

INTERCONTINENTALEXCHANGE INC

Form S-4

October 31, 2006

Table of Contents

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

Registration No. 333-[\*]

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

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## INTERCONTINENTALEXCHANGE, INC.

(Exact name of registrant as specified in its charter)

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**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)**

**Audrey R. Hirschfeld, Esq.**  
**Senior Vice President & General Counsel**  
**Board of Trade of the City of New York, Inc.**  
**One North End Avenue**  
**New York, New York 10282-1101**

**(212) 748-4000**

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*Copies to:*

**John Evangelakos, Esq.**  
**Catherine M. Clarkin, Esq.**  
**Sullivan & Cromwell LLP**  
**125 Broad Street**  
**New York, New York 10004**  
**(212) 558-4000**

**Roland Hlawaty, Esq.**  
**Milbank, Tweed, Hadley & McCloy LLP**  
**1 Chase Manhattan Plaza**  
**New York, New York 10005**  
**(212) 530-5000**

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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>				

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**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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**Table of Contents**

**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.

**Table of Contents**

**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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**Table of Contents**

**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.



**Table of Contents**

**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.

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING</u>	1
<u>SUMMARY</u>	5
<u>Comparative Historical and Unaudited Pro Forma Per Share and Per Membership Interest Data</u>	10
<u>Comparative Value of Membership Interests and Securities</u>	11
<u>RISK FACTORS</u>	12
<u>Risks Relating to the Merger</u>	12
<u>Risks Relating to ICE's Business Following the Merger</u>	15
<u>Risks Relating to an Investment in ICE's Common Stock</u>	34
<u>CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</u>	36
<u>THE SPECIAL MEETING OF NYBOT MEMBERS</u>	38
<u>Time, Place and Purpose of the NYBOT Special Meeting</u>	38
<u>Who Can Vote at the NYBOT Special Meeting</u>	38
<u>Vote Required</u>	38
<u>Adjournments</u>	38
<u>Manner of Voting</u>	39
<u>Inspection of Election</u>	39
<u>Solicitation of Proxies</u>	39
<u>THE MERGER</u>	40
<u>General</u>	40
<u>Background of the Merger</u>	40
<u>ICE's Reasons for the Merger</u>	47
<u>NYBOT's Reasons for the Merger; Recommendation of the Merger by NYBOT's Board of Governors</u>	49
<u>Opinion of NYBOT's Financial Advisor</u>	52
<u>Interests of Officers and Governors in the Merger</u>	60
<u>Certain Relationships and Related-Party Transactions</u>	62
<u>Material United States Federal Income Tax Consequences</u>	62
<u>Regulatory Approvals</u>	65
<u>Restrictions on Sales of Shares by Affiliates of NYBOT</u>	65
<u>Stock Exchange Listing and Stock and Membership Interest Prices</u>	66
<u>Appraisal Rights of Dissenting Members</u>	67
<u>Effect of the Merger on NYBOT Members</u>	67
<u>Legal Proceedings Relating to the Merger</u>	76

**Table of Contents**

	<b>Page</b>
<u>THE MERGER AGREEMENT</u>	77
<u>Merger Consideration To Be Received by NYBOT Members</u>	77
<u>No Fractional Shares</u>	81
<u>Dividends: Withholding</u>	81
<u>Post-Closing Transfer Restrictions</u>	81
<u>Bonus Pool</u>	81
<u>Conditions to the Completion of the Merger</u>	82
<u>Reasonable Best Efforts to Obtain Required Approvals</u>	84
<u>No Solicitation of Alternative Transactions</u>	84
<u>Members Meeting</u>	86
<u>Termination</u>	86
<u>Conduct of Business Pending the Merger</u>	88
<u>Organizational Documents of NYCC</u>	89
<u>Indemnification and Insurance of Governors and Officers</u>	89
<u>Benefits Matters</u>	90
<u>Governance and Management</u>	90
<u>Amendment and Waiver</u>	90
<u>Fees and Expenses</u>	90
<u>Representations and Warranties</u>	91
<u>THE BYLAWS</u>	92
<u>Trading Memberships</u>	92
<u>Trading Permits</u>	92
<u>Transaction Fees</u>	92
<u>Side-by-Side Electronic Trading</u>	94
<u>Discounts</u>	95
<u>Trade Committees</u>	95
<u>Transfer of Membership Interests and Trading Permits</u>	96
<u>Governance</u>	96
<u>Amendment of Bylaws</u>	96
<u>Clearing Members</u>	97
<u>DIRECTORS AND OFFICERS OF ICE AFTER THE MERGER AND THE DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION AFTER THE MERGER</u>	98
<u>ICE</u>	98
<u>Surviving Corporation</u>	98

---

**Table of Contents**

	<b>Page</b>
<u>INDUSTRY</u>	99
<u>General</u>	99
<u>The Futures Market</u>	100
<u>The OTC Market</u>	101
<u>Industry Trends</u>	102
<u>INFORMATION ABOUT ICE</u>	104
<u>General</u>	104
<u>ICE's History</u>	104
<u>ICE's Business</u>	105
<u>ICE's Competitive Strengths</u>	107
<u>ICE's Growth Strategy</u>	110
<u>ICE's Products and Services</u>	111
<u>ICE's Participant Base</u>	117
<u>Product Development</u>	119
<u>Technology</u>	120
<u>Internally Developed Software</u>	122
<u>Competition</u>	122
<u>Intellectual Property</u>	124
<u>Sales</u>	125
<u>Property</u>	126
<u>Employees</u>	126
<u>Legal Proceedings</u>	126
<u>Directors and Executive Officers</u>	127
<u>Executive Compensation</u>	133
<u>Employment Agreements</u>	134
<u>Benefit Plans</u>	136
<u>Limitation of Liability and Indemnification of Officers and Directors</u>	141
<u>Certain Relationships and Related Party Transactions</u>	141
<u>Principal Shareholders</u>	144
<u>INFORMATION ABOUT NYBOT</u>	146
<u>General</u>	146
<u>NYBOT's History</u>	146
<u>NYBOT's Competitive Strengths</u>	147
<u>NYBOT's Products</u>	148
<u>Trade Execution</u>	150
<u>Clearing Services</u>	150
<u>Market Data Services</u>	150
Table of Contents	13

<u>Members and Customers</u>	152
<u>Technology</u>	153
<u>Competition</u>	154

**Table of Contents**

	<b>Page</b>
<u>Intellectual Property</u>	155
<u>Marketing and Advertising</u>	155
<u>Property</u>	156
<u>Employees</u>	156
<u>Legal Proceedings</u>	156
<b><u>SELECTED CONSOLIDATED FINANCIAL DATA OF ICE</u></b>	<b>157</b>
<b><u>ICE MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u></b>	<b>161</b>
<u>Overview</u>	161
<u>ICE's Business Environment</u>	162
<u>Variability in Quarterly Comparisons</u>	163
<u>Products</u>	163
<u>Technology</u>	164
<u>Segment Reporting</u>	165
<u>Sources of Revenues</u>	172
<u>Components of Expenses</u>	175
<u>Consolidated Results of Operations</u>	180
<u>Key Statistical Information</u>	182
<u>Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005</u>	183
<u>Year Ended December 31, 2005 Compared to Year Ended December 31, 2004</u>	187
<u>Year Ended December 31, 2004 Compared to Year Ended December 31, 2003</u>	191
<u>Quarterly Results of Operations</u>	196
<u>Liquidity and Capital Resources</u>	197
<u>Cash Flow</u>	199
<u>Loan Agreements</u>	200
<u>Future Capital Requirements</u>	201
<u>Off-Balance Sheet Entities</u>	201
<u>Contractual Obligations and Commercial Commitments</u>	201
<u>Non-GAAP Financial Measures</u>	201
<u>Quantitative and Qualitative Disclosures about Market Risk</u>	204
<u>Recently Adopted Accounting Pronouncements</u>	205
<u>New Accounting Pronouncements</u>	206
<u>Critical Accounting Policies</u>	206
<b><u>SELECTED CONSOLIDATED FINANCIAL DATA OF NYBOT</u></b>	<b>210</b>
<b><u>NYBOT MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u></b>	<b>214</b>
<u>Overview</u>	214
<u>Sources of Revenues</u>	215





**Table of Contents**

	<b>Page</b>
<u>Components of Expenses</u>	218
<u>Consolidated Results of Operations</u>	221
<u>Six Months Ended June 30, 2006 Compared to Six Months Ended June 30, 2005</u>	222
<u>Year Ended December 31, 2005 Compared to Year Ended December 31, 2004</u>	225
<u>Year Ended December 31, 2004 Compared to Year Ended December 31, 2003</u>	228
<u>Liquidity and Capital Resources</u>	231
<u>New Accounting Pronouncements</u>	234
<u>ICE REGULATION</u>	235
<u>Overview</u>	235
<u>Regulation of ICE's Business in the United States</u>	235
<u>Regulation of ICE's Business in the United Kingdom and Europe</u>	236
<u>NYBOT REGULATION</u>	238
<u>Regulation of the U.S. Futures Exchange Industry</u>	238
<u>Changes in Existing Laws and Rules</u>	238
<u>UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA FOR ICE AFTER THE MERGER</u>	239
<u>DESCRIPTION OF ICE'S CAPITAL STOCK</u>	246
<u>Preferred Stock</u>	246
<u>Common Stock</u>	246
<u>Limitation of Liability and Indemnification Matters</u>	247
<u>Section 203 of the Delaware General Corporation Law</u>	247
<u>Certain Anti-Takeover Matters</u>	248
<u>Listing</u>	249
<u>Transfer Agent</u>	249
<u>COMPARISON OF RIGHTS PRIOR TO AND AFTER THE MERGER</u>	250
<u>VALIDITY OF COMMON STOCK</u>	257
<u>EXPERTS</u>	258
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	259
<u>INDEX TO CONSOLIDATED FINANCIAL STATEMENTS</u>	F-1
<u>ANNEXES</u>	
<u>Annex A Merger Agreement and First Amendment to Merger Agreement</u>	
<u>Annex B Certificate of Incorporation of Surviving Corporation</u>	
<u>Annex C Form of Bylaws of Surviving Corporation</u>	
<u>Annex D Fairness Opinion of Houlihan Lokey Howard &amp; Zukin Financial Advisors, Inc.</u>	

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**Table of Contents**

**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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**Table of Contents**

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.

## **Table of Contents**

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 1<sup>st</sup> floor of NYBOT's offices at World Financial Center, One North End Avenue, New York, New York 10282, at [●] p.m., local time.

**Table of Contents**

**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

## **Table of Contents**

### **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.



## **Table of Contents**

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

## **Table of Contents**

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.

## **Table of Contents**

### **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](#).

## **Table of Contents**

### **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.

**Table of Contents**

**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
<b>ICE Historical Comparative Per Share Data</b>		
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
<b>NYBOT Historical Comparative Membership Interest Data</b>		
Basic earnings per NYBOT membership interest	\$ 11,284	\$ 13,363
Book value per NYBOT membership interest at end of period	\$ 37,562	\$ 26,269
<b>Unaudited Pro Forma Condensed Combined Comparative Per Share Data</b>		
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	
<b>Unaudited Pro Forma Equivalent Per Share Data for NYBOT</b>		
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	

**Table of Contents****Comparative Value of Membership Interests and Securities**

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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**Table of Contents**

**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

**Table of Contents**

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



**Table of Contents**

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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## **Table of Contents**

***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.

## **Table of Contents**

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

**Table of Contents**

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;

**Table of Contents**

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

**Table of Contents**

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.