatility or price levels could reduce trading activity in those markets, including in our markets. Moreover, any reduction in trading activity could reduce liquidity the ability to find ready buyers and sellers at current prices which in turn could further discourage existing and potential market participants and thus accelerate any decline in the level of trading activity in these markets. In these circumstances, the markets with the highest trading volumes, and therefore the most liquidity, would likely have a growing competitive advantage over other markets. This could put us at a greater disadvantage relative to our principal competitor and other competitors, whose markets are larger and more established than ours.

We cannot predict whether or when these unfavorable conditions may arise in the future or, if they occur, how long or severely they will affect trading volumes. A significant decline in our trading volumes, due to reduced volatility, lower prices or any other factor, could have a material adverse effect on our revenues, since our transaction fees would decline, and in particular on our profitability, since our revenues would decline faster than our expenses, some of which are fixed. Moreover, if these unfavorable conditions were to persist over a lengthy period of time and trading volumes were to decline substantially and for a long enough period, the liquidity of our markets, and the critical mass of transaction volume necessary to support viable markets, could be jeopardized.

Our revenues have depended heavily upon trading volumes in the markets for ICE Brent Crude and ICE Gas Oil futures contracts and OTC North American natural gas and power contracts. A decline in volumes or in our market share in these contracts would jeopardize our ability to remain profitable and grow.

ICE's revenues currently depend heavily on trading volumes in four principal markets: the markets for ICE Brent Crude futures contracts, ICE Gas Oil futures contracts, OTC North American natural gas contracts and OTC North American power contracts. Trading in these four contracts in the aggregate has represented over 80% of ICE's consolidated revenues for the most recent interim and annual periods. Our trading volume or market share in these markets may decline due to a number of factors, including:

development of competing contracts, and competition generally;

reliance on technology to conduct trading;

the relative stability of commodity prices;

reduced growth in mature commodity markets;

increased availability of electronic trading on competing contracts;

possible regulatory changes; and

adverse publicity and government investigations.

A decline in trading volumes in one or more of these contracts could adversely affect our business. In February 2006, ICE launched trading in ICE WTI Crude futures contract, which has traded in substantial volumes since it began trading. While ICE only began to derive transaction fees from this contract in the second

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quarter of 2006, we expect that this contract could represent a significant percentage of our consolidated revenues in future periods. Accordingly, a decline in trading volumes in this contract could adversely affect our future revenues. If ICE's market share in any of these markets declines, participants may decide to trade in other markets and our revenues would decline, which could harm our ability to remain profitable and to grow our business.

Our business will also depend on the trading volumes of sugar futures contracts and options on sugar futures contracts.

Upon completion of the merger, exchange fees derived from trading in sugar futures and options contracts on NYBOT's exchange will be an important source of our transaction fees. NYBOT's sugar futures and options markets are recognized globally and have achieved record trading volumes in recent years. Sugar contracts are NYBOT's largest market and have accounted for 44.2%, 49.0%, 40.1% and 36.1% of NYBOT's total trading volumes for the six months ended June 30, 2006 and the years ended December 31, 2005, 2004 and 2003, respectively. NYBOT's principal sugar contract, world Sugar No. 11, achieved strong growth in futures and options volumes at the end of September 2006, with over 12.1 million sugar futures contracts traded year to date, representing an increase of 17% over the same period in 2005. The growth in volume of Sugar No. 11 options contracts has exceeded that of the corresponding futures contract, reaching a year to date volume of over 5.0 million contracts through the end of September 2006, representing a 120% increase compared to the same period in 2005. This volume growth is due, in part, to price volatility that was driven by the continued increase in demand for ethanol, which led to the diversion of significant amounts of sugar cane to ethanol production, and to the ongoing increase in global sugar consumption. Additionally, trends in the world sugar market favor trade in raw sugar, which is traded on NYBOT, versus refined sugar, which is traded in other markets, as additional refineries are completed in destinations that do not produce a domestic sugar crop and which previously relied on imports of refined sugar to fill consumption needs. Volumes have also been increased by the growth in asset allocation to index funds and their inclusion of sugar in major indices. A disruption in the growth of the sugar market could have a significant impact on our operating results and profitability.

A decline in the production of commodities traded in our markets could reduce our liquidity and adversely affect our revenues and profitability.

ICE derived 85.0%, 86.9%, 82.1% and 79.1% of its consolidated revenues for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, from exchange fees and commission fees generated from trading in commodity products in its futures and OTC markets. The volume of contracts traded in the futures and OTC markets for any specific commodity tends to be a multiple of the physical production of that commodity. If the physical supply or production of any commodity declines, market participants could become less willing to trade in contracts based on that commodity. For example, ICE Brent Crude futures contract has been subject to this risk as production of Brent crude oil peaked in 1984 and began steadily falling in subsequent years. ICE, in consultation with market participants, altered the mechanism for settlement of ICE Brent Crude futures contract to a mechanism based on the Brent/Forties/Oseberg North Sea oil fields, known as the BFO Index, to ensure that the commodity prices on which its settlement price is based reflect a large enough pool of traders and trading activity so as to be less susceptible to manipulation. Market participants that trade in ICE Brent Crude futures contract may determine in the future, however, that additional underlying commodity products need to be considered in the settlement of that contract or that the settlement mechanism is not credible. Exchange fees earned from trading in ICE Brent Crude futures contract accounted for 58.0%, 68.8%, 65.3% and 66.6% of ICE's total revenues from its futures business, net of intersegment fees, for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, or 21.4%, 26.5%, 29.7% and 30.4% of ICE's consolidated revenues for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively. Any uncertainty concerning the settlement of ICE Brent Crude futures contract, or a decline in the physical supply or production of any other commodity on which our trading products are based, including agricultural commodities underlying NYBOT's core products, could result in a decline in trading volumes in our markets, adversely affecting our revenues and profitability.

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We may explore acquisition opportunities relating to other businesses, products or technologies. If we do, we may be unable to integrate them successfully with our business, or the acquisition may not produce the results we anticipated.

We may seek to strengthen our business and grow our company by entering into business combination transactions, making acquisitions or entering into strategic partnerships, joint ventures or alliances, which may be material. We may enter into these transactions to acquire other businesses, products or technologies to expand our products and services, advance our technology or take advantage of new developments and potential changes in the industry.

The market for acquisition targets and strategic alliances is highly competitive, particularly in light of increasing consolidation in the exchange sector. As a result, we may be unable to identify strategic opportunities or we may be unable to negotiate or finance any future acquisition successfully.

We also have limited experience in integrating a significant acquisition into our business, other than our acquisition of ICE Futures. The process of integration may produce unforeseen regulatory and operating difficulties and expenditures and may divert the attention of management from the ongoing operation of our business. Additionally, further growth of our company following the merger with NYBOT could place a significant strain on our personnel, systems and other resources.

Further, as a result of any future acquisition, we may issue additional shares of common stock that dilute shareholders ownership interest in us, expend cash, incur debt, assume contingent liabilities or create additional expenses related to amortizing intangible assets with estimable useful lives, any of which could harm our business, financial condition or results of operations and negatively impact our stock price.

We may lose trading volume in NYBOT's markets if electronic trading is not accepted and adopted as and to the extent we introduce it into NYBOT's markets.

NYBOT has historically operated, and continues to operate, a traditional open-outcry trading floor on which all transactions are executed. Although ICE operates its electronic trading platform exclusively, and closed its open-outcry trading floor in April 2005, the merger agreement preserves certain core rights of NYBOT members relating to open-outcry trading of NYBOT's agricultural products following the merger. For example, under the terms of the merger agreement, NYBOT's trading floor may not be closed until 2013 unless certain conditions occur or there is a supermajority approval by the board of directors and the public directors of the surviving corporation. Until then, transactions for core NYBOT agricultural products executed electronically on ICE's platform will be charged an exchange fee that is \$1.00 greater per side than the exchange fee charged for the same transaction executed by open-outcry, subject to certain exceptions in the event a competing exchange introduces a competing contract or the board of directors of the surviving corporation by supermajority approval of its board and its public directors determines otherwise. Consistent with these rights, we expect to maintain side-by-side trading with respect to certain agricultural products traded in NYBOT's markets for the foreseeable future.

We cannot assure you that electronic trading will be accepted or adopted by NYBOT participants. While there has been increasing acceptance and adoption of electronic trading by market participants generally, our competitive position could be impaired if electronic trading on our platform is not successful or if trading volumes in NYBOT's products decline because its participants elect to trade on another platform or exchange. Declining trading volumes may make NYBOT's futures markets less liquid than those of competing markets. We believe that the future success of our business will depend on our ability to create and maintain liquid electronic marketplaces in our products that satisfy the required functionality, performance, reliability and speed to attract and retain our customers.

In addition, the cost of operating both electronic and open-outcry trading platforms for designated agricultural products may be expensive both in terms of costs and managerial resources and other required

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resources. We may not have sufficient resources to adequately support or manage both trading venues, which may result in resource allocation decisions that materially adversely impact one or both venues. Also, if we continue to operate both trading platforms, liquidity on each may be less than the liquidity on a competitive unified trading platform, making NYBOT's trading platforms less attractive and less competitive. As a result, our total revenues may be lower than if we operated only electronic trading or only open-outcry trading with respect to NYBOT's agricultural products. Moreover, to the extent that we continue to operate two trading venues, our board and management may make decisions that are designed to enhance the continued viability of two separate trading platforms, which may have a negative impact on the overall competitiveness of each trading platform. Finally, to the extent NYBOT's trading floor is closed, participants may seek alternative open-outcry trade execution rather than transitioning to electronic trade execution. If this occurs, our trading volumes will likely decline.

Following the completion of the merger, we may continue to rely on LCH.Clearnet to provide clearing services for the trading of certain futures and cleared OTC contracts in our markets. We cannot operate our futures and cleared OTC businesses without clearing services.

ICE currently does not own a clearing house and has contracted with LCH.Clearnet to provide clearing services to it for all futures contracts traded in its markets. Following the completion of the merger, we may continue to obtain clearing services from LCH.Clearnet even though we will own and operate NYCC. Pursuant to our contract with LCH.Clearnet, LCH.Clearnet has agreed to provide clearing services in respect of ICE's futures contracts for an indefinite term, subject to termination by either party upon one year's prior written notice, provided the contract is not otherwise terminated in accordance with its terms. Pursuant to a separate contract with LCH.Clearnet, LCH.Clearnet has agreed to provide clearing services to participants in ICE's OTC business that trade designated contracts eligible for clearing, subject to the same termination provisions described above.

Following the completion of the merger, NYCC will continue to serve as the designated clearing house for all trades executed on NYBOT's exchange. As part of the integration of our businesses, we may consider clearing certain futures and OTC contracts through NYCC. We cannot assure you that we will do so or that we will be able to do so on the same terms as we have contracted with LCH.Clearnet. NYCC is not currently authorized by United Kingdom regulators to clear transactions executed on an exchange located in the United Kingdom. Consequently, NYCC will not be able to clear trades for ICE futures until it obtains such recognition, which could take considerable time. There is no assurance that such recognition will be granted.

If the clearing services provided to ICE's OTC or futures customers were suspended or interrupted following the termination of our contracts with LCH.Clearnet or for any other reason, and we were unable to provide clearing services to these customers through NYCC or an alternate provider on a timely basis, our business, financial condition and results of operations would be materially and adversely affected. In particular, if our agreement with LCH.Clearnet with respect to our futures business was terminated and NYCC could not provide clearing services for ICE's futures products, or we could not obtain clearing services from an alternate provider, we may be unable to operate certain of ICE's futures markets and would possibly be required to cease operations in that segment of our business. For the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, transaction fees generated by ICE's futures business, which are also referred to as exchange fees, accounted for 39.2%, 36.7%, 42.0% and 42.6%, respectively, of ICE's consolidated revenues.

If ICE's agreement with LCH.Clearnet relating to its OTC business was terminated and NYCC could not provide these clearing services, we may be unable to offer clearing services in connection with trading certain OTC contracts in our markets for a considerable period of time. While we would still be able to offer OTC trading in bilateral contracts, our inability to offer trading in cleared contracts, assuming that no other clearing alternatives were available, including NYCC, would significantly impair our ability to compete, particularly in light of the launch of a competing swaps-to-futures clearing facility by one of our competitors and the ease with

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which other competitors can introduce new cleared OTC and futures products. For the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, transaction fees derived from trading in cleared OTC contracts accounted for 36.4%, 37.5%, 21.7% and 6.4%, respectively, of ICE's consolidated revenues. ICE's cleared OTC contracts have been a significant component of our business, and accounted for 68.6%, 69.3%, 47.6% and 13.9% of revenues, net of the intersegment fees, generated by ICE's OTC business for the six months ended June 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively.

Currently, ICE's ability to introduce new cleared OTC products is subject to review by and approval of LCH.Clearnet. LCH.Clearnet also sets all of the related clearing fees, which may be set at prices higher than those set by our competitors or at levels prohibitive to trading. If NYCC is unable to provide these services for ICE's futures and OTC contracts, or LCH.Clearnet elects for strategic reasons to discontinue providing clearing services to ICE at any time following appropriate notice, our business, financial condition and results of operations could be materially and adversely affected. For example, LCH.Clearnet could decide to enter into a strategic alliance with a competing exchange or other trading facility. In addition, according to the terms of ICE's contract with LCH.Clearnet with respect to its OTC business, its relationship may be terminated upon a change in control of either party. While the merger will not result in a change in control of ICE for purposes of this agreement, LCH.Clearnet may still seek to terminate the contract. The commodity markets have experienced increased consolidation in recent years and may continue to do so, and strategic alliances and changes in control involving various market participants are possible. LCH.Clearnet is owned by its members, which include banks and other financial institutions whose commercial interests are broader than the clearing services business. We cannot assure you that ICE's futures or OTC businesses would be able to obtain clearing services from NYCC or an alternate provider in sufficient time to avoid or mitigate the material adverse effects described above and, in the case of an alternate provider, on acceptable terms.

Upon completion of the merger, we will be exposed to risks related to the cost of operating a clearing house and the risk of defaults by our participants clearing trades through our clearing house.

Following the completion of the merger, we will operate NYCC, which will require substantial ongoing expenditures and consume a significant portion of management's time. The diversion of management attention may limit our ability to expand our business in other ways, such as through acquisitions of other companies or the development of new products and services. We cannot assure you that NYCC's clearing arrangements will continue to be satisfactory to NYBOT's participants or will not require substantial systems modifications to accommodate them in the future. Further, we cannot assure you that if we elect to use NYCC as the designated clearing house for certain of ICE's futures and OTC contracts, our participants will find these services suitable or on terms acceptable to them. The transition to new clearing facilities for many ICE participants could be disruptive and costly. Our operation of NYCC may not be as successful and may not provide us the benefits we anticipated. Our operation of NYCC may not generate sufficient revenues to cover the expenses we incur.

There are also substantial risks inherent in operating a clearing house, including exposure to the credit risk of clearing members, to which ICE is not currently subject, and defaults by clearing members could subject our business to substantial losses. Although NYCC currently has policies and procedures to help ensure that clearing members can satisfy their obligations, these policies and procedures may not succeed in detecting problems or preventing defaults. NYCC also has in place various measures intended to enable it to cover any default and maintain liquidity. However, we cannot assure you that these measures will be sufficient to protect us from a default or that we will not be materially and adversely affected in the event of a significant default. Additionally, the default of any one of the clearing members could cause our customers to lose confidence in our markets and the guarantee of NYCC, which would have an adverse affect on our business.

We will also be subject to additional regulation as a result of owning a clearing house. See We are currently subject to regulation, and we will be subject to further regulation upon the completion of the merger. Failure to comply with existing regulatory requirements, and possible future changes in these requirements or in the current interpretation of these requirements, could adversely affect our business.

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We are currently subject to regulation, and we will be subject to further regulation upon the completion of the merger. Failure to comply with existing regulatory requirements, and possible future changes in these requirements or in the current interpretation of these requirements, could adversely affect our business.

ICE currently operates its OTC markets as an exempt commercial market under the CEA. As such, ICE is subject to anti-fraud, anti-manipulation, access, reporting and record-keeping requirements of the CFTC. However, unlike a futures exchange, OTC trading is not currently regulated by the CFTC. Members of Congress have, at various times over the last several years, introduced legislation seeking to restrict OTC derivatives trading of energy generally and to bring electronic trading of OTC energy derivatives within the direct scope of CFTC regulation. Separate pieces of legislation have recently been introduced in Congress that would (i) provide the CFTC with the authority to require exempt commercial markets to comply with additional regulatory requirements, including the imposition of position limits, and to require some participants on exempt commercial markets to file reports on their positions, and (ii) place price controls on natural gas derivatives and make those derivatives tradable only on a designated contract market, which is a regulatory status ICE does not presently hold. If adopted, this legislation could require us and our OTC participants to operate under heightened regulatory burdens and incur additional costs in order to comply with the additional regulations, and could deter some participants from trading on our OTC platform.

In contrast to the OTC business, ICE Futures, through which we conduct our energy futures business, operates as a Recognized Investment Exchange in the United Kingdom. As a Recognized Investment Exchange, ICE Futures has regulatory responsibility in its own right and is subject to supervision by the Financial Services Authority pursuant to the Financial Services and Markets Act 2000, or FSMA. ICE Futures is required under the FSMA to maintain sufficient financial resources, adequate systems and controls and effective arrangements for monitoring and disciplining its members. ICE Futures' ability to comply with all applicable laws and rules is largely dependent on its maintenance of compliance, audit and reporting systems. We cannot assure you that these systems and procedures are fully effective.

Electronic trading in futures contracts on ICE Futures is permitted in many jurisdictions, including in the United States, through no-action relief from the local jurisdiction's regulatory requirements. In the United States, direct electronic access to trading in ICE Futures products is offered to U.S. persons based on a series of no-action letters from the CFTC that permit non-U.S. exchanges, referred to as foreign boards of trade, to provide U.S. persons with electronic access to their markets without registration with the CFTC. In connection with the launch of ICE WTI Crude futures contract in February 2006, the CFTC stated that it will be evaluating the future use of its no-action process. The CFTC held a public hearing on June 27, 2006 to consider the issue of what constitutes a board of trade, exchange, or market located outside the United States for the purposes of exemption from CFTC jurisdiction and regulation. Prior to the hearing, the CFTC issued a request for comment with respect to this issue that expired on August 1, 2006. The CFTC is expected to issue its findings in the near future.

Our ability to offer new futures products under ICE's existing no-action relief could be impacted by the pendency of the CFTC's policy review and any actions taken by the CFTC as a result of its policy review. We cannot predict what level of additional regulation ICE Futures' business and products may be subjected to as a result of this CFTC policy review. If we are unable to offer additional U.S. futures products, or if our offerings of products through ICE Futures to U.S. participants are subject to additional regulatory constraints, our business could be adversely affected. If the CFTC revokes or makes substantial revisions to the no-action process or to the no-action decisions upon which we currently rely, ICE Futures may be required to comply with additional regulation in the United States, including the possibility of being required to register as a regulated futures exchange in the United States, known as a designated contract market. Requiring ICE Futures to comply with regulation in addition to that presently required by its primary regulator, the FSA, would be costly and time consuming and could subject ICE Futures to duplicative or inconsistent regulatory requirements. Failure to comply with current regulatory requirements and regulatory requirements that may be imposed on us in the future could subject us to significant penalties, including termination of its ability to conduct our regulated futures business conducted through ICE Futures.

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Upon completion of the merger, we will be subject to the regulatory framework that governs NYBOT's open-outcry trading floor, which is a designated contract market under the regulation of the CFTC. As a self-regulatory organization, we will be responsible for ensuring that the exchange operates in accordance with existing rules and regulations.

Generally, we dedicate significant resources to protect the integrity of our markets, and the reputation of our markets for fairness and transparency is a significant factor in our long-term success. New regulations or enforcement may force us to allocate more resources to regulation or confidence in our markets may be diminished and our business may be adversely affected. Even the perception of unfairness or illegal behavior in our markets could adversely affect our business.

In addition, the recent demise in certain hedge funds that traded energy commodities may result in additional regulation by the CFTC or Congress. Legislative and regulatory initiatives, either in the United States, the United Kingdom or elsewhere, could affect one or more of the following aspects of our business or impose one or more of the following requirements:

the manner in which we communicate with and contract with our participants;

the demand for and pricing of our products and services;

the tax treatment of trading in our products;

a requirement that we maintain minimum regulatory capital on hand;

a requirement that we exercise regulatory oversight of our OTC participants, and assume responsibility for their conduct;

our financial and regulatory reporting practices;

our record-keeping and record-retention procedures;

the licensing of our employees; and

the conduct of our directors, officers, employees and affiliates.

The implementation of new regulations, or changes in or unfavorable interpretations of existing regulations by courts or regulatory bodies could require us to incur significant compliance costs and impede our ability to operate, expand and enhance our electronic platform as necessary to remain competitive and expand our business. Regulatory changes inside or outside the United States or the United Kingdom could materially and adversely affect our business, financial condition and results of operations.

Proposals of legislation or regulatory changes preventing clearing facilities from being owned or controlled by exchanges, even if unsuccessful, may limit or stop NYBOT's ability to run a clearing house.

Many clearing firms have increasingly emphasized the importance to them of centralizing clearing of futures contracts and options on futures in order to maximize the efficient use of their capital, exercise greater control over their value at risk and extract greater operating leverage from clearing activities. Many have expressed the view that clearing firms should control the governance of clearing houses or that clearing houses should be operated as utilities rather than as for-profit enterprises. Some of these firms, along with the Futures Industry Association, are attempting to cause legislative or regulatory changes to be adopted that would facilitate mechanisms or policies that allow market participants to

transfer positions from an exchange-owned clearing house to a clearing house owned and controlled by clearing firms. If these legislative or regulatory changes are adopted, our strategy and business plan may lead clearing firms to establish, or seek to use, alternative clearing houses for clearing positions established on our exchange. Even if they are not successful in their efforts, the factors described above may cause clearing firms to limit or stop the use of our clearing house. If any of these events occur, our revenues and profits would be materially and adversely affected.

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The nature and role of NYBOT's self-regulatory responsibilities may change.

Some financial services regulators have publicly stated their interest in evaluating the ability of a financial exchange, organized as a for-profit corporation, to adequately discharge its self-regulatory responsibilities. NYBOT's regulatory programs and capabilities contribute significantly to its brand name and reputation. Although we believe that NYBOT will be permitted to maintain these responsibilities, we cannot assure you that NYBOT will not be required to modify or restructure its regulatory functions in order to address these or other concerns. Any such modifications or restructuring of its regulatory functions could entail material costs that have not currently been planned for. The CFTC has recently issued for public comment proposed changes to conflict of interest rules, including rules relating to the governance of self-regulatory organizations. Any such changes could impose significant costs and other burdens on NYBOT.

The energy commodities trading industry in North America has been subject to increased regulatory scrutiny in the recent past, and we face the risk of changes to our regulatory environment in the future, which may diminish trading volumes on ICE's electronic platform.

ICE's OTC business is currently subject to limited regulatory oversight due to the limitations on the types of market participants that are eligible to trade in the OTC markets. As an exempt commercial market, ICE is not subject to registration as an exchange nor to the type of comprehensive oversight to which exchanges, like NYBOT, are subject. Instead, ICE is required to comply with access, reporting and record-keeping requirements of the CFTC. In addition, ICE Futures is subject to primary regulation by the FSA, and offers its products for trading in the United States pursuant to a series of no-action letters, which effectively exempts it from CFTC jurisdiction and regulation.

In past years, and again recently, the market for OTC energy commodities trading has been the subject of increased scrutiny by regulatory and enforcement authorities due to a number of highly publicized problems involving energy commodities trading companies, particularly hedge funds. This increased scrutiny has included investigations by the Department of Justice, the Federal Energy Regulatory Commission and the Federal Trade Commission of alleged manipulative trading practices, misstatements of financial results, and other matters.

Furthermore, in response to the rise in energy commodity prices in recent years and allegations that manipulative trading practices by certain market participants may have contributed to the rise in prices, legislative and regulatory authorities at both the federal and state levels, as well as political and consumer groups, have called for increased regulation and monitoring of the OTC energy commodities markets and a review of the no-action process pursuant to which ICE Futures' contracts are presently offered to market participants in the United States. For example, regulators in some states have publicly questioned whether some form of regulation, including price controls, should be re-imposed in OTC commodities markets, particularly in states where power markets were deregulated in recent years. In addition, members of Congress have, at various times in the last several years, introduced legislation seeking to restrict OTC derivatives trading of energy contracts generally, to bring electronic trading of OTC energy derivatives within the direct scope of CFTC regulation, to impose position limits on trading in energy commodities, and to provide for expanded CFTC surveillance of both OTC and futures markets and the people and entities that trade in those markets. Most recently, the United States Senate Permanent Subcommittee on Investigations issued a report regarding its investigation into the role of market speculation in rising oil and gas prices in which it specifically refers to ICE. If any of these measures are implemented, they could reduce demand for our products, which will adversely affect our business.

Also, on January 19, 2006, the Federal Energy Regulatory Commission issued final rules under the Energy Policy Act of 2005 clarifying the agency's authority over market manipulation by all electricity and natural gas sellers, transmission owners and pipe lines, regardless of whether they are regulated by the Federal Energy Regulatory Commission. In addition, the Energy Policy Act of 2005 granted the Federal Energy Regulatory Commission the power to prescribe rules related to the collection and government dissemination of information regarding the availability and price of natural gas and wholesale electric energy. These rules and possible future

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exercises of the Federal Energy Regulatory Commission's rulemaking powers could adversely affect the trading of certain of our products and adversely impact demand for ICE Data's market data products in the United States or have other material adverse impacts on our business.

It is possible that future unanticipated events in the markets for energy commodities trading will lead to additional regulatory scrutiny and changes in the level of regulation to which we are subject. Increased regulation of our participants or our markets could materially adversely affect our business. The imposition of stabilizing measures such as price controls in energy commodities markets could substantially reduce or potentially even eliminate trading activity in affected markets. New laws and rules applicable to us could significantly increase our regulatory compliance costs, delay or prevent us from introducing new products and services as planned and discourage some market participants from using ICE's electronic platform. Allegations of manipulative trading by market participants could subject us to regulatory scrutiny and possibly fines or restrictions on its business, as well as significant legal expenses and adverse publicity. All of this could lead to lower trading volumes and transaction fees, higher operating costs and lower profitability or losses.

If we are unable to keep up with rapid changes in technology and participant preferences, we may not be able to compete effectively.

To remain competitive, we must continue to enhance and improve the responsiveness, functionality, accessibility and reliability of ICE's electronic platform and our proprietary technology. The financial services industry is characterized by rapid technological change, change in use patterns, change in client preferences, frequent product and service introductions and the emergence of new industry standards and practices. These changes could render our existing proprietary technology uncompetitive or obsolete. Our ability to pursue our strategic objectives, including increasing trading volumes on our trading platforms, as well as our ability to continue to grow our business, will depend, in part, on our ability to:

enhance our existing services and maintain and improve the functionality and reliability of ICE's electronic platform, in particular, reducing network downtime;

develop or license new technologies that address the increasingly sophisticated and varied needs of our participants;

anticipate and respond to technological advances and emerging industry practices on a cost-effective and timely basis; and

continue to attract and retain highly skilled technology staff to maintain and develop our existing technology and to adapt to and manage emerging technologies.

We cannot assure you that we will successfully implement new technologies or adapt our proprietary technology to our participants requirements or emerging industry standards in a timely and cost-effective manner. Any failure to remain abreast of industry standards in technology and to be responsive to participant preferences could cause our market share to decline and negatively impact our profitability.

Our operating results may be subject to significant fluctuations due to a number of factors.

A number of factors beyond our control may contribute to substantial fluctuations in our operating results following the completion of the merger, particularly in our quarterly results. As a result of the factors described in the preceding risk factors, you will not be able to rely on ICE's and NYBOT's historical operating results in any particular period as an indication of our future performance. The commodities trading industry and energy commodities trading in particular has historically been subject to variability in trading volumes due primarily to five key factors. These factors include geopolitical events, weather, real and perceived supply and demand imbalances in the underlying commodities, the number of trading days in a quarter and seasonality. As a result of one or more of these factors, trading volumes in our markets could decline, possibly significantly, which would adversely affect our revenues derived from transaction fees. If we fail to meet securities analysts expectations

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regarding our operating performance, the price of ICE common stock could decline substantially. See also Risks Relating to an Investment in ICE's Common Stock The market price of ICE's common stock may fluctuate significantly.

Our cost structure is largely fixed. If our revenues decline and we are unable to reduce our costs, or if our expenses increase without a corresponding increase in revenues, our profitability will be adversely affected.

ICE's cost structure has been largely fixed, and following the merger, we expect that it will continue to be largely fixed. We base our expectations of our cost structure on historical and expected levels of demand for our products and services as well as our fixed operating infrastructure, such as computer hardware and software, hosting facilities and security and staffing levels. If demand for our products and services declines and, as a result, our revenues decline, we may not be able to adjust our cost structure on a timely basis. In that event, our profitability will be adversely affected.

Fluctuations in currency exchange rates may adversely affect our operating results.

The revenues, expenses and financial results of ICE Futures and other U.K. subsidiaries have historically been denominated in pounds sterling, the functional currency of ICE's U.K. subsidiaries. ICE had foreign currency translation risk equal to its net investment in its subsidiaries. The financial statements of ICE's U.K. subsidiaries were translated into U.S. dollars using current rates of exchange, with gains or losses included in the cumulative translation adjustment account, a component of shareholders' equity. As of June 30, 2006 and December 31, 2005, the portion of ICE's shareholders' equity attributable to accumulated other comprehensive income from foreign currency translation was \$30.7 million and \$21.3 million, respectively. The period-end foreign currency exchange rate for pounds sterling to the U.S. dollar increased from 1.7188 as of December 31, 2005 to 1.8491 as of June 30, 2006.

Effective as of July 1, 2006, the functional currency of the majority of ICE's U.K. subsidiaries became the U.S. dollar. The functional currency of an entity is the currency of the primary economic environment in which the entity operates. A change in functional currency should be accounted for prospectively, and previously issued financial statements should not be restated for a change in functional currency. In addition, if the functional currency changes from a foreign currency to the reporting currency, as is the case with ICE, translation adjustments for prior periods should not be removed from equity and the translated amounts for non-monetary assets as the end of the prior period become the accounting basis for those assets in the period of the change and subsequent periods. The functional currency switched based on various economic factors and circumstances, including the fact that beginning in the second quarter of 2006, ICE Futures began to charge and collect exchange fees in U.S. dollars rather than pounds sterling in its key futures contracts, including crude oil and heating oil contracts. We will no longer recognize any translation adjustments in the consolidated financial statements subsequent to June 30, 2006 for those U.K. subsidiaries that will switch their functional currency to the U.S. dollar. However, gains and losses from foreign currency transactions will continue to be included in other income (expense) in our consolidated statements of income.

We have foreign currency transaction risk primarily related to the settlement of foreign assets, liabilities and payables that occur through our foreign operations which are received in or paid in pounds sterling. ICE had foreign currency transaction gains (losses) of (\$317,000) and \$1.1 million for the six months ended June 30, 2006 and 2005, respectively, primarily attributable to the fluctuations of pounds sterling relative to the U.S. dollar. The average exchange rate of pounds sterling to the U.S. dollar decreased from 1.8713 for the six months ended June 30, 2005 to 1.7973 for the six months ended June 30, 2006.

We may experience substantial gains or losses from foreign currency transactions in the future given there are still net assets and expenses of our U.K. subsidiaries that are denominated in pounds sterling. Of ICE's consolidated operating expenses, 30.8% and 34.6% were denominated in pounds sterling for the six months ended June 30, 2006 and 2005, respectively. As the pounds sterling exchange rate changes, the U.S. equivalent of

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expenses denominated in foreign currencies changes accordingly. All sales in ICE's business are denominated in U.S. dollars, except for some small futures contracts in ICE's futures business segment. ICE's U.K. operations in some instances function as a natural hedge because ICE generally holds an equal amount of monetary assets and liabilities that are denominated in pounds sterling.

While we expect to continue to enter into hedging transactions to help mitigate our foreign exchange risk exposure, primarily with respect to our net investment in our U.K. subsidiaries, these hedging arrangements may not always be effective, particularly in the event of imprecise forecasts of the levels of its non-U.S. denominated assets and liabilities. Accordingly, if there is an adverse movement in exchange rates, we may suffer significant losses, which would adversely affect our operating results and financial condition.

The nature of our business is highly competitive, which may result in litigation with competitors or competitors' affiliated entities.

Our business is highly competitive. ICE has been sued in the past by NYMEX and was also sued by MBF Clearing Corp, an entity closely affiliated with NYMEX, over actions ICE had taken in connection with conducting its business. While ICE was awarded summary judgment on the NYMEX suit, the decision was appealed by NYMEX. ICE also settled the MBF litigation. These litigations have been costly and time consuming. For a discussion of these matters, see Information About ICE Legal Proceedings. Moreover, the results of the NYMEX litigation, or any future litigation, are inherently uncertain and may result in adverse rulings or decisions that may, individually or in the aggregate, impact our business in a material and adverse manner. See also Any infringement by us of intellectual property rights of others could result in litigation and adversely affect our ability to continue to provide, or increase the costs of providing, our products and services.

Any infringement by us of intellectual property rights of others could result in litigation and adversely affect our ability to continue to provide, or increase the cost of providing, our products and services.

Patents and other intellectual property rights are increasingly important as further electronic components are added to trading, and patents and other intellectual property rights of third parties may have an important bearing on our ability to offer certain of our products and services. Our competitors, as well as other companies and individuals, may have obtained, and may be expected to obtain in the future, patent rights related to the types of products and services we offer or plan to offer. We cannot assure you that we are or will be aware of all patents that may pose a risk of infringement by our products and services. In addition, some patent applications in the United States are confidential until a patent is issued, and therefore we cannot evaluate the extent to which our products and services may be covered or asserted to be covered in pending patent applications. Thus, we cannot be sure that our products and services do not infringe on the rights of others or that others will not make claims of infringement against us.

In addition, our competitors may claim other intellectual property rights over information that is used by us in our product offerings. For example, in November 2002, NYMEX filed claims against ICE in the U.S. District Court for the Southern District of New York asserting that, among other things, it infringed copyrights NYMEX claims exist in its publicly available settlement prices that ICE uses in connection with the clearing of certain OTC derivative contracts. While the court granted a motion for summary judgment in ICE's favor in September 2005 dismissing all claims brought against it by NYMEX, NYMEX is appealing the ruling of the District Court to the Second Circuit Court of Appeals, and no decision has yet been made by the Court of Appeals. If NYMEX successfully appeals the court's judgment and ICE is subsequently found to have infringed NYMEX's intellectual property rights after a trial, we may incur substantial monetary damages and may be enjoined from using or referring to one or more types of NYMEX settlement prices. If we are so enjoined, we could lose all or a substantial portion of our cleared trading volume in Henry Hub natural gas and West Texas Intermediate crude oil contracts and the related commission revenues. For more information regarding the NYMEX litigation, see Information About ICE Legal Proceedings NYMEX Claim of Infringement.

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With respect to our intellectual property, if one or more of our products or services is found to infringe patents held by others, it may be required to stop developing or marketing the products or services, obtain licenses to develop and market the products or services from the holders of the patents or redesign the products or services in such a way as to avoid infringing the patents. We also could be required to pay damages if we were found to infringe patents held by others, which could materially adversely affect our business, financial condition and operating results. We cannot assess the extent to which we may be required in the future to obtain licenses with respect to patents held by others, whether such licenses would be available or, if available, whether it would be able to obtain such licenses on commercially reasonable terms. If we were unable to obtain such licenses, we may not be able to redesign our products or services at a reasonable cost to avoid infringement, which could materially adversely affect our business, financial condition and operating results.

Some of the proprietary technology we employ may be vulnerable to infringement by others.

Our business is dependent on proprietary technology and other intellectual property that we own or license from third parties. Despite precautions we have taken or may take to protect our intellectual property rights, third parties could copy or otherwise obtain and use our proprietary technology without authorization. It may be difficult for us to monitor unauthorized use of our intellectual property. We cannot assure you that the steps that we have taken will prevent misappropriation of our proprietary technology or intellectual property.

ICE has filed U.S. patent applications for our electronic trade confirmation service, our method to allow a participant to engage in program trading while protecting its data (referred to as ICEMaker), our method for displaying both cleared and bilateral OTC contracts in single price stream, our method for locking prices on electronic trading screens, and our method for exchanging OTC contracts and futures contracts in similar base commodities on an electronic trading platform. In addition, we have been issued a joint U.S. patent with NYMEX covering an implied market trading system. ICE has also filed patent applications in the European Patent Office and Canada for our electronic trade confirmation service and our method for displaying cleared and bilateral OTC contracts in a single price stream, as well as having made a filing under the Patent Cooperation Treaty with respect to ICEMaker. On May 5, 2006, ICE filed two new patent applications with the U.S. patent office and three corresponding patent applications under the Patent Cooperation Treaty, all of which related to systems and features for trading commodities contracts. We cannot assure you that we will obtain any final patents covering these services, nor can we predict the scope of any patents issued. In addition, we cannot assure you that any patent issued will be effective to protect this intellectual property against misappropriation. Third parties in Europe or elsewhere could acquire patents covering this or other intellectual property for which ICE obtains patents in the United States, or equivalent intellectual property, as a result of differences in local laws affecting patentability and patent validity. Third parties in other jurisdictions might also misappropriate ICE's intellectual property rights with impunity if intellectual property protection laws are not actively enforced in those jurisdictions. Patent infringement and/or the grant of parallel patents would erode the value of ICE's intellectual property.

ICE has secured trademark registrations for IntercontinentalExchange and ICE from the United States Patent and Trademark Office and from relevant agencies in Europe as appropriate, as well as registrations for other trademarks used in ICE's business. ICE also has several U.S. and foreign applications pending for other trademarks used in ICE's business. We cannot assure you that any of these marks for which applications are pending will be registered.

Upon completion of the merger, we will have a number of products and services that are protected by copyright, service mark, trademark law and contractual safeguards to proprietary interest in these products and services. For example, eCOPS, Coffee C and US Dollar Index will all be protected by trademarks as branded property of ICE. However, we may not be able to protect certain products and services against duplication by competitors. Certain countries where NYBOT's commodities are produced and consumed may not recognize intellectual property rights in accordance with U.S. law.

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In addition, we may have to resort to litigation to enforce our intellectual property rights, protect our trade secrets, and determine the validity and scope of the intellectual property rights of others or defend ourselves from claims of infringement. We may not receive an adequate remedy for any infringement of our intellectual property rights, and we may incur substantial costs and diversion of resources and the attention of management as a result of litigation, even if we prevail. As a result, we may choose not to enforce our infringed intellectual property rights, depending on our strategic evaluation and judgment regarding the best use of our resources, the relative strength of our intellectual property portfolio and the recourse available to us.

We face significant challenges in implementing our strategic goals of expanding product and service offerings and attracting new market participants to our markets. If we do not meet these challenges, we may not be able to increase our revenues or remain profitable.

We seek to expand the range of commodity products that can be traded in our markets and to ensure that trading in those new products becomes liquid within a sufficiently short period of time to support viable trading markets. We also seek to expand the number of contracts traded in our futures markets following the potential closure of our open-outcry trading floor. In meeting these strategic goals, however, we face a number of significant challenges, including the following:

To introduce new cleared contracts that will be cleared through LCH.Clearnet, we must first obtain their approval. The timing and terms of LCH. Clearnet's approval may prevent us from bringing new cleared contracts to market as quickly and competitively as our competitors. The approval of LCH.Clearnet and the timing of our receipt will depend upon the type of product proposed, the type and extent of system modification required to establish clearing functionality for the relevant product and the integration of the new contract with ICE's electronic platform and other challenges posed. This could result in a substantial delay between development of a cleared contract and our offering of it on ICE's electronic platform.

Prior to launching a new contract, we must satisfy certain regulatory obligations, which if not satisfied could delay the launch of the new contract.

To expand the use of ICE's electronic platform to additional participants and contracts, we must continue to expand capacity without disrupting functionality to satisfy evolving customer requirements.

To introduce new trading-related services, we must develop additional systems technology that will interface successfully with the wide variety of unique internal systems used by our participants. These challenges may involve unforeseen costs and delays.

We must continue to build significant brand recognition among commodities market participants in order to attract new participants to our markets. This will require us to increase our marketing expenditures. The cost of our marketing efforts may be greater than we expect, and we cannot assure you that these efforts will be successful.

Even if we resolve these issues and are able to introduce new products and services, there is no assurance that they will be accepted by our participants, attract new market participants, or be competitive with those offered by other companies. If we do not succeed in these efforts on a consistent, sustained basis, we will be unable to implement our strategic objectives. This would seriously jeopardize our ability to increase and diversify our revenues, remain profitable and continue as a viable competitor in our markets.

Reductions in our exchange rates or commission rates resulting from competitive pressures could lower our revenues and profitability.

We expect to experience pressure on our exchange rates and commission rates as a result of competition we face in our futures and OTC markets. Some of our competitors offer a broader range of products and services to a larger participant base, and enjoy higher trading volumes, than we do. Consequently, our competitors may be able and willing to offer commodity trading services at lower commission rates than we currently offer or may be

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able to offer. As a result of this pricing competition, we could lose both market share and revenues. We believe that any downward pressure on commission rates would likely continue and intensify as we continue to develop our business and gain recognition in our markets. A decline in commission rates could lower our revenues, which would adversely affect our profitability. In addition, our competitors may offer other financial incentives such as rebates or payments in order to induce trading in their markets, rather than ours.

Our business may be harmed by computer and communications systems failures and delays.

We support and maintain many of the systems that comprise our electronic platform. Our failure to monitor or maintain these systems, or to find replacements for defective components within a system in a timely and cost-effective manner when necessary, could have a material adverse effect on our ability to conduct our business. Although we fully replicate our primary data center, our redundant systems or disaster recovery plans may prove to be inadequate. Our systems, or those of our third party providers, may fail or, due to capacity constraints, may operate slowly, causing one or more of the following:

unanticipated disruption in service to our participants;

slower response time and delays in our participants' trade execution and processing;

failed settlement by participants to whom we provide trade confirmation or clearing services;

incomplete or inaccurate accounting, recording or processing of trades;

our distribution of inaccurate or untimely market data to participants who rely on this data in their trading activity; and

financial loss.

We could experience system failures due to power or telecommunications failures, human error on our part or on the part of our vendors or participants, natural disasters, fire, sabotage, hardware or software malfunctions or defects, computer viruses, intentional acts of vandalism or terrorism and similar events. In these instances, our disaster recovery plan may prove ineffective. If any one or more of these situations were to arise, they could result in damage to our business reputation, participant dissatisfaction with our electronic platform, prompting participants to trade elsewhere, or exposure to litigation or regulatory sanctions. As a consequence, our business, financial condition and results of operations could suffer materially.

The surviving corporation's status as a CFTC registrant generally requires that our trade execution and communications systems be able to handle anticipated present and future peak trading volume. Heavy use of computer systems during peak trading times or at times of unusual market volatility could cause those systems to operate slowly or even to fail for periods of time. We will continue to constantly monitor system loads and performance and regularly implement system upgrades to handle estimated increases in trading volume. However, we cannot assure you that our estimates of future trading volume will be accurate or that our systems will always be able to accommodate actual trading volume without failure or degradation of performance.

Our systems and those of our third party service providers may be vulnerable to security risks, which could result in wrongful use of our information, or which could make our participants reluctant to use our electronic platform.

We regard the secure transmission of confidential information on our electronic platform as a critical element of our operations. Our networks and those of our participants and our third party service providers, including LCH.Clearnet, may, however, be vulnerable to unauthorized access, computer viruses, firewall or encryption failures and other security problems. We may be required to expend significant resources to protect our business and our participants against the threat of security breaches or to alleviate problems caused by security breaches. Although we intend to continue to implement industry standard security measures, we cannot assure you that those measures will be sufficient to protect our business against losses or any reduced trading volume incurred in our markets as a result of any significant security breaches on our platform.

Table of Contents***We rely on specialized management and employees.***

Our future success depends, in part, upon the continued contributions of our executive officers and key employees whom we rely on for executing our business strategy and identifying new strategic initiatives. Some of these individuals have significant experience in the energy commodities trading industry and financial services markets generally, and possess extensive technology skills. We rely in particular on Jeffrey C. Sprecher, our chief executive officer, Charles A. Vice, our president and chief operating officer, Richard V. Spencer, our chief financial officer, David S. Goone, our chief strategic officer, and Edwin D. Marcial, our chief technology officer, as well as certain other employees responsible for product development and technological development within the company. Although we have entered into employment agreements with each of these executive officers, it is possible that one or more of these persons could voluntarily terminate their employment agreements with us. Furthermore, we have not entered into employment agreements with non-executive personnel, who may terminate their employment at any time. Several of these employees have been with us since ICE's inception and have vested stock options. Any loss or interruption of the services of our executive officers or other key personnel could result in our inability to manage our operations effectively or to execute our business strategy. We cannot assure you that we would be able to find appropriate replacements for these key personnel if the need arose. We may have to incur significant costs to replace key employees who leave, and our ability to execute our business strategy could be impaired if we cannot replace departing employees in a timely manner. Competition in our industry for persons with trading industry and technology expertise is intense.

We rely on third party providers and other suppliers for a number of services that are important to our business. An interruption or cessation of an important service or supply by any third party could have a material adverse effect on our business.

In addition to ICE's dependence on LCH.Clearnet as a clearing service provider, we depend on a number of suppliers, such as online service providers, hosting service and software providers, data processors, software and hardware vendors, banks, and telephone companies, for elements of our trading, clearing and other systems. For example, we rely on Atos Euronext Market Solutions Limited for the provision of a trade registration system that routes trades executed in our markets to LCH.Clearnet for clearing. Atos Euronext Market Solutions Limited and other companies within the Euronext, N.V. group of companies, are potential competitors to both our futures business and OTC business, which may affect the continued provision of these services in the future. Moreover, the proposed merger between NYSE Group, Inc. and Euronext, N.V., as well as the general trend toward industry consolidation, may increase the risk that these services may not be available to us in the future. We also rely on a large international telecommunications company for the provision of hosting services. If this company were to discontinue providing these services to us, we would likely experience significant disruption to our business until we were able to establish connectivity with another provider. We will also rely on SDS Technologies for NYBOTLiveDirect data service and on eTV Media, Inc. for NYBOTV streaming video.

We cannot assure you that any of these providers will be able to continue to provide these services in an efficient, cost-effective manner or that they will be able to adequately expand their services to meet our needs. We also cannot assure you that any of these providers will not terminate our business relationship with us for competitive reasons or otherwise. An interruption in or the cessation of an important service or supply by any third party and our inability to make alternative arrangements in a timely manner, or at all, would result in lost revenues and higher costs.

In addition, participants trading on our electronic platform may access it through 12 independent software vendors, which represent a substantial portion of the independent software vendors that serve the commodities markets. The loss of a significant number of independent software vendors providing access could make ICE's platform less attractive to participants who prefer this form of access.

As an electronic futures and OTC marketplace, we are subject to significant litigation and liability risks.

Many aspects of our business, and the businesses of our participants, involve substantial risks of liability. These risks include, among others, potential liability from disputes over terms of a trade, the claim that a system

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failure or delay caused monetary loss to a participant or that an unauthorized trade occurred. For example, dissatisfied participants that have traded on ICE's electronic platform or on NYBOT's exchange, or those on whose behalf such participants have traded, may make claims regarding the quality of trade execution, or alleged improperly confirmed or settled trades, abusive trading practices, security and confidentiality breaches, mismanagement or even fraud against us or our participants. In addition, because of the ease and speed with which sizable trades can be executed on ICE's electronic platform, participants can lose substantial amounts by inadvertently entering trade orders or by entering them inaccurately. A large number of significant error trades could result in participant dissatisfaction.

As a result, we could incur significant legal expenses defending claims against us, even those without merit. The adverse resolution of any lawsuits or claims against us could result in an obligation to pay substantial damages, and cause us reputational harm. Our participants may face similar legal challenges, and these challenges could affect their ability or willingness to trade on ICE's electronic platform. The initiation of lawsuits or other claims against us, or against our participants with regard to their trading activities, could adversely affect our business, financial condition and results of operations, whether or not these lawsuits or other claims are resolved in our favor. If we violate the terms and provisions of the CEA under which we operate our OTC business, or if the CFTC concludes or believes we have violated CFTC regulations or provisions of the CEA, we could also be exposed to substantial liability. See also ["Regulation"](#). We are currently subject to regulation, and we will be subject to further regulation upon the completion of the merger. Failure to comply with existing regulatory requirements, and possible future changes in these requirements or in the current interpretation of these requirements, could adversely affect our business.

If we are compelled to monitor our OTC participants' compliance with applicable standards, our operating expenses and exposure to private litigation could increase.

While each of ICE Futures and NYBOT currently has self-regulatory status in its futures business, ICE currently does not assume responsibility for enforcing compliance with applicable commercial and legal standards by its participants when they trade OTC contracts in its markets. If we determine that it is necessary to undertake such a role in respect of OTC products—for example, to deter unfavorable regulatory actions, to respond to regulatory actions or simply to maintain participants' confidence in the integrity of ICE's OTC markets—we would have to invest heavily in developing new compliance and surveillance systems, and our operating expenses could increase significantly. Our assumption of such a role could also increase our exposure to lawsuits from dissatisfied participants and other parties claiming that we failed to deter inappropriate or illegal conduct.

Our compliance and risk management methods might not be effective and may result in outcomes that could adversely affect our financial condition and operating results.

Our ability to comply with applicable laws and rules is largely dependent on our establishment and maintenance of compliance, audit and reporting systems, as well as our ability to attract and retain qualified compliance and other risk management personnel. Our policies and procedures to identify, monitor and manage risks may not be fully effective. Management of operational, legal and regulatory risk requires, among other things, policies and procedures to record properly and verify a large number of transactions and events. We cannot assure you that our policies and procedures will always be effective or that we will always be successful in monitoring or evaluating the risks to which we are or may be exposed.

In addition, the CFTC has broad enforcement powers to censure, fine, issue cease-and-desist orders, prohibit us from engaging in some of our businesses or suspend or revoke our designation as a contract market or the designation of NYCC as a derivatives clearing organization. Our ability to comply with applicable laws and rules is largely dependent on our establishment and maintenance of compliance, audit and reporting systems, as well as our ability to attract and retain qualified compliance and other risk management personnel. We face the risk of significant intervention by regulatory authorities, including extensive examination and surveillance activity. In the case of non-compliance or alleged non-compliance with applicable laws or regulations, we could be subject

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to investigations and judicial or administrative proceedings that may result in substantial penalties or civil lawsuits, including by customers, for damages, which can be significant. Any of these outcomes would adversely affect our reputation, financial condition and operating results. In extreme cases, these outcomes could adversely affect our ability to conduct our business.

Risks Relating to an Investment in ICE's Common Stock

The market price of ICE's common stock may fluctuate significantly.

The market price of ICE's common stock has fluctuated, and may continue to fluctuate, significantly from time to time as a result of many factors, including:

investors' perceptions of ICE's prospects;

investors' perceptions of the prospects of the commodities markets and in particular, the energy markets;

differences between ICE's actual financial and operating results and those expected by investors and analysts;

changes in analysts' recommendations or projections;

fluctuations in quarterly operating results;

announcements by ICE or ICE's competitors of significant business initiatives, acquisitions, strategic partnerships or divestitures;

changes or trends in ICE's industry, including trading volumes, competitive or regulatory changes or changes in the commodities markets;

changes in valuations for exchanges and other trading facilities in general;

adverse resolution of new or pending litigation against ICE;

additions or departures of key personnel;

changes in general economic conditions; and

broad market fluctuations.

In particular, announcements of potentially adverse developments, such as proposed regulatory changes, new government investigations or the commencement or threat of litigation against ICE or ICE's major participants, as well as announced changes in ICE's business plans or those of ICE's competitors, could adversely affect the trading price of ICE's stock, regardless of the likely outcome of those developments. Broad market and industry factors may adversely affect the market price of ICE's common stock, regardless of ICE's actual operating performance.

ICE may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock.

ICE may seek to raise additional funds, finance further acquisitions or develop strategic relationships by issuing equity or convertible debt securities, which would reduce the percentage ownership of current ICE stockholders and former NYBOT members and employees that become ICE stockholders following the completion of the merger. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of ICE's common stock.

Delaware law and some provisions of ICE's organizational documents and employment agreements make a takeover of ICE more difficult.

Provisions of ICE's charter and bylaws may have the effect of delaying, deferring or preventing a change in control of ICE. A change of control could be proposed in the form of a tender offer or takeover proposal that

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might result in a premium over the market price for ICE's common stock. In addition, these provisions could make it more difficult to bring about a change in the composition of ICE's board of directors, which could result in entrenchment of management. For example, ICE's charter and bylaws:

require that the number of directors be determined, and any vacancy or new board seat be filled, only by the board;

do not permit shareholders to act by written consent;

do not permit shareholders to call a special meeting unless at least a majority of the shareholders join in the request to call such a meeting;

allow a meeting of shareholders to be adjourned or postponed without the vote of shareholders;

permit the bylaws to be amended by a majority of the board without shareholder approval, and require that a bylaw amendment proposed by shareholders be approved by 66 2/3% of all outstanding shares;

require that notice of shareholder proposals be submitted between 90 and 120 days prior to the scheduled meeting; and

authorize the issuance of undesignated preferred stock, or blank check preferred stock, by ICE's board of directors without shareholder approval.

In addition, Section 203 of the Delaware General Corporation Law imposes restrictions on merger and other business combinations between ICE and any holder of 15% or more of ICE's common stock. Delaware law prohibits a publicly held corporation from engaging in a business combination with an interested shareholder for three years after the shareholder becomes an interested shareholder, unless the corporation's board of directors and shareholders approve the business combination in a prescribed manner or the interested shareholder has acquired a designated percentage of ICE's voting stock at the time it becomes an interested shareholder.

ICE's employment agreements with ICE's executive officers also contain change in control provisions. Under the terms of these employment agreements, all of the stock options granted to these officers after entering into the agreement will fully vest and become immediately exercisable if such officer's employment is terminated following, or as a result of, a change in control of ICE. In addition, the executive officer is entitled to receive a significant cash payment.

These and other provisions of ICE's organizational documents, employment agreements and Delaware law may have the effect of delaying, deferring or preventing changes of control or changes in management of ICE, even if such transactions or changes would have significant benefits for ICE's shareholders. As a result, these provisions could limit the price some investors might be willing to pay in the future for shares of ICE's common stock.

ICE does not expect to pay any dividends for the foreseeable future.

ICE has not paid any dividends to its shareholders and does not anticipate paying any dividends to ICE's shareholders for the foreseeable future. Any determination to pay dividends in the future will be made at the discretion of ICE's board of directors and will depend upon ICE's results of operations, financial conditions, contractual restrictions, restrictions imposed by applicable law or the SEC and other factors its board deems relevant.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Forward-looking statements have been made under the captions Summary, Risk Factors, Information About ICE, ICE Management's Discussion and Analysis of Financial Condition and Results of Operations, Information About NYBOT and NYBOT Management's Discussion and Analysis of Financial Condition and Results of Operations, and in other sections of this prospectus/proxy statement. These statements may include statements regarding the period following completion of the merger. In some cases, you can identify these statements by forward-looking words such as may, might, will, should, expect, plan, anticipate, believe, estimate, predict, potential or could, and the negative of these terms and other comparable terminology. These forward-looking statements, which are subject to known and unknown risks, uncertainties and assumptions, may include projections of ICE's and NYBOT's future financial performance based on their growth strategies and anticipated trends in their businesses and industry. These statements are only predictions based on ICE and NYBOT's current expectations and projections about future events. There are important factors that could cause ICE's, NYBOT's and merger sub's actual results, level of activity, performance or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements. In particular, you should consider the numerous risks and uncertainties described under Risk Factors.

These risks and uncertainties are not exhaustive. Other sections of this prospectus/proxy statement describe additional factors that could adversely impact our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible to predict all risks and uncertainties, nor can ICE or NYBOT assess the impact that these factors will have on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Although ICE and NYBOT believe the expectations reflected in the forward-looking statements are reasonable, they cannot guarantee future results, level of activity, performance or achievements. Moreover, neither ICE, NYBOT, merger sub nor any other person assumes responsibility for the accuracy or completeness of any of these forward-looking statements. You should not rely upon forward-looking statements as predictions of future events. Neither ICE, NYBOT nor merger sub has a duty to update any of these forward-looking statements after the date of this prospectus/proxy statement to conform the prior statements to actual results or revised expectations, and neither ICE, NYBOT nor merger sub intends to do so.

Forward-looking statements include, but are not limited to, statements about:

possible or assumed future results of operations and operating cash flows;

strategies and investment policies;

financing plans and the availability of capital;

competitive position;

potential growth opportunities available to ICE or NYBOT;

the risks associated with potential acquisitions or alliances;

the recruitment and retention of officers and employees;

expected levels of compensation;

potential operating performance, achievements, productivity improvements, efficiency and cost reduction efforts;

the likelihood of success and impact of litigation;

protection or enforcement of intellectual property rights;

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the expectation with respect to securities markets and general economic conditions;

the ability to keep up with rapid technological change;

the effects of competition; and

the impact of future legislation and regulatory changes.

We caution you not to place undue reliance on the forward-looking statements, which speak only as of the date of this document. We expressly qualify in their entirety all forward-looking statements attributable to ICE, NYBOT or merger sub or any person acting on their behalf by the cautionary statements contained or referred to in this section.

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THE SPECIAL MEETING OF NYBOT MEMBERS

Time, Place and Purpose of the NYBOT Special Meeting

The special meeting of NYBOT members will be held on [●], 200[●], in the Pat O Shea Boardroom located on the 13th floor of NYBOT s offices at World Financial Center, One North End Avenue, New York, New York 10282, at [●] p.m., local time, for the following purposes:

to consider and vote on a proposal to approve and adopt the merger agreement and the transactions contemplated by the merger agreement, pursuant to which, among other things, NYBOT has agreed to be merged with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE and a for-profit Delaware corporation;

to consider and vote on any proposal that may be made by NYBOT s President to adjourn or postpone the NYBOT special meeti