INTERCONTINENTALEXCHANGE INC
Form 424B3
November 20, 2006
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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 December 11, 2006, 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 November 15, 2006 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 November 17, 2006, and is first being mailed to NYBOT members on or about November 20, 2006.

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CERTAIN FREQUENTLY USED TERMS

Unless otherwise specified or if the context so requires:

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

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

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

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

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

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

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

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

SEC refers to the United States Securities and Exchange Commission.

IMPORTANT

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

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

REGISTERED TRADEMARKS

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

New York Board of Trade®, NYBOT®, Coffee C®, eCOPS®, FINEX®, TIPS®, U.S. Dollar Index®, USDX® and the NYBOT logo are registered service marks of Board of Trade of the City of New York, Inc. Cotton No. 2℠ and Sugar No. 11℠ are service marks of Board of Trade of the

City of New York, Inc. The NYSE Composite Index® is a registered trademark of the New York Stock Exchange, Inc. The Russell 1000®, Russell 2000® and Russell 3000® are registered trademarks and service marks of the Frank Russell Company, used under license.

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ADDITIONAL INFORMATION

Please note that copies of the documents provided to you will not include exhibits. In order to receive timely delivery of requested documents in advance of the NYBOT special meeting, you should make your request to NYBOT by calling the NYBOT Member Services Department at (212) 748-4164 no later than December 1, 2006.

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

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

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

Notice of Special Meeting of Members

To Be Held on

December 11, 2006

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 December 11, 2006 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 3:00 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 November 15, 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

November 17, 2006

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

1) VISIT THE WEBSITE noted on your proxy card to vote through the Internet;

2) CALL THE NUMBER noted on your proxy card to vote telephonically;

3) MARK, SIGN, DATE AND PROMPTLY RETURN the enclosed proxy card in the postage-paid envelope to Corporate Election Services, P.O. Box 1150, Pittsburgh, PA 15230;

4) FAX the enclosed proxy card to the attention of Corporate Election Services, at (412) 299-9191; or

5) VOTE IN PERSON by appearing at the NYBOT special meeting and submitting a ballot.

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QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING

The questions and answers below highlight only selected procedural information from this document. They do not contain all of the information that may be important to you. You should read carefully this entire document, including its annexes, to fully understand the proposed transaction, the voting procedures for the special meeting and the procedures for making cash and stock 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 thereof (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. The election form, on which each NYBOT member will make the election to receive either cash or ICE common stock, or a combination of cash and ICE common stock, will be included in a subsequent mailing.

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?

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

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

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

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

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

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

Q: How do I vote?

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

Q: Who is entitled to vote?

A: All holders of record of NYBOT membership interests on November 15, 2006 are entitled to vote at the special meeting. Each NYBOT member of record on November 15, 2006 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 749 NYBOT members entitled to vote at the special meeting.

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You should be aware that, as of November 15, 2006, the record date, 20 NYBOT governors 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 December 11, 2006 in the Pat O Shea Boardroom located on the 15th floor of NYBOT s offices at World Financial Center, One North End Avenue, New York, New York 10282, at 3:00 p.m., local time.

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Q: Who can help answer my questions?

A: If you have any questions about how to submit your proxy, or if you need additional copies of this document, the election form (which will be included in a subsequent mailing) 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 the election form, or need additional copies of the election form, you should contact:

Member Services Department

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

World Financial Center

One North End Avenue

New York, NY 10282

Tel: (212) 748-4164

Fax: (212) 748-4088

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SUMMARY

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

Information Regarding IntercontinentalExchange, Inc. (see page 106)

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 148)

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 December 11, 2006 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 3:00 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 November 15, 2006. Each NYBOT member of record on November 15, 2006 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 749 members entitled to vote at the special meeting.

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

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

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

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

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

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

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

NYBOT s Board Recommendations (see page 49)

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

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

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

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

Opinion of Financial Advisor (see page 52)

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

Structure of the Merger (see page 40)

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

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

Material United States Federal Income Tax Consequences (see page 63)

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

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

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

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

- If you receive solely cash in exchange for your NYBOT membership interest, then you generally will recognize gain or loss equal to the difference between the amount of cash you receive and the allocable tax basis in your NYBOT membership interest.

You should read The Merger Material United States Federal Income Tax Consequences for a more complete discussion of the U.S. federal income tax consequences of the merger and the conversion of NYBOT members trading rights and NYBOT trading permits into rights to trade on the surviving corporation s exchange. We urge you to consult with your tax advisor for a full understanding of the tax consequences of the merger to you.

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Accounting Treatment

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

Regulatory Approvals and Conditions to Completion of the Merger (see pages 66 and 82)

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 and received early termination of the waiting period from the FTC on November 1, 2006, which satisfies this closing condition.

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 99)

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. See Directors and Officers of ICE After the Merger and Directors and Officers of the Surviving Corporation After the Merger.

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. See Directors and Officers of ICE After the Merger and Directors and Officers of the Surviving Corporation After the Merger.

Termination of the Merger Agreement; Fees Payable (see pages 86 and 87)

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

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

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No Solicitation (see page 84)

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

Bylaws of the Surviving Corporation (see page 93)

Pursuant to the merger agreement, ICE has 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 252)

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

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

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Comparative Historical and Unaudited Pro Forma Per Share

and Per Membership Interest Data

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

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

	Nine months ended September 30, 2006	Year ended December 31, 2005
ICE Historical Comparative Per Share Data		
Basic earnings (loss) per common share	$ 1.68	$ (0.39)
Diluted earnings (loss) per common share	$ 1.59	$ (0.39)
Cash dividends per common share	$	$
Book value per common share at end of period	$ 6.63	$ 4.19
NYBOT Historical Comparative Membership Interest Data		
Basic earnings per NYBOT membership interest	$ 14,337	$ 13,363
Book value per NYBOT membership interest at end of period	$ 40,650	$ 26,269
Unaudited Pro Forma Condensed Combined Comparative Per Share Data		
Basic earnings (loss) per common share	$ 1.44	$ (0.42)
Diluted earnings (loss) per common share	$ 1.38	$ (0.42)
Cash dividends per common share	$	$
Book value per common share at end of period	$ 16.08	
Unaudited Pro Forma Equivalent Per Share Data for NYBOT		
Basic earnings (loss) per common share	$ 15,176	$ (4,426)
Diluted earnings (loss) per common share	$ 14,544	$ (4,426)
Cash dividends per common share	$	$
Book value per common share as of end of period	$ 169,467	

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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 November 15, 2006 (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
November 15, 2006	$ 95.65	$ 1,100,000	$ 1,074,719	$ 1,628,441

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RISK FACTORS

Risks Relating to the Merger

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

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

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

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

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

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

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

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

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substantial resources and effort. The integration process and other disruptions resulting from the merger may also disrupt each company s ongoing businesses or cause inconsistencies in standards, controls, procedures and policies that adversely affect our relationships with market participants, employees, regulators and others with whom we have business or other dealings or our ability 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 market price 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, or a combination thereof, see The Merger Agreement Merger Consideration To Be Received by NYBOT Members. For a discussion of the material federal income tax consequences of the merger, see The Merger Material United States Federal Income Tax Consequences.

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

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

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

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

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

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governors recommends, by a 22-1 vote, that you vote in favor of the approval and adoption of the merger agreement. NYBOT s governors and executive officers may have interests in the merger that are different from, in addition to or in conflict with yours. These interests include the continued employment of certain executive officers of NYBOT by ICE, the membership of certain governors of NYBOT on the boards of directors of ICE and/or of the surviving corporation following the completion of the merger, and the indemnification of former NYBOT governors and executive officers by ICE. With respect to certain NYBOT governors and executive officers, these interests also include the treatment in the merger of employment agreements, bonus pool allocations of up to $10,747,183.66 in the aggregate made available by ICE and payable in cash and/or shares of ICE common stock (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 September 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 $120.7 million in cash, cash equivalents, investment and other securities. Although the management of ICE believes that this amount will be sufficient to meet ICE s business objectives, this amount is significantly less than the approximately $291.6 million of combined cash, cash equivalents, investment and other securities of the two companies as of September 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. Because the trading rights that will be issued by the surviving corporation will exist as a matter of

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contact only, the board of directors of the surviving corporation will not have a fiduciary duty, obligation or responsibility to the holders of these trading rights and, in determining whether to amend or repeal the terms of any of these trading rights, may consider the interests of ICE rather than the interests of the holders. 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.

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 and necessary financing by ICE may delay the completion of the merger. Failure to obtain required approvals may 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 and 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. 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. In addition, ICE expects to finance a portion of the cash merger consideration through a bank loan and a new revolving credit facility. The terms of the bank loan and the credit facility are subject to negotiation among ICE and its lenders. If one or both of the term loan or credit facility are not in place prior to the completion of the merger (or alternative financing is not arranged), ICE would have insufficient cash on hand to pay the cash consideration in full. As a result, the merger could be delayed with the agreement of NYBOT until alternative financing is arranged.

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.).

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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.

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. 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 and negatively impact our trading volume and the liquidity in our markets. Recently, the volume of NYMEX energy futures contracts traded electronically has surpassed the volume of its energy futures contracts traded on its open-outcry market. NYMEX also entered into an alliance with General Atlantic as a strategic partner and is expected to complete an initial public offering of NYMEX common stock in November 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 87.3%, 87.9%, 83.9% and 86.9% of its consolidated revenues for the nine months ended September 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

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transaction fees relating to trading on its exchange. NYBOT derived 74.0%, 73.0%, 69.7% and 67.5% of its consolidated revenues for the nine months ended September 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 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, which are beyond our control and are unpredictable. Consequently, we cannot predict whether global energy prices will remain at their current levels, and we cannot predict the impact that these prices will have on our future revenues or profitability.

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

- economic, political and market conditions in the United States, Europe, the Middle East and elsewhere in the world;
- weather conditions, including hurricanes and other significant weather events that impact production, of commodities, and, in the case of energy commodities, production, refining and distribution facilities for oil and natural gas;
- the volatility in production volume of the commodities underlying our energy and agricultural products and markets;
- war and acts of terrorism;
- legislative and regulatory changes;

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credit quality of market participants;

the availability of capital;

broad trends in industry and finance;

the level and volatility of interest rates;

fluctuating exchange rates and currency values; and

concerns over inflation.

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

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

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

ICE s revenues currently depend heavily on trading volumes in four principal markets: the markets for ICE Brent Crude futures contracts, ICE Gas Oil futures contracts, OTC North American natural gas contracts and OTC North American power contracts. Trading in these four contracts in the aggregate has represented over 75% 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 the ICE WTI Crude futures contract, which has traded in substantial volumes since it began trading. While ICE only began to derive transaction fees from this contract in the second

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

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

Upon completion of the merger, exchange fees derived from trading in sugar futures and options contracts on NYBOT s exchange will be an important source of our transaction fees. NYBOT s sugar futures and options markets are recognized globally and have achieved record trading volumes in recent years. Sugar contracts are NYBOT s largest market and have accounted for 49.9%, 44.2%, 40.1% and 36.1% of NYBOT s total trading volumes for the nine months ended September 30, 2006 and the years ended December 31, 2005, 2004 and 2003, respectively. NYBOT s principal sugar contract, world Sugar No. 11, achieved strong growth in futures and options volumes at the end of September 2006, with over 12.1 million sugar futures contracts traded year to date, representing an increase of 17% over the same period in 2005. The growth in volume of Sugar No. 11 options contracts has exceeded that of the corresponding futures contract, reaching a year to date volume of over 5.0 million contracts through the end of September 2006, representing a 120% increase compared to the same period in 2005. This volume growth is due, in part, to price volatility that was driven by the continued increase in demand for ethanol, which led to the diversion of significant amounts of sugar cane to ethanol production, and to the ongoing increase in global sugar consumption. Additionally, trends in the world sugar market favor trade in raw sugar, which is traded on NYBOT, versus refined sugar, which is traded in other markets, as additional refineries are completed in destinations that do not produce a domestic sugar crop and which previously relied on imports of refined sugar to fill consumption needs. Volumes have also increased due to the growth in asset allocation to index funds and their inclusion of sugar in major indices. A disruption in the growth of the sugar market could have a significant impact on our operating results and profitability.

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

ICE derived 86.1%, 86.9%, 82.1% and 79.1% of its consolidated revenues for the nine months ended September 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, from exchange fees and commission fees generated from trading in commodity products in its futures and OTC markets. The volume of contracts traded in the futures and OTC markets for any specific commodity tends to be a multiple of the physical production of that commodity. If the physical supply or production of any commodity declines, market participants could become less willing to trade in contracts based on that commodity. For example, ICE Brent Crude futures contract has been subject to this risk as production of Brent crude oil peaked in 1984 and began steadily falling in subsequent years. ICE, in consultation with market participants, altered the mechanism for settlement of ICE Brent Crude futures contract to a mechanism based on the Brent/Forties/Oseberg North Sea oil fields, known as the BFO Index, to ensure that the commodity prices on which its settlement price is based reflect a large enough pool of traders and trading activity so as to be less susceptible to manipulation. Market participants that trade in ICE Brent Crude futures contract may determine in the future, however, that additional underlying commodity products need to be considered in the settlement of that contract or that the settlement mechanism is not credible. Exchange fees earned from trading in ICE Brent Crude futures contract accounted for 52.8%, 68.8%, 65.3% and 66.6% of ICE s total revenues from its futures business, net of intersegment fees, for the nine months ended September 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively, or 21.1%, 26.5%, 29.7% and 30.4% of ICE s consolidated revenues for the nine months ended September 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively. Any uncertainty concerning the settlement of ICE Brent Crude futures contract, or a decline in the physical supply or production of any other commodity on which our trading products are based, including agricultural commodities underlying NYBOT s core products, could result in a decline in trading volumes in our markets, adversely affecting our revenues and profitability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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which other competitors can introduce new cleared OTC and futures products. For the nine months ended September 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, transaction fees derived from trading in cleared OTC contracts accounted for 38.3%, 37.5%, 21.7% and 6.4%, respectively, of ICE s consolidated revenues. ICE s cleared OTC contracts have been a significant component of our business, and accounted for 70.9%, 69.3%, 47.6% and 13.9% of revenues, net of the intersegment fees, generated by ICE s OTC business for the nine months ended September 30, 2006, and for the years ended December 31, 2005, 2004 and 2003, respectively.

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

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

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

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

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

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

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

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

Electronic trading in futures contracts on ICE Futures is permitted in many jurisdictions, including in the United States, through no-action relief from the local jurisdiction s regulatory requirements. In the United States, direct electronic access to trading in ICE Futures products is offered to U.S. persons based on a series of no-action letters from the CFTC that permit non-U.S. exchanges, referred to as foreign boards of trade, to provide U.S. persons with electronic access to their markets without registration with the CFTC. In connection with the launch of ICE WTI Crude futures contract in February 2006, the CFTC stated that it would evaluate the future use of its no-action process. As part of its evaluation, the CFTC held a public hearing on June 27, 2006 to consider the issue of what constitutes a board of trade, exchange, or market located outside the United States for the purposes of exemption from CFTC jurisdiction and regulation. On November 2, 2006, the CFTC issued a Statement of Policy affirming the use of its no-action process to permit foreign boards of trade to provide U.S. persons with electronic access to their markets.

Our ability to offer new futures products under ICE s existing no-action relief could be impacted by any actions taken by the CFTC as a result of future policy review. If we are unable to offer additional U.S. futures products, or if our offerings of products through ICE Futures to U.S. participants are subject to additional regulatory constraints, our business could be adversely affected. If the CFTC revokes or makes substantial revisions to the no-action process or to the no-action decisions upon which we currently rely, ICE Futures may be required to comply with additional regulation in the United States, including the possibility of being required to register as a regulated futures exchange in the United States, known as a designated contract market. Requiring ICE Futures to comply with regulation in addition to that presently required by its primary regulator, the FSA, would be costly and time consuming and could subject ICE Futures to duplicative or inconsistent regulatory requirements. Failure to comply with current regulatory requirements and regulatory requirements that may be imposed on us in the future could subject us to significant penalties, including termination of its ability to conduct our regulated futures business conducted through ICE Futures.

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

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

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

- the manner in which we communicate with and contract with our participants;
- the demand for and pricing of our products and services;
- the tax treatment of trading in our products;
- a requirement that we maintain minimum regulatory capital on hand;
- a requirement that we exercise regulatory oversight of our OTC participants, and assume responsibility for their conduct;
- our financial and regulatory reporting practices;
- our record-keeping and record-retention procedures;
- the licensing of our employees; and
- the conduct of our directors, officers, employees and affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- enhance our existing services and maintain and improve the functionality and reliability of ICE s electronic platform, in particular, reducing network downtime;
- develop or license new technologies that address the increasingly sophisticated and varied needs of our participants;
- anticipate and respond to technological advances and emerging industry practices on a cost-effective and timely basis; and
- continue to attract and retain highly skilled technology staff to maintain and develop our existing technology and to adapt to and manage emerging technologies.

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

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

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

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

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

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

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

The revenues, expenses and financial results of ICE Futures and other U.K. subsidiaries have historically been denominated in pounds sterling, the functional currency of ICE s U.K. subsidiaries. ICE had foreign currency translation risk equal to its net investment in its subsidiaries. The financial statements of ICE s U.K. subsidiaries were translated into U.S. dollars using current rates of exchange, with gains or losses included in the cumulative translation adjustment account, a component of shareholders equity. As of September 30, 2006 and December 31, 2005, the portion of ICE s shareholders equity attributable to accumulated other comprehensive income from foreign currency translation was $29.9 million and $21.3 million, respectively. The period-end foreign currency exchange rate for pounds sterling to the U.S. dollar increased from 1.7188 as of December 31, 2005 to 1.8716 as of September 30, 2006.

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

We have foreign currency transaction risk primarily related to the settlement of foreign assets, liabilities and payables that occur through our foreign operations which are received in or paid in pounds sterling. ICE had foreign currency transaction gains (losses) of ($516,000) and $1.3 million for the nine months ended September 30, 2006 and 2005, respectively, primarily attributable to the fluctuations of pounds sterling relative to the U.S. dollar. The average exchange rate of pounds sterling to the U.S. dollar increased from 1.8065 for the nine months ended September 30, 2005 to 1.8839 for the nine months ended September 30, 2006.

We may experience substantial gains or losses from foreign currency transactions in the future given there are still net assets and expenses of our U.K. subsidiaries that are denominated in pounds sterling. Of ICE s consolidated operating expenses, 30.5% and 35.5% were denominated in pounds sterling for the nine months ended September 30, 2006 and 2005, respectively. As the pounds sterling exchange rate changes, the U.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

unanticipated disruption in service to our participants;

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

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

incomplete or inaccurate accounting, recording or processing of trades;

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

financial loss.

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

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

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

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

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We rely on specialized management and employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Risks Relating to an Investment in ICE s Common Stock

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

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

- investors perceptions of ICE s prospects;
- investors perceptions of the prospects of ICE s competitors;
- investors perceptions of the prospects of the commodities markets and in particular, the energy markets;
- differences between ICE s actual financial and operating results and those expected by investors and analysts;
- changes in analysts recommendations or projections;
- fluctuations in quarterly operating results;
- announcements by ICE or ICE s competitors of significant business initiatives, acquisitions, strategic partnerships or divestitures;
- changes or trends in ICE s industry, including trading volumes, competitive or regulatory changes or changes in the commodities markets;
- changes in valuations for exchanges and other trading facilities in general;
- adverse resolution of new or pending litigation against ICE;
- additions or departures of key personnel;
- changes in general economic conditions; and
- broad market fluctuations.

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

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

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

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

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

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

- require that the number of directors be determined, and any vacancy or new board seat be filled, only by the board;
- do not permit shareholders to act by written consent;
- do not permit shareholders to call a special meeting unless at least a majority of the shareholders join in the request to call such a meeting;
- allow a meeting of shareholders to be adjourned or postponed without the vote of shareholders;
- permit the bylaws to be amended by a majority of the board without shareholder approval, and require that a bylaw amendment proposed by shareholders be approved by 66 2/3% of all outstanding shares;
- require that notice of shareholder proposals be submitted between 90 and 120 days prior to the scheduled meeting; and
- authorize the issuance of undesignated preferred stock, or blank check preferred stock, by ICE s board of directors without shareholder approval.

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

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

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

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

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

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

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

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

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

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

- possible or assumed future results of operations and operating cash flows;
- strategies and investment policies;
- financing plans and the availability of capital;
- competitive position;
- potential growth opportunities available to ICE or NYBOT;
- the risks associated with potential acquisitions or alliances;
- the recruitment and retention of officers and employees;
- expected levels of compensation;

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

the likelihood of success and impact of litigation;

protection or enforcement of intellectual property rights;

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- the expectation with respect to securities markets and general economic conditions;
- the ability to keep up with rapid technological change;
- the effects of competition; and
- the impact of future legislation and regulatory changes.

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

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THE SPECIAL MEETING OF NYBOT MEMBERS

Time, Place and Purpose of the NYBOT Special Meeting

The special meeting of NYBOT members will be held on December 11, 2006, 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 3:00 p.m., local time, for the following purposes:

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

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

Who Can Vote at the NYBOT Special Meeting

Only NYBOT s equity members of record on November 15, 2006 will be entitled to vote on the proposal to approve and adopt the merger agreement. Each NYBOT member of record on November 15, 2006 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 749 NYBOT members entitled to vote at the special meeting.

Vote Required

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.

Adjournments

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 regardless of whether a quorum is present at that meeting. If NYBOT s

President proposes to adjourn the NYBOT special

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meeting, and this proposal is approved by NYBOT members, the NYBOT special meeting will be adjourned for this purpose. However, no proxy that is voted against a proposal described in this document will be voted in favor of an adjournment or postponement.

Manner of Voting

You may submit your vote for or against the proposal submitted at the NYBOT special meeting in person or by proxy. You may vote by proxy in any of the following ways:

- by using the enclosed proxy card and mailing a completed and signed proxy card to Corporate Election Services, P.O. Box 1150, Pittsburgh, PA 15230;
- by faxing the enclosed proxy card to the attention of Corporate Election Services, at (412) 299-9191;
- by visiting the website noted on the enclosed proxy card and voting through the Internet; or
- by calling the number noted on the enclosed proxy card and voting telephonically.

Information and applicable deadlines for using the proxy card, or voting through the Internet or telephonically are set forth in the enclosed proxy card instructions.

All NYBOT membership interests represented by proxy (including those given through the Internet or telephonically) received before the NYBOT special meeting or adjourned NYBOT special meeting, as the case may be, will, unless revoked, be voted in accordance with the instructions indicated in those proxies. If no instructions are indicated on a properly executed proxy card, the shares will be voted in accordance with the recommendation of NYBOT s board of governors and, therefore, FOR the approval and adoption of the merger agreement.

If your proxy indicates instructions for some, but not all, of the proposals, your votes will be cast as indicated on the specified proposals and as described in the preceding sentence for any proposal for which no instructions are indicated. We urge you to mark each applicable box on the proxy card or voting instruction card to indicate how to vote your NYBOT membership interest.

You may revoke your proxy at any time before it is voted by:

- submitting 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
- submitting a later-dated proxy by mail, fax or through the Internet or telephonically, as provided above; or
- attending the NYBOT special meeting and voting by paper ballot in person.

Attendance at the NYBOT special meeting will not, in and of itself, constitute revocation of a previously granted proxy. If the NYBOT special meeting is adjourned or postponed, it will not affect the ability of NYBOT members to exercise their voting rights or to revoke any previously granted proxy using the methods described above.

Inspection of Election

NYBOT has engaged Corporate Election Services to count the votes represented by proxies and ballots. An employee of Corporate Election Services will serve as Inspector of Election. NYBOT will pay Corporate Election Services a fee of approximately $7,000, plus reimbursement of

reasonable out-of-pocket expenses.

Solicitation of Proxies

NYBOT and ICE will share equally the expenses incurred in connection with the printing and mailing of this document. Solicitation of proxies by mail may be supplemented by telephone and other electronic means, advertisements and personal solicitation by the governors, officers or employees of NYBOT and ICE. No additional compensation will be paid to our governors, officers or employees for solicitation.

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THE MERGER

This section of the document describes material aspects of the proposed merger. This summary may not contain all of the information that is important to you. You should carefully read this entire document, including the full text of the merger agreement, which is attached as Annex A, and the other documents we refer you to for a more complete understanding of the merger.

General

NYBOT and ICE have entered into a merger agreement that provides that NYBOT will be merged with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE.

In the merger, each outstanding NYBOT membership interest (or portion thereof) will be converted into either (1) 17,025 shares of ICE common stock, (2) cash equal to $1,074,719 or (3) a pro rata share thereof if an election is made with respect to a portion of a membership interest (which must represent a percentage of a membership interest equal to 10% or any whole multiple thereof), subject in each case to proration as described below under The Merger Agreement Merger Consideration To Be Received by NYBOT Members Proration and Allocation Procedure. Based upon ICE s capitalization, as of the date of this prospectus/proxy statement, the aggregate number of shares of ICE common stock issued to NYBOT members in the merger will represent approximately 15% of ICE s common stock outstanding immediately after the merger calculated on a fully-diluted basis as described below.

Background of the Merger

The exchange industry in which ICE and NYBOT operate has been experiencing a period of consolidation and strategic alliances between exchanges. The board of directors of ICE and the board of governors of NYBOT continually review their respective results of operations and competitive positions in their industry, as well as their strategic plans and alternatives. In connection with these reviews, each of ICE and NYBOT from time to time has evaluated potential joint ventures and transactions that would further their respective strategic objectives.

In particular, NYBOT s board of governors has considered a variety of strategic alternatives, including evaluating and investing in its current business, acquiring other businesses, partnering with another business, demutualizing and becoming a for-profit company, and conducting an initial public offering. On February 12, 2004, at a meeting of NYBOT s board of governors, senior management of NYBOT presented an overview of the benefits and detriments associated with various alternative forms of corporate structure, including demutualizing and becoming a public company.

During the spring and summer of 2004, NYBOT held preliminary discussions regarding possible strategic alternatives with a number of exchanges and entered into numerous confidentiality agreements. In particular, NYBOT held preliminary discussions regarding the possibility of a strategic joint venture with a non-U.S. exchange, referred to as exchange A. NYBOT also began exchanging due diligence information with a U.S.-based exchange, referred to as exchange B.

In October 2004, NYBOT engaged Brown Brothers Harriman (BBH) as its financial advisor to advise its board of governors with respect to valuation of NYBOT and potential strategic alternatives.

On November 10, 2004, at a meeting of NYBOT s board of governors, BBH gave an overview presentation on demutualization and the effects of demutualization. During the next several months, NYBOT senior management supplemented the information presented by BBH with more detailed information relating to the potential benefits and risks of demutualization, possible effects of demutualization on members, cost estimates and other related issues, as well as outlining the steps for demutualization.

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On December 8, 2004, at a meeting of NYBOT s board of governors, a committee consisting of Mr. C. Harry Falk, President and Chief Executive Officer of NYBOT, Mr. Fred W. Schoenhut, Chairman of the Board of NYBOT, Mr. Roger Corrado, Vice Chairman of the Board of NYBOT, Mr. Joe Nicosia, a governor of NYBOT, Terrence F. Martell, Ph.D., a public governor of NYBOT, and Mr. Bill Shaughnessy, a governor of NYBOT (collectively, the Negotiating Committee) was formed for the purpose of exploring potential transactions with exchange A and exchange B, which had previously approached NYBOT regarding strategic transactions.

On December 22, 2004, Mr. Falk received a letter from a second US-based exchange, referred to as exchange C, which outlined potential corporate synergies, areas of common use and operating efficiencies (technology) and shared strategic vision between NYBOT and exchange C.

Over the next several months, senior management of NYBOT, members of the Negotiating Committee and representatives of BBH held numerous meetings and discussions with the parties that had previously indicated an interest in pursuing a strategic transaction with NYBOT. In particular, senior management of NYBOT and representatives of BBH met with senior management of exchange B and its investment bankers to discuss possible areas of consolidation. They also held in person and telephonic meetings with exchange C to explore a strategic transaction and additional meetings with exchange A regarding a joint venture. In addition, senior management of NYBOT, members of the Negotiating Committee and representatives of BBH commenced preliminary discussions with a third US-based exchange, referred to as exchange D, and a second non-US exchange, referred to as exchange E, regarding strategic alternatives.

During this period, representatives of NYBOT and BBH also held numerous meetings with various private equity firms to explore the possibility of a minority investment in NYBOT.

On March 8, 2005, exchange B s investment bankers presented BBH with an oral expression of interest that proposed a transaction to acquire NYBOT at a valuation of between $100 million and $125 million for the equity of NYBOT. NYBOT senior management, together with its advisors from BBH, noted that this proposal valued NYBOT at less than the then-current price per membership and determined that a transaction at this value range did not merit serious discussions. However, senior management of NYBOT, members of the Negotiating Committee and representatives of BBH continued to remain open to exploring a potential transaction with exchange B.

In April 2005, senior management of NYBOT, members of the Negotiating Committee and representatives of BBH again had several separate meetings with exchange C and exchange D to explore mutual business interests and initiatives, as well as various strategic alternatives.

On April 13, 2005, NYBOT s board of governors discussed and developed the concept of core principles, which they believed should be part of any strategic alternatives that NYBOT might pursue. The core principles would include continued open-outcry and trading privileges for core products for so long as NYBOT s markets were efficient and continued relevance of trade committees and the exchange board of directors. The board also ratified the appointment of a working group of individuals from the current Negotiating Committee and senior management of NYBOT to continue to explore the possible transaction between NYBOT and exchange B and other strategic partners. This working group consisted of Mr. Falk, Mr. Schoenhut, Mr. Walter J. Hines, Chief Financial Officer of NYBOT, Ms. Audrey R. Hirschfeld, Senior Vice President and General Counsel of NYBOT, and Mr. Martell (collectively, the Working Group).

As part of ICE s ongoing review of its strategic alternatives, ICE held preliminary discussions regarding possible strategic alternatives with NYBOT during 2005. The initial meeting between ICE and NYBOT was held on February 10, 2005 and was attended by Mr. Jeffrey Sprecher, Chief Executive Officer and Chairman of the Board of ICE, a representative of ICE s outside legal counsel, Sullivan & Cromwell LLP, and Messrs. Falk and Schoenhut and Ms. Hirschfeld, on behalf of NYBOT. The initial meeting involved discussions regarding clearing services. These same persons had a second meeting on April 12, 2005. This second meeting focused on

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discussing strategic alternatives regarding clearing services and technology outsourcing. No definitive licensing, joint venture or other strategic arrangement resulted from these discussions. After these initial meetings, Mr. Sprecher and Mr. Schoenhut spoke to each other periodically at various industry trade shows, conferences and events.

On May 16, 2005, NYBOT sent a letter to exchange A outlining the combined synergies and interests the two companies could share by combining their businesses. The letter did not indicate financial terms, but served as the basis for continued discussions. In June and July 2005, senior management of NYBOT, members of the Working Group and representatives of BBH continued discussions with exchange A pertaining to a strategic joint venture and explored strategic alternatives relating to electronic trading.

In November 2005, senior management of NYBOT, members of the Working Group and representatives of BBH continued to have various telephone conferences and meetings with exchange B regarding a strategic transaction.

On November 22, 2005, BBH and NYBOT sent a letter to exchange C explaining their views on the investment merits and rationale for a transaction involving the two exchanges. The letter did not propose financial terms of a potential transaction.

On December 13, 2005, at a meeting of NYBOT members, senior management of NYBOT discussed the various strategic alternatives it had been exploring, including the possible demutualization, and the numerous exchanges with which NYBOT had been discussing strategic alternatives.

During late 2005 and early 2006, Mr. Falk, Mr. Hines and Mr. Schoenhut continued to have discussions with private equity firms that had approached NYBOT previously, and began preliminary discussions with various other private equity firms regarding a partnership with NYBOT or a minority investment in NYBOT.

On January 9, 2006, BBH received an indicative draft term sheet from a private equity firm. The term sheet from the private equity firm expressed an interest to acquire a 30% equity stake in NYBOT for between $108 million and $130 million. This proposal equated to an approximate pro forma total equity valuation of NYBOT of between $360 million and $430 million. On January 25, 2006, at a joint meeting of NYBOT s Negotiating Committee and executive committee, BBH presented a term sheet from the private equity firm detailing its proposal. However, the term sheet did not include provisions pertaining to core principles for the members with respect to electronic trading rights. The term sheet also included a provision that allowed the private equity firm to cause NYBOT to implement electronic trading if failure to do so could reasonably be expected to materially adversely affect the financial performance of NYBOT. Based on the proposal from the private equity firm and preliminary discussions with other private equity firms, the Negotiating Committee and the executive committee determined that private equity firms would not meet NYBOT s requirements for a strategic transaction. In particular, a transaction with a private equity firm would not provide liquidity to members, while at the same time would grant extensive negative controls to the private equity firm.

During the next several months, the Working Group continued to analyze strategic alternatives and update the board of governors, executive committee and Negotiating Committee as to the status of negotiations with various parties and the exploration of various strategic alternatives.

Beginning in February 2006, discussions resumed between ICE and NYBOT. On February 2, 2006 and February 3, 2006, at a regularly scheduled meeting of the ICE board of directors, ICE management continued its earlier discussions with the ICE board regarding a variety of strategic alternatives for ICE, including a review of clearing models and relationships in the exchange industry. The ICE board discussed an array of strategic alternatives and clearing options, including the likelihood of success of ICE starting its own clearing house. The ICE board also discussed how each strategic alternative would impact the competitive landscape in the exchange industry. One of the possible strategic alternatives that was discussed involved a transaction with NYBOT.

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Mr. Sprecher provided an update to the ICE board on various strategic alternatives at special meetings called on February 21, 2006 and February 26, 2006. In addition, on March 8, 2006, at a regularly scheduled meeting of the ICE board held in London, England, Mr. Sprecher provided the ICE board with a detailed review of strategic alternatives and discussions that had occurred since the last ICE board meeting. At this meeting, Mr. Sprecher provided an update of the discussions between ICE management and representatives of NYBOT. Mr. Sprecher provided a summary to the ICE board regarding NYBOT s products and operations.

During the week of March 13, 2006, at an industry conference in Boca Raton, Florida, Mr. Sprecher and Mr. Charles Vice, President and Chief Operating Officer of ICE, on behalf of ICE, and Messrs. Falk and Schoenhut, on behalf of NYBOT, met to discuss business strategies and their vision for their respective businesses. Certain officers of each of ICE and NYBOT also met with management representatives of other exchanges to discuss strategic alternatives. The representatives of ICE and NYBOT agreed that a possible transaction between the companies should be explored further and agreed to review various strategic alternatives with their respective management and boards and to continue the conversations if their respective boards were supportive of further discussions.

In mid-March 2006, ICE engaged Evercore Partners (Evercore) to act as its financial advisor to assist ICE in evaluating a potential transaction with NYBOT.

On March 31, 2006, ICE and NYBOT entered into a mutual confidentiality agreement to facilitate further discussions regarding a strategic relationship and to allow the sharing of confidential information necessary to analyze the potential synergies that could be realized through a strategic relationship.

As described in more detail below, at various times beginning mid-March 2006 through May 2006, representatives of ICE, including Evercore, Ernst & Young and Sullivan & Cromwell LLP, and representatives of NYBOT, including BBH, Deloitte & Touche LLP and Milbank, Tweed, Hadley & McCloy LLP (Milbank), outside counsel to NYBOT, met in person and held telephone conferences to continue to analyze the pro forma financial impact of a potential combination between ICE and NYBOT and to attempt to agree upon a proposed legal structure for the combination. These same parties held multiple due diligence meetings and telephone conferences during this period to assess each other s business, legal and regulatory issues, technology, accounting and other matters.

On April 2, 2006, representatives from ICE and NYBOT met and discussed high-level points of interests for each entity in connection with a possible strategic relationship or transaction. On April 3, 2006, Mr. Schoenhut and Mr. Martell, on behalf of NYBOT, and Messrs. Sprecher and Vice, on behalf of ICE, held a full day meeting in Atlanta, Georgia to discuss the potential for ICE and NYBOT to engage in a strategic transaction. At the meeting, the parties discussed the concept of a merger between the entities and reviewed the details regarding each company s respective businesses and products.

On April 11, 2006, Mr. Richard Spencer, Senior Vice President and Chief Financial Officer of ICE, and Mr. Sprecher met with Mr. Schoenhut, Mr. George Haase, President of NYCC, and Mr. Martell, as well as representatives of Evercore and BBH, in New York to review various strategic alternatives available to the companies and to discuss the potential synergies that might be achievable in connection with a transaction. The parties reviewed an outline of the potential form of consideration for a merger and NYBOT shared additional information regarding its financial condition, trading volumes and products.

On April 19, 2006, the parties circulated a draft term sheet. Over the ensuing six weeks, the parties continued to discuss and revise the term sheet.

On April 28, 2006, at meeting of NYBOT s board of governors, BBH made another presentation on demutualization, including various benefits and disadvantages. A discussion ensued and the board recommended approving that NYBOT take the legal steps necessary to demutualize.

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On May 4, 2006, at two separate NYBOT member meetings, Mr. Schoenhut presented an analysis of demutualization to the members, including the process for demutualization, and the potential benefits and disadvantages of demutualization.

On May 9, 2006, at a meeting of the executive committee, the Negotiating Committee and representatives of BBH provided an update on the various proposals received by NYBOT and the status of the negotiation process with ICE. In addition, the executive committee discussed the importance of core principles, including with respect to open-outcry trading and trade committees, to the members.

On May 11, 2006, at a regularly scheduled meeting of the ICE board held in Atlanta, Georgia with representatives of Evercore present, ICE management updated the ICE board regarding strategic alternatives. Mr. Sprecher reported to the board that ICE was still engaged in discussions with NYBOT regarding a possible strategic combination and informed the board that NYBOT met many of ICE s strategic objectives, including:

NYBOT operating as a U.S. designated contract market under the Commodities Exchange Act;

NYBOT s trading of products that ICE did not list for trading; and

NYBOT s ownership of a clearing house, The New York Clearing Corporation.

The ICE board instructed ICE management to continue discussions with NYBOT but requested that ICE management conduct further analysis of potential synergies and risks associated with a NYBOT transaction and to review other strategic alternatives available to ICE.

On June 1, 2006, a special meeting of the ICE board was held in New York, New York to discuss a potential secondary offering of ICE common stock and whether to move forward with various strategic alternatives, including a strategic transaction with NYBOT. Mr. Sprecher discussed the opportunities, potential synergies and risks of a NYBOT transaction with the board. Mr. Sprecher updated the ICE board regarding strategic discussions with other exchanges and the ICE board discussed the likelihood of forming a successful strategic relationship with various exchanges. Sullivan & Cromwell LLP also provided the ICE board with an overview of the regulatory benefits, burdens and risks associated with various strategic alternatives, including a NYBOT transaction. Also, ICE s clearing consultant updated the ICE board regarding various alternatives relating to clearing. The clearing consultant reviewed NYBOT s clearing operations, which are conducted through The New York Clearing Corporation, and provided operational, regulatory and background information regarding The New York Clearing Corporation. The clearing consultant also provided information regarding the operations of other exchanges clearing houses for purposes of comparison.

On June 1, 2006, Messrs. Sprecher, Spencer and Mr. Johnathan Short, Senior Vice President and General Counsel of ICE, met with Ms. Hirschfeld, Mr. Martell and Mr. Schoenhut in New York, New York to further negotiate the terms of a proposed transaction. This meeting in New York was followed by a meeting on June 5, 2006 in Atlanta, Georgia among Messrs. Sprecher and Spencer, on behalf of ICE, and Messrs. Schoenhut and Martell, on behalf of NYBOT, to continue to negotiate the terms of the transaction. Specific terms of the transaction were discussed at both of these meetings, including the rights and duties of trade committees, the role of electronic trading and the appropriate governance provisions for the surviving entity.

In mid-June, 2006, the parties terminated their discussions due to equity market conditions, including the drop in ICE s share price, and the parties inability to reach agreement on certain material terms of the proposed transaction. At this point in time, NYBOT asked ICE to submit a proposal to provide technology to NYBOT whereby NYBOT would license the ICE electronic trading platform for electronic trading of NYBOT s products. Although initial meetings regarding the potential licensing arrangement were conducted, no formal agreement was reached.

In June 2006, NYBOT engaged the Parthenon Group (Parthenon) as its strategic advisor to evaluate risks with respect to energy trading and ICE s competitive position in that industry.

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During June and July, senior management of NYBOT, members of the Negotiating Committee and representatives of BBH continued to exchange financial information with exchange C for the purpose of exploring a potential transaction. As part of these discussions, representatives of BBH requested that exchange C provide an indication of value for NYBOT. Despite assurances from exchange C that a financial proposal would be forthcoming, NYBOT never received any indication of value from exchange C. In addition, on June 25, 2006, Mr. Schoenhut received a letter from a third non-US exchange, referred to as exchange F, that outlined a process by which NYBOT could utilize exchange F s electronic trading system and, in return, exchange F would be given the right of first refusal to purchase any equity in NYBOT. NYBOT determined that additional discussions with exchange F based on this proposal would not be beneficial for NYBOT and its members.

In early August 2006, discussions between ICE and NYBOT resumed and a revised term sheet was circulated between the parties. These discussions resulted in significant headway in resolving open issues between the parties. At this point, ICE requested that NYBOT agree to negotiate exclusively with ICE for approximately 30 days, but no agreement for exclusive negotiations was reached. Messrs. Sprecher, Short and Mr. David Goone, Senior Vice President and Chief Strategic Officer of ICE, met with Ms. Hirschfeld, Messrs. Martell, Hines, Schoenhut and Falk of NYBOT in New York, New York on August 8-10, 2006 to discuss the terms of the potential transaction. At these series of meetings, the parties negotiated additional terms of the transaction and provided additional information regarding their respective business operations to the other party.

In August 2006 and September 2006, representatives of ICE, Evercore, Ernst & Young, Sullivan & Cromwell LLP, and representatives of NYBOT, including BBH, Deloitte & Touche LLP and Milbank met in person and held telephone conferences to continue to analyze the pro forma financial impact of a potential combination between ICE and NYBOT and to attempt to agree upon a proposed legal structure for the combination. These same parties held multiple due diligence meetings and telephone conferences during this period to assess each other s business, legal and regulatory issues, technology, accounting and other matters.

On August 11, 2006, at a regularly scheduled meeting of the ICE board held in New York, New York, ICE management updated the ICE board regarding the NYBOT transaction. Mr. Sprecher briefed the ICE board regarding strategic changes in the exchange industry and reviewed ICE s strategic alternatives. Evercore discussed with the board recent developments in the exchange industry and reviewed the proposed terms of a transaction with NYBOT. Evercore reviewed the potential synergies and pricing terms for a transaction with NYBOT and discussed NYBOT s business operations. Sullivan & Cromwell LLP reviewed the proposed terms of the transaction and the ICE board asked ICE management to continue the negotiations and report back with specific information regarding the governance provisions involved in the proposed transaction.

On August 17, 2006, Sullivan & Cromwell LLP sent an initial draft merger agreement to NYBOT and Milbank. On August 17 and 18, 2006, representatives from both entities met in New York, New York to review open issues relating to the structure of the transaction and the draft merger agreement. Additional meetings were held between the parties and their advisors over the next two weeks to negotiate and revise the merger agreement, as well as to perform additional due diligence and to negotiate the bylaws for the surviving corporation.

As described in more detail below, during August and September, 2006 NYBOT continued to explore strategic alternatives with numerous parties other than ICE.

On August 4, 2006, exchange B sent NYBOT a non-binding indication of interest to acquire NYBOT for a purchase price in the range of $900 million to $1.0 billion. In response, NYBOT requested that exchange B prepare a more definitive financial proposal and a meeting between the two companies was scheduled. Over the next several weeks, NYBOT and exchange B exchanged updated due diligence information. The parties held a meeting on August 15, 2006, but exchange B never delivered a definitive financial proposal for a transaction between the two companies. At this meeting, representatives of exchange B stated that there was a bona fide interest in a transaction with NYBOT but that, due to the timing of exchange B s own strategic initiatives, exchange B could not enter into a transaction with NYBOT for many months.

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On August 17, 2006, exchange C contacted Mr. Falk and Mr. Schoenhut to discuss the potential combination of the two companies and certain aspects of its proposal. During the next few weeks, NYBOT and exchange C exchanged due diligence material and participated in numerous telephone conferences. However, NYBOT did not receive any financial proposal from this exchange.

On August 26, 2006, exchange F again contacted NYBOT to discuss a possible joint venture, as well as the purchase of an equity stake in NYBOT. However, NYBOT did not receive any financial proposal from this exchange and there were no further discussions between NYBOT and exchange F.

On September 7, 2006, an investment bank that represented exchange D contacted NYBOT to schedule a meeting on September 11, 2006 to explore a possible strategic partnership. Representatives of NYBOT and exchange D met on September 11, 2006, but exchange D was not prepared to engage in substantive discussions. NYBOT did not receive any definitive financial proposal from exchange D.

From September 1, 2006 through September 14, 2006, representatives of ICE, Sullivan & Cromwell LLP and Evercore reviewed and revised the draft merger agreement. At the same time, representatives of NYBOT, Milbank and BBH reviewed and provided comments to drafts of the merger agreement and the bylaws. In particular, on September 5, 2006, representatives of NYBOT met with representatives of ICE at ICE s offices in Atlanta, Georgia to offer a counterproposal to certain of the terms of the merger agreement and the bylaws. Representatives of BBH, on behalf of NYBOT, and of Evercore, on behalf of ICE, also participated in this meeting. These meetings continued, both telephonically and in person, over the next several days. During the week of September 11, 2006, Messrs. Sprecher and Short and representatives from Evercore and Sullivan & Cromwell LLP, on behalf of ICE, worked with Ms. Hirschfeld, Messrs. Schoenhut and Hines and representatives of BBH and Milbank, on behalf of NYBOT, to finalize the terms of the merger agreement in New York, New York. Also during this time, the parties engaged in extensive discussions regarding the governance structure of ICE and NYBOT after the completion of the merger, including the composition of the ICE board of directors and the surviving corporation s board of directors and the authority the surviving corporation s board would have over electronic trading and certain core products. Each party conducted additional due diligence investigations with respect to each other s business, legal and regulatory issues, technology and other matters during this time.

On September 8, 2006 and September 13, 2006, telephonic special meetings of the ICE board were called to discuss the NYBOT transaction. Mr. Sprecher explained that each party had made concessions to move the transaction forward and that the parties were working together to reach a mutually beneficial agreement.

On September 14, 2006, a telephonic special meeting of the ICE board was called to review and approve the merger agreement. Prior to the vote and unanimous approval of the merger agreement by the ICE board, the ICE board discussed the last stages of negotiations with NYBOT and reviewed the merger in light of ICE s strategic objectives.

At the September 8, 2006, September 13, 2006 and September 14, 2006 board meetings, the ICE board received multiple updates from ICE management that covered legal, financial and operational matters, including information in response to the requests made by several directors in earlier meetings. At the meetings, Messrs. Short and Sprecher, representatives of Sullivan & Cromwell LLP and representatives of Evercore updated the ICE board on the key provisions of the draft merger agreement.

The ICE board was also informed that the proposed merger agreement contained a termination fee of approximately $39 million and expense reimbursement of up to $5 million, payable by NYBOT to ICE in the event that NYBOT terminated the merger agreement to accept an alternative proposal that its board deemed superior. The ICE board also reviewed the strategic advantages and risks of the proposed transaction.

The ICE board was also updated on regulatory issues and the timing of a potential closing.

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On September 8, 2006 and September 12, 2006, there were joint meetings of NYBOT s executive committee and Negotiating Committee to discuss the progress of negotiations with ICE. Representatives of BBH gave an overview of the progress of discussions with ICE and made a presentation regarding the terms of the transaction with ICE, including aspects of the merger agreement and bylaws as they related to the core rights. At the September 12, 2006 meeting, Parthenon provided its analysis of ICE s business and its competitive position in the market place. A question and answer session followed during which various aspects of the transaction were discussed, including the impact of closing NYBOT s membership seat market and the integration of an electronic platform and open-outcry trading. At the September 12, 2006 meeting, the executive committee decided to recommend the merger proposal to the board of governors for approval.

Following the September 12, 2006 meeting of the executive committee, a special meeting of NYBOT s board of governors was held. The executive committee discussed its recommendation that the board of governors approve the merger. In addition, NYBOT s management and representatives of BBH presented an overview of the proposed merger transaction to the board. Among other things, NYBOT s board was informed that the board of the surviving corporation will be composed of nine directors, including two members of the current NYBOT board of governors who are designated by ICE (who will also serve on the ICE board of directors) and four directors who qualify as public directors and who, to the extent possible, will be selected from the public directors currently serving on NYBOT s board of governors. There was also a discussion pertaining to how the transaction would preserve certain core rights of members relating to open-outcry trading of NYBOT s agricultural products. The board also received a report from representatives of Milbank on the negotiations of the draft merger agreement and related documentation, including with respect to the circumstances in which NYBOT s board could consider alternative transactions that it may regard as superior to the ICE transaction. This was followed by a presentation by Parthenon concerning ICE and its competitive positioning in the marketplace.

On September 13, 2006, NYBOT s board of governors held a special meeting to deliberate further on the proposed transaction, with representatives of senior management, BBH, Milbank and Houlihan Lokey in attendance. The board of governors received responses from management of NYBOT related to legal, financial and operational matters in response to questions previously raised by NYBOT governors at the September 12, 2006 board meeting. A representative from Milbank also discussed in detail the board s fiduciary duties and responsibilities and the standards that the board should consider in evaluating the proposed transaction. Representatives from Houlihan Lokey then explained the details of its opinion that, as of that date, the consideration to be received by NYBOT members in the transaction was fair from a financial point of view. See The Merger Opinion of NYBOT s Financial Advisor. The board of governors discussed various significant terms of the proposed transaction, including the conditions that must be fulfilled for the transaction to be consummated, and the circumstances in which NYBOT s board of governors could consider alternative transactions that it may regard as superior to the proposed transaction. NYBOT s board considered that the proposed merger agreement contained a termination fee of $39 million and expense reimbursement of up to $5 million for out-of-pocket expenses, payable by NYBOT to ICE in the event that NYBOT terminates the merger agreement to accept an alternative proposal that NYBOT s board deemed superior for NYBOT members. NYBOT s board then discussed at length the advantages and the risks of the proposed transaction as described under The Merger NYBOT s Reasons for the Merger; Recommendation of the Merger by NYBOT s Board of Governors. Following all discussion, the board, upon motion duly made and seconded, by a vote of 22-1, resolved to recommend the proposed transaction to the members of NYBOT.

On September 14, 2006, each of ICE, NYBOT and merger sub executed the merger agreement. On the evening of September 14, 2006, ICE and NYBOT issued a joint press release announcing the transaction. On October 30, 2006, ICE, NYBOT and merger sub entered into the First Amendment to the merger agreement. For a description of the merger agreement, see The Merger Agreement.

ICE s Reasons for the Merger

The ICE board of directors believes that the merger represents one of the most attractive strategic opportunities to combine two companies with complementary businesses and strengths, and to expand the

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competitiveness of the respective businesses. The ICE board determined that the merger was consistent with the strategic plans of ICE to expand its product offerings, diversify its class of commodities and establish clearing alternatives.

The ICE board identified a number of factors that it believed would contribute to the success of the merger and the future performance of the combined companies, including:

- the combination of NYBOT and ICE would create an industry leading international energy and commodities exchange with a diversified product offering;
- the combination of two global and rapidly growing commodity marketplaces, together with a highly respected clearing house, would allow ICE to expand its offerings for market participants, as well as create long-term shareholder value;
- the merger will strengthen ICE s domestic futures position and provide NYBOT with a platform for international expansion;
- ICE s electronic platform can bring increased access, volume and liquidity to NYBOT s strong and growing suite of products;
- the merger would combine NYBOT s strong heritage, diverse range of products and rapidly growing markets with ICE s culture of innovation, customer and stockholder focus and growth;
- the merger provides significant opportunities for cost savings by eliminating duplicate activities, including technology, professional services, and general and administrative expenses;
- the merger would benefit ICE s customers by producing clearing benefits, and will support and drive growth in trading of ICE s cleared products, including the development of new futures and OTC contracts;
- the transaction is structured to encourage current NYBOT members and permit holders to continue to trade on the surviving corporation exchange after the completion of the merger;
- the terms and conditions of the merger agreement and the transactions contemplated therein, including the nature and scope of the closing conditions, are comprehensive and favorable to ICE s stockholders; and
- the view of the ICE board of directors that the satisfaction of the conditions to completion of the merger is probable within a reasonable time frame.

The ICE board of directors also identified and considered a number of uncertainties and risks, which included:

- the risk that the merger with NYBOT might not be completed in a timely manner or at all and the attendant adverse consequences for ICE s and NYBOT s businesses as a result of the pendency of the merger and operational disruption;

the risk that the potential benefits, savings and synergies of the merger may not be fully or partially realized;

the challenges and difficulties, foreseen and unforeseen, relating to integrating the operations of ICE and NYBOT;

the risks associated with the occurrence of events which may materially and adversely affect the operations or financial condition of NYBOT and its subsidiaries, which may not entitle ICE to terminate the merger agreement;

the risk that the members of NYBOT fail to approve the transaction;

the risk of diverting ICE management focus and resources from other strategic opportunities and from operational matters while working to implement the transaction with NYBOT;

the risk associated with integrating ICE s electronic trading platform with NYBOT s open-outcry market and implementing electronic trading for NYBOT products;

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the risk that certain key members of NYBOT senior management who ICE would expect to hold senior management positions in the surviving corporation might not choose to remain with the surviving corporation;

the risks relating to NYBOT s business and how they would affect the results of operations of ICE after the completion of the merger;

the potential expenses associated with the transaction; and

various other risks associated with the merger and the businesses of ICE and NYBOT set forth under the heading Risk Factors.

The ICE board of directors weighed the benefits, advantages and opportunities of pursuing a transaction with NYBOT against the risks and challenges inherent in the proposed merger and concluded that the potential benefits of consummating the merger outweighed the potential risks. The ICE board of directors unanimously approved the merger agreement and the transactions contemplated by it.

NYBOT s Reasons for the Merger; Recommendation of the Merger by NYBOT s Board of Governors

On September 13, 2006, NYBOT s board of governors determined, by a 22-1 vote, that the merger agreement and the transactions contemplated by the merger agreement are advisable, fair to and in the best interests of NYBOT and its members and approved and adopted the merger agreement. **NYBOT s board of governors overwhelmingly recommends, by a vote of 22-1, that NYBOT members vote FOR the approval and adoption of the merger agreement at the NYBOT special meeting of members.**

In approving the merger agreement, NYBOT s board of governors considered a number of factors, including the factors discussed in the following paragraphs, and discussed these factors with NYBOT s senior management and NYBOT s financial, business and legal advisors. In light of the number and wide variety of factors considered in connection with its evaluation of the transaction, NYBOT s board of governors did not consider it practicable to, and did not attempt to, quantify or otherwise assign relative weights to the specific factors it considered in reaching its determination. NYBOT s board viewed its position as being based on all of the information available and the factors presented to and considered by it. In addition, individual members of the board may have given different weight to different factors. This explanation of NYBOT s reasons for the proposed merger with ICE and all other information presented in this section is forward-looking in nature and, therefore, should be read in light of the factors discussed under Cautionary Statement Regarding Forward-Looking Statements.

In reaching its decision, NYBOT s board of governors consulted with NYBOT management with respect to strategic, operational, financial, legal and regulatory matters, as well as with its outside legal counsel, financial advisors and business consultants. Among the positive factors that the board of governors considered in approving the merger were the following:

Financial Terms. NYBOT s board of governors determined that the financial terms of the merger were favorable to NYBOT members. In particular, they noted that:

The consideration to be paid by ICE for each NYBOT membership interest represented a premium of 24% over the last sale price of a membership interest immediately prior to the public announcement of the transaction on September 14, 2006 and a premium of 430% above the value of a membership interest on July 1, 2004.

Members may retain or reduce their investment in the commodities industry. While the overall transaction provides for approximately 38% of the purchase consideration in cash and approximately 62% in ICE common stock, members may elect to receive more or less stock, subject to proration.

There is no lock-up on the shares of ICE common stock that members will receive in the merger. Members may sell all of their ICE shares immediately upon the closing of the transaction or retain 3,162 shares in order to retain trading privileges or 21,078 shares in order to maintain clearing member privileges.

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Continuation of Core Rights for NYBOT members. The transaction preserves certain core rights of members relating to open-outcry trading of NYBOT s agricultural products. NYBOT s board of governors noted that:

- The floor may not be closed unless the average daily volume of open-outcry trading in any core product or all core products in the aggregate falls below 50% of the corresponding 2005 levels (with such determination to be made on a rolling 90-day basis as compared to the same period in 2005 to take seasonality into account), NYBOT s current lease at the World Financial Center terminates or, prior to July 1, 2013, a supermajority of the surviving corporation s public directors (who will initially be appointed prior to the closing of the transaction as described in Directors and Officers of ICE After the Merger and the Directors and Officers of the Surviving Corporation After the Merger) recommends such action be taken and at least a two-thirds majority of the surviving corporation s entire board of directors approves such action.

- Brokers handling open-outcry customer business will have the added protection of a pricing structure that provides for $1.00 per contract side premium in exchange fees for electronic trading of core products as long as a competing exchange does not launch a look-a-like physical delivery contract and subject to amendment as described below and subject to certain exceptions.

- After the merger, even if the $1.00 premium is eliminated in a competitive situation, electronic trading fees may not be less than open-outcry fees charged by the exchange for the same contract in a core product, subject to amendment as described below and subject to certain exceptions.

- After the merger, members who retain a trading right will be entitled to a discount of no less than 20% on fees for proprietary trading, on both open-outcry and electronic trading with respect to any existing product subject to amendment as described below and subject to certain exceptions.

- Until July 1, 2013, core rights (including the $1.00 premium on electronic trading fees, the 20% discount in proprietary trading fees, and the pricing preferences described above) may not be amended unless approved by a supermajority of NYBOT s public directors (who will initially be appointed prior to the closing of the transaction) as described in Directors and Officers of ICE After the Merger and the Directors and Officers of the Surviving Corporation After the Merger and a vote of two-thirds of the surviving corporation s entire board.

Opportunity to Participate in a Stronger Combined Company After the Merger. Because NYBOT members would own approximately 15% of the outstanding capital stock of ICE, on a fully-diluted basis immediately after the completion of the merger, NYBOT members would have the opportunity to participate in the future performance of the combined company. In this regard, NYBOT s board of governors noted that:

- The transaction permits NYBOT to combine with a leading electronic exchange to initiate side-by-side electronic trading and develop additional electronic products. This avoids NYBOT having to finance its own electronic platform, may enhance NYBOT s ability to compete against other exchanges that might seek to launch electronic trading of the same or similar products and may significantly broaden the distribution of its financial futures products through electronic trading.

- ICE has a successful history of developing derivative contracts in energy, and ICE could encourage the introduction of electronic derivatives in NYBOT s core agricultural products, including based on grade and location, which may lead to significant arbitrage opportunities.

- The combined company will be led by a strong, experienced management team from both organizations.

The transaction will combine NYBOT s strong reputation, long history and established brand with ICE s culture of technological innovation, customer and stockholder focus, and growth.

The combined company will be a preeminent global marketplace, having an enhanced ability to compete both domestically and internationally with other commodities exchanges, by combining energy and agricultural products and by increasing scale.

The combined company will have a strong balance sheet and the ability to generate substantial cash flow to finance future expansion as well as to invest in improving and adding new technology, services and products for market users.

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Fairness Opinion. Houlihan Lokey delivered a written fairness opinion based upon and subject to the assumptions, conditions, limitations and other matters set forth in its opinion, that, as of the date of the opinion, the consideration to be received by NYBOT members in the merger in exchange for their membership interests was fair to NYBOT members from a financial point of view (see The Merger Opinion of NYBOT s Financial Advisor).

Tax-Free Treatment. It is anticipated that the portion of the consideration to be received by NYBOT members in the merger in the form of shares of ICE common stock would be tax-free to NYBOT members for U.S. federal income tax purposes, although NYBOT s board of governors was also mindful of the fact that any merger consideration received by NYBOT members in the form of cash generally would be taxable for U.S. federal income tax purposes (see The Merger Material United States Federal Income Tax Consequences).

Alternatives to the Merger and Advantages of the Merger with ICE. NYBOT s board of governors had in the past considered a number of strategic alternatives available to NYBOT, including:

- Remaining a not-for-profit entity.
- Converting to a for-profit public company.
- Pursuing acquisitions by one or more other U.S. and non-U.S. exchanges.
- Exploring alliances and joint ventures with other entities.
- Developing its own electronic exchange similar to the exchange operated by ICE.
- Converting the exchange into a co-operative.

NYBOT s board of governors concluded, based on its familiarity with the commodities trading markets and the exchange industry, economic and market conditions, both historical and prospective, and based on presentations by NYBOT s management and legal, business and financial advisors, that the merger agreement represented the most desirable strategic alternative available to NYBOT at this time. In reaching this conclusion, NYBOT s board of governors reviewed and took into consideration:

- The information concerning NYBOT s and ICE s businesses, historical financial performance and condition, operations, properties, assets, regulatory issues, competitive positions, prospects and management.
- The current and prospective economic and competitive environment facing the commodities exchange industry and NYBOT in particular, including the anticipated electronic competition in the industry.
- The historical market prices, volatility and trading information with respect to ICE common stock.
- The strong strategic fit between NYBOT and ICE s electronic trading capability.

The material terms of the merger agreement, including the nature and scope of the closing conditions and the ability of NYBOT s board of governors to terminate the merger agreement with ICE to pursue an alternative proposal that it deems superior for NYBOT members.

The view of NYBOT s board of governors that the satisfaction of the conditions to completion of the merger was probable within a reasonable period of time.

NYBOT s board of governors also considered the following potentially negative factors associated with the merger:

ICE has been a public company for less than twelve months. During this time its share price has experienced significant volatility. ICE shares reached a high of $82.40 per share in May 2006, which was a more than three-fold increase from ICE s initial public offering price of $26.00 in November 2005 and a recent low of $46.20 on June 14, 2006.

The transaction provides for a fixed number of shares to be distributed to NYBOT members. These may not be sold until the transaction closes. The value of the shares could decline during that period.

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ICE s business is highly dependent on the energy sector. Future profits would likely be correlated to energy trading.

ICE may face increased competition due to other exchanges advances in electronic trading, which could affect ICE s ability to maintain its current profitability and commission structure.

The core rights of members related to open-outcry trading of NYBOT s agricultural products may, under certain circumstances, be amended.

ICE may introduce competitive electronic products, such as mini and maxi sized contracts, which may draw customer business away from NYBOT s existing open-outcry based contracts.

The risk of diverting management focus and resources from other strategic opportunities and from operational matters, and the potential disruption associated with the merger and integrating the companies.

The restrictions on the conduct of NYBOT s business prior to the completion of the merger, requiring NYBOT to conduct its business in the ordinary course, subject to specific limitations, which may delay or prevent NYBOT from undertaking business opportunities that may arise pending completion of the merger.

ICE insiders and significant stockholders have a substantial number of shares that, prior to the expected closing date, will no longer be subject to lock-up restrictions. Sales of these shares could adversely impact ICE s share price. If members elect to quickly sell the shares they receive in the merger, this may also lead to downward pressure on ICE s share price.

The requirement that NYBOT submit the merger agreement to its members for approval in certain circumstances, which even if NYBOT s board of governors withdraws its recommendation, could delay or prevent NYBOT s ability to pursue alternative proposals if one were to become available.

That some officers and governors of NYBOT have interests in the merger as individuals in addition to, and that may be different from, the interests of NYBOT members, including such interests in the bonus pool (see The Merger Interests of Officers and Governors in the Merger).

Various other risks associated with the merger and the business of NYBOT, ICE and the combined company described under Risk Factors.

NYBOT s board of governors believed and continues to believe that the potential benefits that NYBOT s board expects NYBOT and its members to achieve as a result of the proposed merger greatly outweigh potential risks and drawbacks.

In considering the proposed merger, NYBOT s board of governors was, and is, aware of the interests of certain officers and governors of, and advisors to, NYBOT and its board in the merger, as described under The Merger Interests of Officers and Governors in the Merger and The Merger Certain Relationships and Related-Party Transactions.

Opinion of NYBOT s Financial Advisor

The board of governors of NYBOT retained Houlihan Lokey Howard & Zukin Financial Advisors, Inc., or Houlihan Lokey, to render to it an opinion, referred to as the Opinion, as to whether, as of the date of the Opinion, the merger consideration to be received by NYBOT members in the merger in exchange for their membership interests is fair to them from a financial point of view.

Houlihan Lokey delivered its written Opinion, dated September 13, 2006, to NYBOT s board of governors, to the effect that, as of the date of the Opinion, on the basis of Houlihan Lokey s analysis summarized below, and subject to the assumptions, factors and limitations set forth in the written Opinion and described below, the merger consideration to be received by NYBOT members in the merger in exchange for their membership interests is fair to them from a financial point of view.

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The full text of Houlihan Lokey s Opinion, which is attached as Annex D, describes, among other things, the assumptions made, general procedures followed, matters considered and limitations on the review undertaken by Houlihan Lokey in rendering its Opinion. The Opinion was furnished to NYBOT s board of governors in connection with its consideration of the merger and does not constitute a recommendation to any NYBOT member on whether or not to vote in favor of or against approval and adoption of the merger agreement. The summary of Houlihan Lokey s Opinion in this statement is qualified in its entirety by reference to the full text of its Opinion. NYBOT members are urged to read the Opinion carefully and in its entirety.

Houlihan Lokey was not requested to, and did not, (a) initiate any discussions with, or solicit any indications of interest from, third parties with respect to the merger or any alternatives to the merger, (b) negotiate the terms of the merger, or (c) advise NYBOT s board of governors or any other party with respect to alternatives to the merger. The Opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Houlihan Lokey as of, the date of the Opinion. Houlihan Lokey has not undertaken, and is under no obligation, to update, revise, reaffirm or withdraw the Opinion, or otherwise comment on or consider events occurring after the date thereof. Houlihan Lokey has not considered, nor does Houlihan Lokey express any opinion with respect to, the prices at which the common stock of ICE has traded or may trade subsequent to the disclosure or consummation of the merger. Houlihan Lokey assumed that the common stock to be issued in the merger to NYBOT members will be registered and listed on the NYSE.

Houlihan Lokey was not requested to opine as to, and the Opinion did not address, among other things:

- the underlying business decision of NYBOT, NYBOT members or any other party to proceed with or effect the merger;
- the fairness of any portion or aspect of the merger not expressly addressed in the Opinion;
- the fairness of any portion or aspect of the merger to the holders of any class of securities or membership interest, creditors or other constituencies of NYBOT or any other party other than those set forth in the Opinion;
- the relative merits of the merger as compared to any alternative business strategies that might exist for NYBOT or any other party or the effect of any other transaction in which NYBOT or any other party might engage;
- the tax or legal consequences of the merger to any of NYBOT, NYBOT members, or any other party;
- the fairness of any portion or aspect of the merger to any one class or group of NYBOT s or any other party s security or membership interest holders vis-à-vis any other class or group of NYBOT s or such other party s security or membership interest holders;
- whether or not NYBOT, its membership interest holders or any other party is receiving or paying reasonably equivalent value in the merger; or
- the solvency, creditworthiness or fair value of NYBOT, ICE or any other participant in the merger under any applicable laws relating to bankruptcy, insolvency or similar matters.

Furthermore, no opinion, counsel or interpretation is intended with respect to matters that require legal, regulatory, accounting, insurance, tax or other similar professional advice. Houlihan Lokey assumed that such opinions, counsel or interpretations have been or will be obtained from the appropriate professional sources by NYBOT. Furthermore, Houlihan Lokey relied, with the consent of NYBOT s board of governors, on advice of the outside counsel and the independent accountants to NYBOT and ICE, and on the assumptions of the management of NYBOT, as to all legal, regulatory, accounting, insurance and tax matters with respect to NYBOT, ICE and the merger.

Houlihan Lokey has not been requested to make, and has not made, any physical inspection or independent appraisal of any of the assets, properties or liabilities (contingent or otherwise) of NYBOT, ICE or any other

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party, nor was Houlihan Lokey provided with any such appraisal. Furthermore, Houlihan Lokey has undertaken no independent analysis of any potential or actual litigation, regulatory action, possible unasserted claims or other contingent liabilities, to which NYBOT or ICE is or may be a party or is or may be subject, or of any governmental investigation of any possible unasserted claims or other contingent liabilities to which NYBOT or ICE is or may be a party or is or may be subject.

In connection with the Opinion, Houlihan Lokey made such reviews, analyses and inquiries as it deemed necessary and appropriate under the circumstances. Among other things, Houlihan Lokey:

Discussed with management of NYBOT and their representatives:

The nature and operations of the business of NYBOT, including NYBOT s historical financial performance, existing business plans, future performance estimates, and budgets;

The assumptions underlying NYBOT s business plans, estimates, and budgets as well as risk factors that could affect planned performance; and

The sale process undertaken by NYBOT and its advisors including alternatives to the merger considered and other offers for NYBOT;

Reviewed NYBOT s audited financial statements for the fiscal years ended December 31, 2002 to 2005 and unaudited balance sheet and income statement of NYBOT for the seven-month period ended July 31, 2006;

Reviewed ICE s Form 10-K filed for the year ended December 31, 2005, Form 10-Q filed for the period ended June 30, 2006, the prospectus filed with the SEC on November 16, 2005 and the prospectus filed with the SEC on July 18, 2006;

Reviewed the NYCC audited financial statements for the years ended December 31, 2004 and 2005;

Reviewed financial forecasts and projections prepared by the management of NYBOT with respect to NYBOT s balance sheet for the fiscal years ending December 31, 2006 through 2014 and NYBOT s income statement for the fiscal years ending December 31, 2006 through 2015;

Reviewed the merger agreement, draft dated September 11, 2006; and

Conducted such other studies, analyses and inquiries as it deemed necessary and appropriate under the circumstances.

The full text of the Opinion attached as Annex D sets forth in greater detail the matters considered and items reviewed by Houlihan Lokey in rendering its Opinion.

Assumptions

Houlihan Lokey relied upon and assumed, without independent verification, the accuracy and completeness of all data, material and other information furnished, or otherwise made available, to Houlihan Lokey, discussed with or reviewed by Houlihan Lokey, or publicly available, and does not assume any responsibility with respect to such data, material and other information. In addition, management of NYBOT has

advised Houlihan Lokey, and Houlihan Lokey has assumed, without independent verification, that the financial forecasts and projections have been reasonably prepared on bases reflecting the best currently available estimates and judgments of such management as to the future financial results and condition of NYBOT, and Houlihan Lokey expresses no opinion with respect to such forecasts and projections or the assumptions on which they are based. Houlihan Lokey further has been advised, or has assumed, that the information and data provided to or otherwise discussed with Houlihan Lokey relating to the potential strategic implications and operational benefits anticipated to result from the merger were reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of ICE and NYBOT as to such strategic implications and operational benefits. Houlihan Lokey has relied upon and assumed, without independent verification, that there has been no material change in the assets, liabilities, financial condition, results of operations, business or prospects of NYBOT or ICE

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since the date of the most recent financial statements provided to Houlihan Lokey, and that there are no information or facts that would make any of the information reviewed by Houlihan Lokey incomplete or misleading. Houlihan Lokey has not considered any aspect or implication of any transaction to which NYBOT or ICE is a party (other than the merger).

Houlihan Lokey has relied upon and assumed, without independent verification, that (a) the representations and warranties of all parties to the agreements identified in the merger agreement, and all other related documents and instruments that are referred to therein are true and correct, (b) each party to all such agreements will fully and timely perform all of the covenants and agreements required to be performed by such party, (c) all conditions to the consummation of the merger will be satisfied without waiver thereof, and (d) the merger will be consummated in a timely manner in accordance with the terms described in the agreements provided to Houlihan Lokey, without any amendments or modifications thereto or any adjustment to the aggregate consideration (through offset, reduction, indemnity claims, post-closing purchase price adjustments or otherwise). Houlihan Lokey has also relied upon and assumed, without independent verification, that all governmental, regulatory, and other consents and approvals necessary for the consummation of the merger will be obtained and that no delays, limitations, restrictions or conditions will be imposed that would result in the disposition of any material portion of the assets of NYBOT or ICE, or otherwise have an adverse effect on NYBOT or ICE or any expected benefits of the merger. In addition, Houlihan Lokey has relied upon and assumed, without independent verification, that the final forms of the draft documents reviewed by Houlihan Lokey and identified in Houlihan Lokey s Opinion will not differ in any material respect from such draft documents.

Summary of Financial Analyses Performed by Houlihan Lokey

The following is a summary of the material financial analyses used by Houlihan Lokey in connection with providing its Opinion. You are urged to read the full text of the Opinion carefully and in its entirety.

In connection with rendering its Opinion, Houlihan Lokey performed certain financial, comparative and other analyses as described below. The preparation of a fairness opinion involves various determinations as to the most appropriate and relevant methods of financial and comparative analysis and the application of those methods to the particular circumstances and is not, therefore, readily susceptible to summary description. Furthermore, in arriving at its Opinion, Houlihan Lokey made qualitative judgments as to the significance and relevance of each analysis and factor. Accordingly, Houlihan Lokey believes that its analyses must be considered as a whole and that consideration of any portion of such analyses and factors, without consideration of all analyses and factors as a whole, could create a misleading or incomplete view of the process underlying its Opinion. In its analyses, Houlihan Lokey made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of NYBOT. Any estimates contained in these analyses were not necessarily indicative of actual values or predictive of future results or values, which may be significantly more or less favorable than those suggested by these analyses. In addition, analyses relating to the value of businesses do not purport to be appraisals or to reflect the prices at which businesses actually may be sold.

The financial analyses summarized below were based upon market prices as of September 12, 2006, the trading day immediately preceding the date of the Opinion, unless otherwise noted.

In connection with its opinion, Houlihan Lokey did not consider or ascribe value to the right of NYBOT members to receive a pro rata share of unpaid bonus pool amounts, or of excess working capital, because the amounts, if any, to be received therefor were not determinable at the date of the Opinion.

In order to evaluate the fairness to NYBOT members, from a financial point of view, of the merger consideration to be received by NYBOT members in exchange for their membership interests, Houlihan Lokey evaluated the enterprise value ranges from operations (i.e., the equity value, plus all of its interest-bearing debt less cash and non-operating assets) (referred to herein as enterprise value), and the value of the common equity, or MVE, of NYBOT (referred to herein as market value of equity), relative to the merger consideration.

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In order to determine the enterprise and common equity value ranges of NYBOT, Houlihan Lokey utilized the following financial analyses based upon its view that they are appropriate and reflective of generally accepted valuation methodologies given the availability of information regarding comparable publicly-traded companies, the availability of forecasts from management of NYBOT, and the availability of information regarding similar transactions, as applicable. Each analysis provides an indication of the standalone enterprise value from operations of NYBOT. No single analysis was considered to be more appropriate than any other analysis, and therefore Houlihan Lokey considered all of the aforementioned analyses in arriving at its conclusion.

Houlihan Lokey conducted a market multiple analysis, a comparable transaction analysis, a discounted cash flow analysis, a membership interest seat price analysis, a public market trading analysis for ICE and a contribution analysis. The following analyses assume, based on management estimates, that none of NYBOT or ICE has any material contingent liabilities.

Market Multiple Analysis. This analysis provides an indication of enterprise value derived from multiples of (i) revenues, (ii) earnings before interest, taxes, depreciation and amortization, or EBITDA, (iii) earnings before interest and taxes, or EBIT, and an indication of market value of equity derived from multiples of net income. In order to derive NYBOT s enterprise value from the market value of equity, net debt (total debt net of cash) is normally added to the market value of equity. Since NYBOT had no interest bearing debt, Houlihan Lokey deducted $44.3 million of cash from the calculated market value of equity.

Houlihan Lokey s selection of market multiples for NYBOT was based upon its analysis of financial information of certain publicly-traded companies listed below that it considered to be reasonably comparable to NYBOT, based on the industries in which the companies operate, their principal competitors and their business risk profiles. Houlihan Lokey s analysis of comparable companies included both qualitative considerations and quantitative considerations such as size, profitability, growth history and prospects. However, no single factor was determinative in these analyses.

Houlihan Lokey calculated certain financial ratios of these comparable companies based on the most recent publicly available information regarding these companies, including the multiples of enterprise value to revenues, enterprise value to EBITDA, enterprise value to EBIT, and market value of equity to net income, for the latest twelve-month period ended June 30, 2006, or LTM, for the projected fiscal year ending December 31, 2006, or 2006E, and the projected fiscal year ending December 31, 2007, or 2007E.

Houlihan Lokey reviewed publicly-available financial information of the following publicly traded comparable companies: Chicago Mercantile Exchange Holdings, Inc., CBOT Holdings, Inc. and IntercontinentalExchange, Inc., which were categorized as Tier 1 companies on the basis of the industry in which they operate (financial exchanges), their products (futures) and their geographic scope (North America), and NASDAQ Stock Market, Inc., NYSE Group, Inc., TSX Group, Inc., and International Securities Exchange Holdings, Inc., which were categorized as Tier 2 companies on the basis of the industry in which they operate (financial exchanges) and their geographic scope (North America). Because of their product lines (futures trading), the Tier 1 companies have been considered to have more similar risk profiles and growth prospects to NYBOT than the Tier 2 companies. The projections used in Houlihan Lokey s analysis of these comparable companies were based on I/B/E/S analyst consensus estimates and public analyst reports.

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The analysis indicated that the multiples for the publicly traded comparable companies as of approximately September 12, 2006 were as follows:

	ENTERPRISE VALUE / EBITDA			ENTERPRISE VALUE / EBIT		
	LTM	2006E	2007E	LTM	2006E	2007E
Tier 1						
Median	24.6x	18.7x	15.0x	29.8x	23.5x	18.6x
Mean	25.1x	19.4x	15.4x	29.5x	23.5x	17.9x
Tier 2						
Median	16.7x	15.2x	12.8x	20.6x	19.4x	14.5x
Mean	17.7x	15.9x	11.8x	24.0x	20.3x	13.7x

	ENTERPRISE VALUE / Revenue			MARKET VALUE OF EQUITY / Net Income		
	LTM	2006E	2007E	LTM	2006E	2007E
Tier 1						
Median	15.30x	12.73x	10.05x	46.0x	40.0x	31.7x
Mean	14.61x	11.99x	9.83x	48.6x	37.6x	29.0x
Tier 2						
Median	6.60x	5.75x	5.15x	51.8x	37.8x	24.8x
Mean	6.33x	5.68x	5.12x	56.1x	37.9x	24.1x

For purposes of determining the appropriate level of revenues, EBITDA, EBIT and net income for NYBOT, Houlihan Lokey utilized historical financial statements and projected financial statements for the years ended December 31, 2006 and 2007, provided by NYBOT s management. These financial results were adjusted for the following nonrecurring costs or gains: fixed asset write-offs and dispositions; clearing member default costs; costs of terminating certain agreements; and net gain on insurance settlement.

Houlihan Lokey derived NYBOT s enterprise value and market value of equity by applying selected revenues, EBITDA, EBIT and net income multiples to NYBOT s revenues, adjusted EBITDA, adjusted EBIT and adjusted net income results for the latest twelve month period ended July 31, 2006 as well as to projected results for the fiscal years ending December 31, 2006 and December 31, 2007.

1. With respect to enterprise value to revenues multiples, Houlihan Lokey selected multiples in the range of 8.0x to 10.0x for the LTM period, 7.5x to 9.5x for the 2006E period and 6.5x to 8.5x for the 2007E period.

2. With respect to enterprise value to EBITDA multiples, Houlihan Lokey selected multiples in the range of 21.0x to 24.0x for the LTM period, 17.0x to 19.0x for the 2006E period and 13.0x to 15.0x for the 2007E period.

3. With respect to enterprise value to EBIT multiples, Houlihan Lokey selected multiples in the range of 25.0x to 27.0x for the LTM period, 20.0x to 23.0x for the 2006E period and 15.5x to 17.5x for the 2007E.

4. With respect to market value of equity to net income multiples, Houlihan Lokey selected multiples in the range of 40.0x to 44.0x for the LTM period, 32.0x to 36.0x for the 2006E period and 24.0x to 28.0x for the 2007E period.

Based on this market multiple analysis, the indicated enterprise value range for NYBOT was $711.1 million to $814.1 million and the indicated market value of equity range was $755.4 million to $858.4 million.

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Comparable Transaction Analysis. This analysis provides an indication of the value that an acquirer may be willing to pay in a transaction as a multiple of certain of the target company s operating and financial metrics such as revenues, EBITDA and EBIT. Houlihan Lokey reviewed publicly available financial information of the following merger and acquisition transactions announced between January 1, 2002 and August 31, 2006 involving companies deemed comparable to NYBOT:

Acquiror	Target	Dated Announced
Deutsche Boerse AG	Euronext NV	May 23, 2006
NYSE Group	Euronext NV	May 22, 2006
ICAP Plc	EBS Group	April 21, 2006
Nasdaq Stock Market inc	London Stock Exchange Plc(1)	April 11, 2006
General Atlantic	NYMEX Holdings, Inc.(2)	September 20, 2005
NYSE Group	Archipelago	April 20, 2005
OMX AB	Kobenvahns Fondsbors A/S	November 15, 2004
Instinet	Island ECN	June 10, 2002

(1) NASDAQ purchased a 25% equity stake in LSE.
(2) Based on a 10% equity investment.

Houlihan Lokey deemed the target companies in these transactions to be reasonably comparable to NYBOT based on the industry in which NYBOT operates, its principal competitors and its business risk profile.

The analysis showed that the multiples exhibited by the companies involved in these comparable transactions as of the announcement date of each transaction were as follows:

	Revenues	Enterprise Value to EBITDA	EBIT
Low	1.68x	8.5x	11.2x
High	9.81x	21.4x	23.8x
Median	4.74x	12.9x	18.7x
Mean	5.54x	14.7x	18.1x

Houlihan Lokey derived indications of NYBOT s enterprise value by applying selected multiples to NYBOT s latest twelve month revenues, EBITDA and EBIT results. Houlihan Lokey selected enterprise value to revenues multiples in the range of 8.0x to 9.0x, enterprise value to EBITDA multiples in the range of 18.0x to 20.0x and enterprise value to EBIT multiples in the range of 20.0x to 22.0x. The indicated enterprise value range from this method was $654.1 million to $727.4 million for NYBOT and the indicated range of market value of equity was $698.4 million to $771.7 million.

Discounted Cash Flow Analysis. This analysis provides an indication of value for each company based on its ability to achieve its projected financial results. This analysis utilizes the projected cash flows of NYBOT discounted back to present value based on a range of risk-adjusted discount rates.

For purposes of its discounted cash flow analysis, Houlihan Lokey utilized certain financial projections of NYBOT that were prepared by NYBOT management for the fiscal years ending December 31, 2006, 2007, 2008, 2009 and 2010. In order to determine the enterprise value of NYBOT, Houlihan Lokey first derived adjusted free cash flow by adjusting projected EBIT for capital expenditures, as well as working capital requirements and taxes.

Houlihan Lokey used the terminal multiple approach to determine the separate value of NYBOT at the end of the projection period. In the terminal multiple approach, Houlihan Lokey evaluated the aggregate value of all estimated future cash flows subsequent to the projection period (referred to herein as the terminal value) by

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multiplying NYBOT s estimated EBITDA in the final projection year (2010) by terminal EBITDA multiples ranging from 13.0x to 15.0x. Houlihan Lokey selected a range of terminal EBITDA multiples based on the range of enterprise value to EBITDA multiples calculated in the respective Market Multiple and Comparable Transaction Analyses, as applicable. Houlihan Lokey then applied risk-adjusted discount rates to NYBOT s projected adjusted free cash flows in order to discount NYBOT s projected future cash flows to a present value. Houlihan Lokey applied the risk-adjusted discount rates in the range of 14.5% to 16.5%.

NYBOT s enterprise value was calculated as the sum of (i) the present value of free cash flows for the period September 1, 2006 through December 31, 2010 and (ii) the present value of NYBOT s terminal value.

Based on this discounted cash flow analysis, the indicated enterprise value of NYBOT ranged from $744.3 million to $899.5 million, or a market value of equity ranging between $788.7 million to $943.8 million.

Membership Interest Seat Price Analysis. Houlihan Lokey analyzed the historical prices for NYBOT s membership interest seats and reviewed news articles and press releases relating to NYBOT. In particular, Houlihan Lokey analyzed NYBOT s (i) latest seat trade price, (ii) the average of the seat prices in the last 5, 10 and 20 trades and the average of the seat prices for all 2006 trades, all as of September 12, 2006. Based on the highest and lowest seat prices paid in trades that took place within the last 90 days preceding September 12, 2006, Houlihan Lokey noted seat prices ranging from $675,000 to $850,000, indicating a range of total equity value from $660.0 million to $830.0 million based on 977 seats. Additionally, Houlihan Lokey estimated the value of the floor trading rights associated with NYBOT s seat ownership, using leasing rates of the average of the last five announced leases of the seat trading rights and capitalization rates ranging from 8% to 12%. Based on this analysis, Houlihan Lokey estimated the seat prices, net of the value of the trading rights associated with such seat, to be in the range of $516,000 to $744,000 per seat, or a total equity value of $500.0 million to $730.0 million based on 977 seats.

Determination of NYBOT s Equity Value. Based upon the above analyses, Houlihan Lokey determined indications of ranges of equity values for NYBOT as follows (rounded):

Market Multiple Analysis: $760.0 million to $860.0 million

Comparable Transaction Analysis: $700.0 million to $770.0 million

Discounted Cash Flow Analysis: $790.0 million to $940.0 million

NYBOT Seat Price: $660.0 million to $830.0 million

NYBOT Seat Price, net of trading rights: $500.0 million to $730.0 million

These ranges of equity values for NYBOT compared to a transaction consideration of $1,051.6 million as of September 12, 2006.

ICE Public Market Trading Analysis. Houlihan Lokey analyzed the historical market prices and trading volume for ICE s publicly held common stock and reviewed analyst reports, news articles, press releases relating to ICE, and ICE s common stock ownership. Houlihan Lokey analyzed ICE s closing stock price on a spot basis and the lowest and highest stock prices on a 90-day and 30-day period basis and since its IPO on November 16, 2005, all as of September 12, 2006, the trading day immediately prior to the delivery of Houlihan Lokey s opinion.

Additionally, Houlihan Lokey performed a sensitivity analysis comparing the merger consideration, calculated as the sum of $400.0 million in cash and 10,297,000 ICE common stock shares, assuming ICE s highest, lowest and average stock price for the last 90 days. This sensitivity analysis resulted in a total value of the merger consideration ranging from $873.7 million to $1,215.2 million, with a midpoint of $1,044.5 million. Houlihan Lokey noted that the $1,051.6 million value of the merger consideration as of September 12, 2006, is approximately 0.7% higher than the midpoint of $1,044.5 million.

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Contribution Analysis. Houlihan Lokey then evaluated NYBOT s revenues, EBITDA and net income contribution, on a pre-merger basis, to the total combined entity of NYBOT and ICE. This analysis was performed to compare the proportionate operating performance contributed by NYBOT to the proportion of the combined entity s equity to be received by NYBOT members in the merger. Houlihan Lokey concluded the range of NYBOT s relative contribution, before taking into account any synergy resulting from the merger, was between:

26.0% of the expected combined revenues for 2006 and 24.4% of the expected combined revenues for 2007;

16.7% of the expected combined EBITDA for 2006 and 18.2% of the expected combined EBITDA for 2007; and

13.5% of the expected combined net income for 2006 and 15.0% of the expected combined net income for 2007;

For purpose of comparison to the contribution analysis above, Houlihan Lokey noted that, NYBOT membership interest pro forma ownership of the combined entity equity, calculated as if the value of the merger consideration were paid totally in ICE common stock, was 23.4% and calculated on an actual basis was 14.5%.

Additionally, Houlihan Lokey discussed with NYBOT s management the likelihood of clearing ICE s products through NYBOT s in-house clearing house, instead of a third-party clearing organization, and the resulting revenue synergies. Houlihan Lokey considered these revenue synergies in its analysis of the combined entity s pro forma earnings per share and the related accretion/dilution analysis.

Miscellaneous

Houlihan Lokey has acted as financial advisor to the board of governors of NYBOT in connection with the merger and has received from NYBOT customary fees for providing its fairness opinion, which was not contingent upon the conclusions reached in its Opinion, any actions taken by NYBOT s board of governors, the approval of the merger by NYBOT members or the consummation of the merger. In addition NYBOT has agreed to indemnify Houlihan Lokey for certain liabilities and other items arising out of its engagement.

NYBOT chose to retain Houlihan Lokey to serve as financial advisor to the board of governors based upon Houlihan Lokey s experience in the valuation of businesses and their securities in connection with mergers, acquisitions, recapitalizations and similar transactions.

Houlihan Lokey is an internationally recognized investment banking firm that is engaged in providing financial advisory services and rendering fairness opinions in connection with mergers and acquisitions, leveraged buyouts, and business and securities valuations for a variety of regulatory and planning purposes, recapitalizations, financial restructurings and private placements of debt and equity securities. It has no material prior relationship with the board of governors of NYBOT or their affiliates.

Interests of Officers and Governors in the Merger

Interests of NYBOT s Governors and Executive Officers

In considering the recommendation of NYBOT s board of governors to vote FOR the proposal to approve and adopt the merger agreement, 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. NYBOT s board of governors was fully aware of these relationships, agreements and arrangements during its deliberations on the merits of the merger and in making its decision to recommend to NYBOT members that they vote to approve and adopt the merger agreement. See The Merger NYBOT s Reasons for the Merger; Recommendation of the Merger by NYBOT s Board of Governors.

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NYBOT Governors. Pursuant to the terms of the merger agreement, until the second anniversary of the completion of the merger, the surviving corporation s board of directors will be comprised of nine directors, including two members of the current NYBOT board of governors designated by ICE (who will also serve on the ICE 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. Terrence F. Martell and Frederick W. Schoenhut are expected to serve as directors of ICE after the merger. NYBOT s governors who are expected to serve on the surviving corporation s board of directors and ICE s board of directors after the merger are expected to be compensated for their services in that capacity in accordance with a customary director compensation policy. For further information, see Directors and Officers of ICE After the Merger and the Directors and Officers of the Surviving Corporation After the Merger.

NYBOT Management. Certain members of NYBOT management are expected to serve in senior management positions of the surviving corporation after the merger. For further information, see Directors and Officers of ICE After the Merger and the Directors and Officers of the Surviving Corporation After the Merger.

NYBOT Employment and Change-in-Control Policy. NYBOT has in place an employment agreement with C. Harry Falk, President and Chief Executive Officer of NYBOT. The employment agreement provides for Mr. Falk to serve as President and Chief Executive Officer of NYBOT and, in such capacity, to have authority over the general management of NYBOT s business and supervision of all of its operations. The agreement may be terminated by NYBOT at any time upon three months written notice, or immediately, if terminated for cause as defined in the agreement. Upon termination of the agreement, Mr. Falk would be bound by a non-competition provision for a period of three months (or one year, if terminated for cause) following termination of his employment.

NYBOT has a change-in-control policy that provides if, within two years following a change of control, NYBOT or its successor terminates an employee other than for cause or the employee terminates his or her employment for good reason, NYBOT or its successor, as the case may be, will, subject to certain limitations and restrictions, provide the following severance benefits to the employee:

Senior Staff:	2.0x pay (pay is defined as salary plus, where applicable, three year average incentive)
Other Management:	1.5x pay (pay is defined as salary plus, where applicable, three year average incentive)

Bonus Pool. In connection with the merger, ICE will make available $10,747,183.66, payable in cash and/or shares of ICE common stock valued at $63.127 per share (the Bonus Pool) for NYBOT to allocate to certain eligible governors and employees of NYBOT and its subsidiaries. NYBOT, with the concurrence of NYBOT s board and the compensation committee of NYBOT s board, has allocated the Bonus Pool to the following governors and employees: Fred W. Schoenhut; Terrence F. Martell, Ph.D; C. Harry Falk; Audrey R. Hirschfeld; Walter J. Hines; Joseph O Neill; George Haase Jr.; Patrick Gambaro; Thomas Greene; Steven Bass and Donald Windey; and NYBOT has allocated $2,010,000 in cash from the Bonus Pool to be used to provide an incentive for other employees of NYBOT to remain as employees of NYBOT after the merger (the Stay Bonus Pool). Messrs. Schoenhut and Martell, who are expected to serve as directors of ICE following the merger, have been allocated $375,150 and $112,545 in cash, respectively, and 18,971 and 5,691 shares of ICE common stock, respectively, of the total cash and stock ICE will make available under the Bonus Pool. The Stay Bonus Pool will be allocated by management of NYBOT prior to the merger and will be paid in two equal installments on the six-month and twelve-month anniversaries of the merger to those eligible employees who remain employed by NYBOT on those dates. In the event that the closing share price of ICE common stock on the trading day immediately prior to the date of the merger exceeds $81.65 per share, the cash amount allocated to each senior manager will be reduced by an amount determined by multiplying such excess (up to $9.39 per share, representing the excess if such closing price were $91.04 per share) above $81.65 per share by the number of

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shares of ICE common stock allocated to such senior manager. The foregoing reductions have the effect of creating a cap on the aggregate amount to be received by each senior manager (based on the sum of the cash allocation and the share allocation valued at $81.65). The aggregate amount of all such reductions in the cash allocations shall then be reallocated and included in the Stay Bonus Pool.

In the event that the closing share price of ICE common stock on the trading day immediately prior to the date of the merger exceeds $91.04 per share, in addition to the cash reduction described in the previous paragraph, the number of shares of ICE common stock allocated to each senior manager shall be reduced by the aggregate value of such excess over $91.04 per share, determined by multiplying the number of shares allocated to each senior manager by such excess over $91.04 per share and dividing that amount by such prior day s closing price per share. The aggregate number of shares reduced pursuant to the prior sentence will not be delivered to governors or employees of NYBOT, will revert to the Bonus Pool based upon ICE s common stock valued at $63.127 per share, and will be issued as additional merger consideration to the members in the same proportions of cash and ICE common stock as such members are otherwise entitled to receive after application of the proration mechanics by the exchange agent. ICE will not be required to distribute the Bonus Pool to the extent such distribution is not fully deductible by ICE, NYBOT or the surviving corporation under Section 162(m) or Section 280G of the Internal Revenue Code, and any such Bonus Pool not so distributed shall be distributed to the members.

Indemnification and Insurance. The merger agreement provides that, upon completion of the merger, ICE will, to the fullest extent permitted by law, indemnify and hold harmless, and provide advancement of expenses to, all past and present directors, officers and employees of the surviving corporation and its subsidiaries to the same extent those individuals were entitled to indemnification or advancement of expenses under NYBOT s certificate of incorporation and indemnification agreements, if any, in existence as of the date of the merger agreement. To this end, the surviving corporation s certificate of incorporation and bylaws will include provisions relating to indemnification of officers, directors and employees that are, in the aggregate, no less advantageous to the intended beneficiaries than the corresponding provisions in the current NYBOT certificate of incorporation and bylaws.

The merger agreement also provides that, prior to the effective time of the merger, ICE will purchase or permit NYBOT to purchase a six-year tail prepaid policy on terms and conditions no less advantageous to the insured than the current directors and officers liability insurance policies maintained by NYBOT, although neither ICE nor NYBOT may expend for such tail policy a premium amount in excess of $1,500,000 in the aggregate.

Relationship with Brown Brothers Harriman. John C. Santos, a public governor on NYBOT s board of governors, is currently a Managing Director at Brown Brothers Harriman, which has served as NYBOT s financial advisor with respect to the merger transaction and also serves as a settlement bank for NYBOT s subsidiary clearing organization.

Relationship with ICE. On September 13, 2006, the date NYBOT s board of governors held its special meeting to approve the merger agreement, Martin Greenberg and Alfred J. Mascia, members of NYBOT s board of governors, owned approximately 5,000 and 1,000 shares of ICE common stock, respectively. NYBOT s board of governors was notified of these relationships prior to the time of its decision to recommend to NYBOT members that they vote to approve and adopt the merger agreement. Both governors also informed NYBOT s board of governors that their respective holdings of ICE common stock represent an insignificant portion of each of their overall investment portfolios.

Certain Relationships and Related-Party Transactions

None.

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Material United States Federal Income Tax Consequences

Subject to the limitations and qualifications described herein, the following discussion describes the material U.S. federal income tax consequences of the merger to U.S. holders of NYBOT membership interests. This discussion is based on current provisions of the Internal Revenue Code, final, temporary or proposed U.S. Treasury regulations promulgated under the Internal Revenue Code, judicial opinions, published positions of the Internal Revenue Service and all other applicable authorities, all of which are subject to change (possibly with retroactive effect).

For purposes of this discussion, the term U.S. holder means:

- a citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in the United States or under the laws of the United States or of any state;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (1) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If an entity that is treated as a partnership for U.S. federal income tax purposes holds NYBOT membership interests, the tax treatment of a partner in this partnership generally will depend on the status of the partners and the activities of the partnership. If you are a partner in a partnership holding NYBOT membership interests, you should consult your tax advisor. This discussion only addresses holders of NYBOT membership interests that hold their NYBOT membership interests as a capital asset within the meaning of Section 1221 of the Internal Revenue Code. Further, this summary does not address all aspects of U.S. federal income taxation that may be relevant to a holder in light of the holder s particular circumstances or that may be applicable to holders subject to special treatment under U.S. federal income tax law (including, for example, persons that are not U.S. persons, financial institutions, dealers in securities, insurance companies, tax-exempt entities, partnerships or other pass-through entities, holders subject to the alternative minimum tax provisions of the Internal Revenue Code, persons whose functional currency is not the U.S. dollar, and holders who hold their NYBOT membership interests as part of a hedge, straddle, constructive sale or conversion transaction). In addition, no information is provided herein with respect to the tax consequences of the merger under applicable state, local or non-U.S. laws or federal laws other than those pertaining to the federal income tax.

ALL HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE MERGER TO THEM, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE AND LOCAL, FOREIGN AND OTHER TAX LAWS.

Conditions to Closing

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 the merger will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code and 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. It is a condition to the obligation of ICE to consummate the merger that it receive a private letter ruling 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.

NYBOT and ICE have each requested a private letter ruling from the Internal Revenue Service with respect to the transactions contemplated by the merger agreement. The receipt of this ruling and its continuing validity

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will be subject to representations and assumptions. Neither NYBOT nor ICE is aware of any facts or circumstances that would cause these representations or assumptions to be untrue. The parties have not yet received the private letter ruling and there can be no assurance that a private letter ruling will be received or that, if received, the Internal Revenue Service will agree with all of the conclusions described in the following discussion.

Neither NYBOT nor ICE intends to waive the receipt of a private letter ruling described in the first paragraph above as a condition to its obligation to complete the merger and neither NYBOT nor ICE will waive the receipt of this ruling as a condition to its obligation to complete the merger without recirculating this document in order to resolicit NYBOT member approval. It is assumed for purposes of the discussion set forth below under The Merger Material United States Federal Income Tax Consequences The Merger, that the private letter rulings described above have been received.

The Merger

The U.S. federal income tax consequences of the merger to U.S. holders of NYBOT membership interests are as follows:

Holders Who Receive Solely ICE Common Stock. A holder of a NYBOT membership interest will not recognize gain or loss upon receipt of ICE common stock solely in exchange for the holder s NYBOT membership interest, except with respect to cash received in lieu of fractional shares of ICE common stock (as discussed below). The aggregate tax basis of the shares of ICE common stock received (including any fractional shares deemed received and exchanged for cash) will be equal to the holder s allocable tax basis in NYBOT s membership interest exchanged therefor. For purposes of this discussion, the term allocable tax basis shall be equal to a holder s tax basis in a NYBOT membership interest excluding the portion of the tax basis in the NYBOT membership interest allocable to the trading rights associated with such NYBOT membership interest. The holding period of ICE s common stock received (including any fractional shares deemed received and exchanged for cash) will include the holding period of NYBOT membership interest exchanged. Because ICE

will pay the excess working capital, if any, in cash (unless it is necessary for ICE to pay the excess working capital in shares of ICE common stock in order for the merger to be treated as a tax-free reorganization) it is possible that there will not be any holders of a NYBOT membership interest who will receive solely ICE common stock in exchange for the holder s NYBOT membership interest.

Holders Who Receive Solely Cash. A holder who exchanges a NYBOT membership interest solely for cash generally will recognize gain or loss in an amount equal to the difference between the amount of cash received and the holder s allocable tax basis in the NYBOT membership interest exchanged. The gain or loss recognized will be long-term capital gain or loss if, as of the effective date of the merger, the holder s holding period for the NYBOT membership interest exchanged exceeds one year. The deductibility of capital losses is subject to limitations. In some cases, if a holder actually or constructively owns ICE common stock after the merger, the cash received could be treated as having the effect of the distribution of a dividend under the tests set forth in Section 302 of the Internal Revenue Code, in which case the holder may have dividend income up to the amount of the cash received. In such cases, holders that are corporations should consult their tax advisors regarding the potential applicability of the extraordinary dividend provisions of the Internal Revenue Code.

Holders Who Receive a Combination of ICE Common Stock and Cash. The U.S. federal income tax consequences to holders who receive a combination of ICE common stock and cash generally will be as follows. If a holder s allocable tax basis in the NYBOT membership surrendered is less than the sum of the fair market value, as of the closing date of the merger, of the ICE common stock and the amount of cash received by the holder, then the holder 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. However, if a holder s allocable tax basis in the NYBOT membership interest surrendered is greater than the sum of the amount of cash and the fair market value of the ICE common stock received, the holder s loss will

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not be currently allowed or recognized for U.S. federal income tax purposes. If a holder acquired different NYBOT membership interests at different times or different prices, the holder should consult the holder s tax advisor regarding the manner in which gain or loss should be determined. Any recognized gain generally will be long-term capital gain if, as of the effective date of the NYBOT merger, the holder s holding period with respect to the NYBOT membership interest surrendered exceeds one year. In some cases, if the holder actually or constructively owns ICE common stock, other than ICE common stock received in the merger, the recognized gain could be treated as having the effect of the distribution of a dividend under the tests set forth in Section 302 of the Internal Revenue Code, in which case such gain would be treated as dividend income. In such cases, holders that are corporations should consult their tax advisors regarding the potential applicability of the extraordinary dividend provisions of the Internal Revenue Code. The aggregate tax basis of the ICE common stock received (including any fractional shares deemed received and exchanged for cash) by a holder that exchanges its NYBOT membership interest for a combination of ICE common stock and cash will be equal to the aggregate allocable tax basis of the NYBOT membership interest surrendered, reduced by the amount of cash received by the holder (excluding any cash received instead of fractional shares of ICE common stock) and increased by the amount of gain, if any, recognized by the holder (excluding any gain recognized with respect to cash received in lieu of fractional shares of ICE common stock) on the exchange. The holding period of the ICE common stock received (including any fractional shares deemed received and exchanged for cash) will include the holding period of the NYBOT membership interest surrendered.

Trading Rights

The U.S. federal income tax consequences of the merger to U.S. holders of NYBOT membership interests and U.S. holders of NYBOT trading permits are as follows:

No gain or loss will be recognized by the NYBOT members with respect to their trading rights, or the holders of NYBOT trading permits, when such trading rights and trading permits become the right to trade on the surviving corporation s exchange. The basis of the surviving corporation trading rights received in the merger will be the same as the portion of such NYBOT member s tax basis in the NYBOT membership interest allocable to the trading rights, immediately before the merger. The basis of the surviving corporation trading permits received in the merger will be the same as such holder s basis in the NYBOT trading permits exchanged therefor immediately before the merger. Provided any NYBOT member s trading right or any trading permit is held as a capital asset at the time of the merger, the holding period of the surviving corporation trading right or trading permit received in exchange therefor will include the holding period of such NYBOT member s trading right or such holder s trading permit, as the case may be.

Cash in Lieu of Fractional Shares

A holder who receives cash in lieu of a fractional share of ICE common stock in the merger generally will be treated as having received such fractional share in the merger and then as having received cash in exchange for such fractional share. Gain or loss generally will be recognized by such holder based on the difference between the amount of cash received in lieu of the fractional share and the tax basis allocated to such fractional share of ICE common stock. Such holder generally will recognize capital gain to the extent of the cash received. Gain or loss recognized with respect to cash received in lieu of fractional shares of ICE common stock generally will be long-term capital gain or loss if, as of the effective date of the merger, the holding period for the membership interests exchanged therefor is greater than one year.

Backup Withholding and Information Reporting

Payments of cash made in connection with the merger may, under certain circumstances, be subject to information reporting and backup withholding at a rate of 28%, unless such NYBOT member receiving cash provides proof of an applicable exemption or furnishes its taxpayer identification number, and otherwise complies with all applicable requirements of the backup withholding rules. Any amounts withheld from

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payments to a NYBOT member under the backup withholding rules are not additional tax and will be allowed as a refund or credit against the NYBOT member s federal income tax liability, provided the required information is furnished to the Internal Revenue Service.

Regulatory Approvals

NYBOT Regulatory Approvals

NYBOT has been designated by the CFTC as a contract market under the CEA with respect to each of the futures contracts and options traded on NYBOT. The completion of the transaction is subject to receipt of any necessary CFTC approval. NYBOT and the surviving corporation will seek CFTC approval to transfer each of NYBOT s contract market designations to the surviving corporation. The surviving corporation will adopt the current NYBOT rules as its rules, with such changes as are necessary to reflect the terms of the merger agreement and the proposed bylaws of the surviving corporation and such other changes as may be agreed to by NYBOT and ICE or required by the CFTC. All such rule changes will be filed with the CFTC for approval along with the proposed bylaws of the surviving corporation in connection with the request to transfer NYBOT s contract market designations.

Restrictions on Sales of Shares by Affiliates of NYBOT

The shares of ICE common stock to be issued in connection with the merger will be registered under the Securities Act, and will be freely transferable under the Securities Act, except for shares of ICE common stock issued to any person who is deemed to be an affiliate of NYBOT at the time of the applicable special meeting. Persons who may be deemed to be affiliates include individuals or entities that control, are controlled by, or are under common control with NYBOT, and may include NYBOT executive officers and governors. Affiliates may not sell their shares of ICE common stock acquired in connection with the merger except pursuant to:

- an effective registration statement under the Securities Act covering the resale of those shares;
- an exemption under paragraph (d) of Rule 145 under the Securities Act; or
- any other applicable exemption under the Securities Act.

NYBOT expects that each of its affiliates will agree with ICE that the affiliate will not transfer any shares of stock received in the merger, except in compliance with the Securities Act. Resales of ICE common stock by affiliates of NYBOT are not being registered pursuant to the registration statement of which this document forms a part.

Stock Exchange Listing and Stock and Membership Interest Prices

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

Shares of ICE common stock are listed on the NYSE under the symbol ICE.

The following table sets forth, for the periods indicated, the high and low sale prices of NYBOT membership interests as recorded in NYBOT s records, as well as the high and low sale prices of a share of ICE common stock (as reported on the NYSE).

ICE common stock has been publicly traded since November 16, 2005 following its initial public offering. Prior to that date, there was no public market in the stock.

As of November 14, 2006, there were 71 record holders of ICE s common stock and no holders of record of ICE s Class A common stock. No dividends have ever been paid on ICE s common stock. On November 15, 2006, ICE s common stock traded at a high of $97.30 per share and a low of $93.28 per share.

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The following table sets forth, for the periods indicated, the high and low sale prices of ICE common stock as reported on the NYSE and the high and low sale prices of NYBOT membership interests as recorded in NYBOT s records.

	ICE Common Stock Price		NYBOT Membership Interest	
Calendar Quarter	**High**	**Low**	**High**	**Low**
2004				
Second Quarter			$ 210,000(1)	$ 205,000(1)
Third Quarter			$ 245,000	$ 202,000
Fourth Quarter			$ 307,000	$ 235,000
2005				
First Quarter			$ 350,000	$ 250,000
Second Quarter			$ 350,000	$ 250,000
Third Quarter			$ 395,000	$ 325,000
Fourth Quarter	$ 44.21(2)	$ 31.27(2)	$ 490,000	$ 325,000
2006				
First Quarter	73.59	36.00	$ 735,000	$ 495,000
Second Quarter	82.40	45.27	$ 875,000	$ 760,000
Third Quarter	77.92	51.77	$ 1,000,000	$ 675,000
Fourth Quarter (through November 15, 2006)	97.56	72.15	$ 1,100,000	$ 950,000

(1) Second quarter figures are given for the period from June 10, 2004 (the date NYBOT was formed upon the merger of two predecessor companies) to June 30, 2004.

(2) Fourth quarter figures are given for the period from November 16, 2005 (the date on which ICE s common stock commenced trading on the New York Stock Exchange) to December 31, 2005.

Appraisal Rights of Dissenting Members

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

Effect of the Merger on NYBOT Members

This section describes the differences between the rights of holders of NYBOT membership interests relating to certain trading rights with respect to commodity contracts traded on NYBOT prior to the merger and the trading rights on the exchange of the surviving corporation to be received in the merger. The differences primarily arise because (i) NYBOT is a New York not-for-profit corporation, whereas the surviving corporation is a Delaware for-profit corporation, and (ii) there are differences between the governing documents of NYBOT and the governing documents of the surviving corporation. For a discussion of the differences between the rights of NYBOT members and ICE stockholders with respect to their equity ownership in either NYBOT or ICE, see Comparison of Rights Prior to and After the Merger.

This section does not include a complete description of all differences in rights held by NYBOT members prior to and after the merger, nor does it include a complete description of NYBOT members specific trading rights. Furthermore, the classification of some of these differences in rights in this section is not intended to indicate that other differences, that may be equally important, do not exist. All NYBOT members are urged to read carefully the relevant provisions of the bylaws and rules of NYBOT and the certificate of incorporation and bylaws of the surviving corporation (which are included as Annexes B and C to this document). Copies of the bylaws and rules of NYBOT are available on its website, and copies of amendments to those rules that will be incorporated in the rules of the surviving corporation are available to NYBOT members upon request.

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
Authorized Equity Interests	
The bylaws of NYBOT authorize the issuance of up to 977 membership interests.	There will be no equity membership interests. The surviving corporation will be authorized to issue shares of common stock, and ICE will own all such shares.
A NYBOT member may lease his or her membership interest upon approval by the board of governors of NYBOT. During the term of the lease, the lessee may use the leased membership interest for the limited purpose of trading in contracts that the lessor is entitled to trade with his or her membership interest. The lessor shall continue to exercise voting rights and receive any distribution of assets of NYBOT in the event of any liquidation, dissolution or winding up of the affairs of NYBOT during the term of the lease.	
Annual Meeting of Members/Stockholders	
A meeting of NYBOT members is held annually on the third Wednesday in June (or such other day as the board of governors shall prescribe). If the annual meeting of NYBOT members is not held on the date designated therefor, the board shall cause the meeting to be held as soon thereafter as convenient.	Former NYBOT members holding trading rights in the surviving corporation will have no meeting rights.
	The surviving corporation will not be required to hold meetings for individuals or entities holding trading rights.
Voting Rights General	
Every NYBOT member is entitled to vote on matters requiring the vote of NYBOT members; provided, however, that no NYBOT member may cast more than one vote, irrespective of the number of NYBOT membership interests that he or she may hold.	Former NYBOT members holding trading rights in the surviving corporation will have no voting rights with respect to the surviving corporation. ICE, as the owner of all issued outstanding shares of common stock of the surviving corporation, will have the sole right to vote on all matters upon which the stockholders of the surviving corporation will be entitled to vote generally.
Trading Rights	
A NYBOT membership interest carries with it the trading right that entitles its holder to trade on the floor or to lease the right to trade to a third party, subject to approval of the board of governors.	Upon the merger, the surviving corporation will issue to each former NYBOT member a trading right that will entitle the former NYBOT member to trade on the surviving corporation s exchange all of the products that were traded on NYBOT immediately prior to the merger, so long as such products continue to be traded on the surviving corporation s exchange and so long as the former NYBOT member owns at least 3,162 shares of ICE common stock (as adjusted for reclassifications, stock splits, stock dividends or distributions, recapitalizations or similar transactions). The holders of the trading right will

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	have the right to lease each trading right to a third party, subject to approval of the board of directors of the surviving corporation.
	The surviving corporation may issue new trading rights in such numbers and for such consideration as the board of directors of the surviving corporation may from time to time determine; provided, that any new trading right may not include the right to execute transactions on the surviving corporation s open-outcry trading floor.
Board of Governors/Directors	
The board of governors consists of twenty-five voting governors:	Until the second anniversary of the completion of the merger, the surviving corporation s board of directors will be comprised of nine directors, including:
five of whom are required to be NYBOT members principally engaged in the purchase and sale of commodity contracts on the exchange floor,	the chief executive officer and the chief financial officer of ICE, the chief executive officer of the surviving corporation (who will be designated by ICE),
five of whom are required to be NYBOT members identified with the coffee, sugar, cocoa, cotton or orange juice trade (provided that each such trade shall have at least one such representative),	two members of the current NYBOT board of governors who are designated by ICE (who will also serve on ICE s board of directors), and
one of whom is required to be a NYBOT member identified with any trade associated with any commodity contract,	four directors who qualify as public directors as described in The Bylaws and who, to the extent possible, will be selected from the public directors currently serving on NYBOT s board of governors.
four of whom are required to be NYBOT members and an executive officer, director, partner or member of a member firm that is a futures commission merchant, or FCM,	Until the fourth anniversary of the completion of the merger, the surviving corporation s board will include at least four public directors.
two of whom are required to be a NYBOT member and an executive officer, director, partner or member of a member firm that is not an FCM but is principally engaged in the business of purchasing and selling commodity contracts on the exchange floor,	Each of the two directors who are members of the current NYBOT board of governors shall hold office for two year terms. The four directors who qualify as public directors shall hold office for four

five of whom may not be NYBOT members and are required to be designated as public governors, and

three of whom are required to be NYBOT members and are required to have been elected as chairman of the board, vice chairman of the board and treasurer, and one non-voting governor who is required be the president of the exchange.

consecutive one year terms subject to removal as described in The Bylaws.

Each director holds office until the next election, and until his or her successor is elected and qualified or until his or her resignation or removal. See The Bylaws.

Former NYBOT members holding trading rights in the surviving corporation will have no right to elect

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
With the exception of the public governors, who are elected by the board of governors, and the president, all governors are elected by the NYBOT members.	or otherwise select the directors of the surviving corporation.
Governors serve for a term of two years or, in the case of a governor appointed to fill a vacancy on the board, until the next annual meeting, whereby NYBOT members elect a governor to serve the balance of the term of the governor who vacated the office, if the term did not already expire.	
Board Vacancies	
Vacancies occurring on the board of governors for any reason are filled by the remaining voting governors. All vacancies are filled by another person from the same category as the governor whose resignation or removal created the vacancy. A governor so appointed by the board of governors to fill a vacancy holds office until the next annual meeting of NYBOT members. A public governor appointed to fill a vacancy holds office until the time at which the term of the governor who vacated the office would have expired, and until his successor is elected and qualified.	Any vacancies on the board of directors of the surviving corporation shall be filled by a majority of the directors then in office, even if less than a quorum, or by the sole remaining director. However, until the four-year anniversary of the completion of the merger (with respect to public directors) and the two-year anniversary of the completion of the merger (with respect to the two NYBOT designees), any vacancy in any public director position shall be filled by an individual appointed by the remaining public directors, subject to the approval of ICE. Any vacancy in the two NYBOT designee positions shall be filled by the other NYBOT designee, if applicable, and by the remaining directors if there is no remaining NYBOT designee. Any director elected or appointed to fill a vacancy or a newly created directorship shall hold office until the next election and until his or her successor is duly elected and qualified, or until his or her earlier resignation or removal.
Amendments to Certificate of Incorporation	
Pursuant to the New York Not-For-Profit Corporation Law, the board of governors and the members of NYBOT must approve any amendment to NYBOT s certificate of incorporation.	Former NYBOT members holding trading rights in the surviving corporation shall have no right to approve amendments to the certificate of incorporation of the surviving corporation. Amendments to the certificate of incorporation of the surviving corporation must be adopted by the board of directors of the surviving corporation and submitted to ICE for approval as the sole stockholder.

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
Amendments to Bylaws/Rules	
The bylaws and rules cannot be altered or amended until the proposed alteration or amendment is (a) approved by a vote of two-thirds of the voting governors present and (b) in the case of the bylaws, ratified by a majority vote of the members, voting by ballot, at a meeting held for that purpose.	The board of directors of the surviving corporation will have the authority to amend the bylaws and the rules of the surviving corporation, except that amendments that would materially and adversely affect certain core rights shall require, until July 1, 2013, approval by (i) a vote of at least two-thirds of the entire board of directors and (ii) a vote of at least the number of public directors that is one less than the total number of public directors eligible to vote on a matter, but in all cases, at least one public director (a supermajority vote of the public directors). Core rights include the provisions of the bylaws of the surviving corporation relating to:
The rules affecting certain commodities may not be amended without the approval of the contract specification committee for the affected commodity contract.	the eligibility standards and criteria for becoming a trading member, permit holder or lessee;
	the financial requirements applicable to a trading member, permit holder, lessee and member firm;
	the trading privileges authorized to each category of permit holder and to trading members;
	the sale and transferability of rights applicable to trading memberships and trading permits, and the leasing of rights applicable to trading memberships;
	the requirements applicable to obtaining open-outcry exchange floor trading privileges by trading members and permit holders;
	provisions of NYBOT s rules governing the mode of executing transactions by open-outcry on the trading floor;
	the eligibility requirements applicable to remaining a clearing member, to the extent that such person was a clearing member prior

to the completion of the merger;

the rights and obligations of clearing members that act as guarantors of floor brokers, to the extent that clearing member so acted prior to the completion of the merger;

composition of the board of directors of the surviving corporation, including designation of NYBOT s governors to be members of the

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	board of directors of the surviving corporation and ICE;
	limitations on electronic trading of core products;
	maintenance of a disaster recovery site (for as long as it is required by the bylaws);
	dedicating financial and technical resources to support and maintain open-outcry trading (for as long as it is required by the bylaws);
	transaction fees and discounts;
	clearing member eligibility requirements; and
	trade committee composition and control over the terms and conditions of contracts for core products.
	Core rights only apply to core products, and only to the extent the amendment would materially and adversely affect the rights of trading members, permit holders, member firms, lessees or existing clearing members or otherwise would materially and adversely affect the core rights described above. Core products refers to futures and options on the following contracts: Coffee C , Cocoa, Cotton No. 2, Sugar No. 11, Frozen Concentrated Orange Juice, Not-From-Concentrate Orange Juice and Sugar No. 14.
Transaction Fees	
The board of governors of NYBOT has the authority to establish fees and charges for commodity contracts purchased and sold on NYBOT s exchange.	The board of directors of the surviving corporation may adopt resolutions that impose fees and charges for each commodity contract purchased and sold on the surviving corporation s exchange. In fixing the amount of such fees and charges, the board

of directors may establish different rates for transactions in different commodities contracts, or for different types of transactions involving the same commodity or the same commodity contract. The surviving corporation will be required to charge at least $1 more for electronic trades of physical delivery core products that were listed on NYBOT s exchange at the time of completion of the merger, except in the case of fees related to *bona fide* market-making programs, and provided that the surviving

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	corporation may eliminate the surcharge in the event that:
	certain competing exchanges, or any of their respective affiliates, introduce a physical delivery contract after September 14, 2006 that (i) has the same contract terms as a core product or (ii) has the same contract terms as a core product except that it is cash-settled (in each case, other than any immaterially different terms); or
	the board of directors of ICE requests that the public directors of the surviving corporation determine whether the introduction of a physical delivery contract by a competing exchange is a competitive contract with respect to a core product and the public directors, by a supermajority vote of the public directors, determine that such contract is a competitive contract.
	In no event will the electronic trading fee for any core product be lower than the open-outcry trading fee for such product (except in connection with bona fide market making programs).
	The term competitive contract refers to any contract listed by a competing exchange after September 14, 2006 that (i) has the same contract terms as a core product (other than any immaterially different terms) or (ii) has the same contract terms as a core product except that it is cash-settled (other than any immaterially different terms); and that, in either case, the failure of the surviving corporation to address and compete with such contract may be expected to give rise to a bona fide risk of a loss of market share by the surviving corporation s exchange for such core product.
	The surviving corporation is required to offer a 20% discount for proprietary trading by NYBOT members and member firms existing at the time the merger agreement was executed for transactions in contracts traded on NYBOT s exchange at the time of the signing of the merger agreement (other than for prices charged with respect to bona fide market

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	making programs) for so long as such contracts continue to be traded on the surviving corporation s exchange.
	NYBOT members and NYBOT permit holders at the time of the completion of the merger will also be entitled to pay the lowest fees payable to the surviving corporation for electronic transactions in contracts traded on NYBOT s exchange at the time of the signing of the merger agreement (other than fees related to bona fide market making programs) for so long as such contracts continue to be traded on the surviving corporation s exchange. Subject to certain exceptions, the right to receive the discount for electronic trading and most favored nation pricing will terminate upon the transfer by the former NYBOT member of his or her trading rights in the surviving corporation.
Side-by-Side Electronic Trading	
NYBOT s board of governors may implement side-by-side electronic trading with respect to any commodity contract.	Upon the merger, the chief executive officer of the surviving corporation will have authority to implement side-by-side electronic trading (including after-hours electronic trading) with respect to any commodity contract except for any cash settled commodity contract that has the same terms as core products.
	The surviving corporation will, at the request of ICE, implement side-by-side electronic trading of a cash-settled commodity contract that has the same terms as core products if:
	certain competing exchanges, or any of their respective affiliates, introduce a cash-settled contract that has the same contract terms as a core product except that it is cash-settled (other than immaterially different terms); or
	the board of directors of ICE requests that the public directors determine whether the introduction of a cash-settled contract by another exchange is a competitive contract with respect to a core product and the public directors, by a

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	supermajority vote of the public directors, determine that such contract is a competitive contract.
Termination of Open-Outcry Trading	
NYBOT s board of governors may terminate open-outcry trading of any futures contracts traded on NYBOT s exchange.	The surviving corporation may terminate open-outcry trading of any futures contracts that are not core products by majority vote of the surviving corporation s board of directors. However, the surviving corporation will be restricted from terminating open-outcry trading of core products, unless:
	the surviving corporation s lease with respect to the surviving corporation s trading floor located at the World Financial Center expires or is terminated (other than as a result of a breach by the surviving corporation or a voluntary termination by the surviving corporation);
	until July 1, 2013, the public directors, by a supermajority vote of the public directors, recommend and two-thirds of the entire board of directors of the surviving corporation approves such termination; or
	certain liquidity events occur.
	A liquidity event means, generally, (i) with respect to a contract in a particular core product, the failure of the average daily open-outcry volume in futures (ADV) measured on a rolling 90-day basis, to equal at least 50% of the ADV in such contract for the comparable 90-day period in calendar year 2005; and (ii) with respect to all core products, in the aggregate, the failure to maintain open-outcry ADV, measured on the foregoing basis, equal to 50% of the aggregate ADV in calendar year 2005 for all core products.
	Open-outcry trading of an option may terminate upon termination of open-outcry trading in the corresponding futures contract.

For so long as open-outcry trading of futures contracts that are core products has not been terminated pursuant to the preceding paragraph, the surviving corporation is required to:

maintain a disaster recovery site, which is comparable to NYBOT s recovery site at the time

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NYBOT (Before Merger)	Surviving Corporation (After Merger)
	of the completion of the merger, in order to sustain open-outcry trading in the event the surviving corporation s trading floor is not available for trading; and
	dedicate sufficient financial and technological resources appropriate to support and maintain trading on an open-outcry trading floor consistent with prevailing industry practices.
Trade Committees	
Under NYBOT s bylaws and rules, no rule may be adopted, amended repealed or modified that affects the terms and conditions of contracts on cocoa, coffee, cotton, frozen concentrate orange juice, sugar, index contracts or financial contracts or any other commodity underlying a NYBOT contract without the approval of the corresponding trade committee and the approval of NYBOT s board of governors.	The surviving corporation will be required to maintain a trade committee for each of the core products. The surviving corporation may not alter any term or condition of any commodity contract involving a core product without the approval of a majority of the members of the applicable trade committee.
	Until the two-year anniversary of the completion of the merger, each trade committee will consist of (i) nine members selected by ICE who are actively engaged or employed by a firm that is actively engaged in the core product industry for the relevant trade committee; (ii) three floor brokers of the surviving corporation s exchange in the core product for the relevant trade committee; (iii) two trading rights members of the surviving corporation who are affiliated persons of futures commissions merchants; and (iv) one trading rights member of the surviving corporation representing an asset management firm advising investment funds or separate accounts that trade in the relevant core product or proprietary trading desk of an investment bank. All trade committees must be composed of at least two-thirds of trading members of the surviving corporation or individuals associated with a firm that was a member firm of NYBOT on the date of the merger agreement, except that the orange juice committee must be composed of at least half trading rights members of the surviving corporation or individuals associated with a firm that was a member firm of NYBOT on the date of the merger agreement.

Legal Proceedings Relating to the Merger

None.

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THE MERGER AGREEMENT

This section of the prospectus/proxy statement describes the material terms of the merger agreement, as amended. The following summary is qualified in its entirety by reference to the complete text of the merger agreement, as amended, which is incorporated by reference and attached as Annex A to this prospectus/proxy statement. ICE and NYBOT urge you to read the full text of the merger agreement, as amended.

On September 14, 2006, ICE, NYBOT and merger sub entered in a merger agreement. On October 30, 2006, ICE, NYBOT and merger sub entered into the First Amendment to the merger agreement. Pursuant to the merger agreement, as so amended, NYBOT agreed to merge with and into merger sub, with merger sub surviving the merger as a wholly-owned subsidiary of ICE (the surviving corporation). Wherever we refer to the merger agreement in this prospectus/proxy statement, we mean to refer to the merger agreement, as so amended.

Merger Consideration To Be Received by NYBOT Members

Amount and Form of Merger Consideration

In the merger, each outstanding NYBOT membership interest will be converted into either (1) cash equal to $1,074,719, (2) 17,025 shares of ICE common stock, subject to proration as described in Proration and Allocation Procedure, or (3) a combination of cash consideration and stock consideration as described in Cash Election and Stock Election, (the merger consideration). 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 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 Excess Working Capital.

The maximum amount of cash payable by ICE as merger consideration (excluding the excess working capital) and including any cash payable in respect of the bonus pool is approximately $400,000,000. ICE will pay the remainder of the merger consideration (excluding the excess working capital) and bonus pool in shares of ICE common stock. ICE will pay the excess working capital, if any, in cash, unless it is necessary for ICE to pay the excess working capital in shares of ICE common stock in order for the merger to be treated as a tax-free reorganization.

In addition to the merger consideration, (1) each NYBOT member will receive in respect of each outstanding membership interest a right to trade any and all products on the surviving corporation s exchange, so long as the member retains 3,162 shares of ICE common stock in respect of each former membership interest, and (2) each holder of a NYBOT trading permit will receive a right to trade any and all products that were the subject of the relevant trading permit prior to the merger on the surviving corporation s exchange. The trading rights of NYBOT members and NYBOT permit holders after the completion of the merger are further described in The Bylaws. These trading rights are subject to modification and termination by the board of directors of the surviving corporation following the completion of the merger as described in The Bylaws Amendment of Bylaws.

Cash Election and Stock Election

A NYBOT member making either a stock election, cash election or no election may only do so with respect to a whole membership interest or a percentage of a membership interest representing at least 10%, or any whole multiple of 10%, of any membership interest. Any reference herein to the election for a NYBOT membership interest will also refer to any portion of a NYBOT membership interest for which an election has been made.

Cash Election. NYBOT members will be provided the opportunity to elect to receive the maximum cash available for their NYBOT membership interests. We refer to this election as the cash election. NYBOT members who make the cash election will, subject to proration and the allocation procedures described under

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Proration and Allocation Procedure, receive for each of their NYBOT membership interests an amount of cash equal to $1,074,719. We refer to the consideration received in the cash election as the cash consideration and the membership interests for which a NYBOT member has made the cash election as cash election membership interests.

Stock Election. NYBOT members may instead elect to receive the maximum shares of ICE common stock available for their NYBOT membership interests. We refer to this election as the stock election. NYBOT members who make the stock election will, subject to proration and the allocation procedures described under Proration and Allocation Procedure, receive for each of their NYBOT membership interests a number of shares of ICE common stock equal to 17,025 shares. We refer to the consideration received in the stock election as the stock consideration and the membership interests for which a NYBOT member has made the stock election as stock election membership interests.

No Election. Any NYBOT member who fails to make any election, or fails to submit a valid election form prior to the election deadline described under Election Mechanics, will receive the form of consideration determined according to the proration and allocation procedures described under Proration and Allocation Procedure. We refer to these membership interests for which a NYBOT member has made no election as no election membership interests. In the case where the aggregate elections made by NYBOT members would require payment of cash to NYBOT members in an amount equal to (or nearly equal to) or more than $400,000,000 (not including payments in respect of NYBOT s excess working capital), each no election membership interest will receive a number of shares of ICE common stock equal to 17,025 shares. In the case where the aggregate elections made by NYBOT members would require payment of cash to NYBOT members in an amount less than $400,000,000 (not including payments in respect of NYBOT s excess working capital), each no election membership interest will receive (1) an amount of cash on a pro rata basis sufficient to ensure that the aggregate cash consideration to be paid in the merger is equal to $400,000,000 and (2) shares of ICE common stock for any portion of such membership interest that did not receive cash pursuant to proration.

Tax Consequences of the Elections. For a discussion of the tax consequences of the elections, see The Merger Material United States Federal Income Tax Consequences.

No Recommendation Regarding Elections. **Neither NYBOT nor ICE is making any recommendation as to whether NYBOT members should make the cash election or the stock election. You must make your own decision with respect to these elections and we encourage you to seek the advice of your own attorneys or accountants.**

Conversion of NYBOT Membership Interests into Merger Consideration

The conversion of NYBOT membership interests into the applicable merger consideration will occur automatically at the effective time of the merger. However, to receive this merger consideration, NYBOT member must properly complete the transmittal materials to be provided by the exchange agent to the holders of NYBOT membership interests and send such transmittal materials to Computershare Shareholder Services, Inc., which will serve as the exchange agent.

The letter of transmittal contains representations and warranties on the part of the NYBOT member, including representations and warranties to the effect that the NYBOT member is, and will be as of the completion of the merger, the record holder of the NYBOT membership interest, with good title to that NYBOT membership interest and full power and authority to sell, assign and transfer that NYBOT membership interest free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claims. After the exchange agent receives a properly completed election form from the NYBOT member, and the merger is completed, the exchange agent will send the NYBOT member his or her merger consideration (other than the member s pro rata share of the excess working capital, if any, which the exchange agent will distribute separately

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as described in Excess Working Capital.) If the letter of transmittal is properly completed, the record holder has the right to designate in the letter of transmittal that a person other than the record holder will receive the merger consideration in respect of such holder s Membership Interest, as more fully explained in the letter of transmittal. Merger consideration paid with respect to a membership interest which is treated as an asset of a member firm pursuant to the terms of a NYBOT A-B-C Agreement may be paid directly to such firm pursuant to instructions contained in the election form.

Election Mechanics

Election Form. The election form will be sent to NYBOT members in a separate mailing subsequent to the mailing of this prospectus/proxy statement. Each NYBOT member will use the election form to make the cash election or stock election for his or her NYBOT membership interest or membership interests. To make the stock election or the cash election, NYBOT members must properly complete and sign an election form as specified in the instructions to the election form, and the properly completed and executed election form must be received by the exchange agent at or prior to the election deadline. If the election form and letter of transmittal are properly completed, the record holder has the right to designate in the election form that a person other than the record holder will receive the merger consideration in respect of a NYBOT membership interest, as more fully explained in the letter of transmittal.

Election Deadline. The election deadline for making the stock election or the cash election will be indicated in the separate mailing of the election form and is expected to be 5:00 p.m., New York City time, on a business day that is at least five business days prior to the completion of the merger.

Election Revocation and Changes. Generally, an election may be revoked or changed with respect to a NYBOT membership interest by a NYBOT member who submitted the applicable form of election, but only by written notice received by the exchange agent prior to the election deadline. NYBOT members may not revoke or change their elections following the election deadline.

NYBOT membership interests as to which a NYBOT member has not made a valid election prior to the election deadline, including as a result of revocation, will be deemed to be no election membership interests.

The exchange agent will have reasonable discretion to determine whether any election, revocation or change to an election form has been properly or timely made and to disregard immaterial defects in the election forms. If the exchange agent determines that any purported election was not properly made, such election will be deemed to be of no force or effect, and a NYBOT membership interest subject to the purported election will be considered a no election membership interest, unless a proper election is subsequently made on a timely basis. NYBOT membership interests as to which a NYBOT member has made no election to receive cash or stock consideration in the merger, as to which elections are not received by the exchange agent by the election deadline, or as to which election forms are improperly completed or are not signed, will be considered no election membership interests.

Election forms will be available to any person who becomes a NYBOT member between the close of business on the fifth business day prior to the date on which the election form is mailed to NYBOT members and the close of business on the business day prior to the election deadline, upon such NYBOT member s reasonable request.

Proration and Allocation Procedure

The cash election and the stock election are subject to proration and allocation adjustments that will ensure that, in the aggregate, the amount of cash issued in the merger will amount to $400,000,000 (plus NYBOT s excess working capital as of the effective time of the merger). Accordingly, regardless of the number of cash elections or stock elections made by NYBOT members, the aggregate amount of cash that will be issued to

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NYBOT members pursuant to the merger will be $400,000,000 (plus NYBOT s excess working capital as of the effective time of the merger).

Oversubscription of the Cash Election. The cash election will be oversubscribed if the aggregate elections made by NYBOT members would require payment of more than $400,000,000 of cash to NYBOT members (not including payments in respect of NYBOT s excess working capital). In case of a cash oversubscription, the cash consideration will be adjusted so that the amount of cash issued to NYBOT members making the cash election is decreased to approximately $400,000,000, and a number of shares of ICE common stock will be issued to those NYBOT members in the place of such deficiency. Specifically, in this scenario:

- all membership interests for which a stock election has been made or for which there has been no election will receive only the stock consideration;
- the exchange agent will determine, pro rata from among the membership interests for which a cash election has been made, a sufficient percentage of such membership interests to receive stock consideration so that the aggregate cash consideration to be paid in the merger (not including payments in respect of NYBOT s excess working capital) is equal to approximately $400,000,000; and
- to the extent membership interests for which a cash election has been made do not receive stock consideration pursuant to proration, such membership interests will receive cash consideration.

The proration process to be used by the exchange agent will consist of such equitable proration processes as determined by ICE in accordance with the merger agreement.

Oversubscription of the Stock Election. The stock election will be oversubscribed if the aggregate elections made by NYBOT members would require payment of less than $400,000,000 in cash (not including payments in respect of NYBOT s excess working capital). In case of a stock oversubscription, the stock consideration will be adjusted so that the number of shares of ICE common stock issued in respect of NYBOT membership interests is decreased, and an amount of cash will be issued in respect of NYBOT membership interests for which the stock election has been made in the place of such deficiency so that the total cash payment by ICE to NYBOT members (not including payments in respect of NYBOT s excess working capital) is approximately $400,000,000. Specifically, in this scenario:

- all membership interests for which a cash election has been made will be converted into the right to receive cash consideration;
- the exchange agent will determine first, pro rata from among the membership interests for which there has been no election, and then (if necessary), pro rata from among the membership interests for which a stock election has been made, a sufficient percentage of membership interests for which no election or a stock election, as applicable, has been made to receive the cash consideration such that the aggregate cash consideration to be paid in the merger is equal to $400,000,000; and
- the membership interests for which a stock election has been made and the membership interests for which there has been no election that will not receive cash consideration pursuant to proration will be converted into the right to receive stock consideration.

Cash Subscriptions Sufficient. If the aggregate cash consideration that would be paid upon the conversion of the cash election membership interests (not including payments in respect of NYBOT s excess working capital) is equal or nearly equal to $400,000,000, then all cash election membership interests will be converted into the right to receive cash consideration and all stock election membership interests and no election membership interests will be converted into the right to receive stock consideration.

Because of the proration and allocation procedures, NYBOT members cannot know for certain the amount of cash consideration or stock consideration they will receive at the time that the elections are required to be made. In addition, due to changes in the market price of ICE s common stock, the value of the cash consideration and stock consideration may differ from each other.

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Excess Working Capital

ICE and NYBOT have agreed that NYBOT and its subsidiaries, at the effective time of the merger, will have working capital of at least $12,000,000. Within 30 days after the completion of the merger, ICE will prepare a calculation of the actual aggregate working capital of NYBOT and its subsidiaries, on a consolidated basis, as of the effective time of the merger. In making this calculation, ICE will apply the same principles, practices, methodologies and policies used in the preparation of a sample calculation that has been agreed upon by ICE and NYBOT.

The amount of excess working capital will be calculated by, first, subtracting NYBOT s current liabilities from its current assets. The resulting amount of net assets is referred to as NYBOT s working capital balance. After the working capital balance is calculated, certain additional adjustments will be made that will decrease the amount of excess working capital. These additional deductions include, among other things, the amount of NYBOT s unpaid merger-related expenses, new indebtedness incurred by NYBOT between September 14, 2006 and the completion of the merger, certain accruals not accounted for on NYBOT s closing balance sheet and certain other one-time payments.

Subject to the adjustments discussed above, to the extent NYBOT s and its subsidiaries aggregate working capital balance at the effective time of the merger exceeds $12,000,000, the amount of the excess will be paid to former NYBOT members pro rata in proportion to their membership interests in NYBOT at the effective time of the merger.

No Fractional Shares

No person will receive fractional shares of ICE common stock in the merger. Instead, the exchange agent will sell, on behalf of NYBOT members, the aggregate fractional shares that those holders would otherwise have received, and each NYBOT member that otherwise would have received a fraction of a share of ICE common stock will receive cash in an amount equal to the member s proportional interest in the net proceeds of the sale.

Dividends; Withholding

Dividends and Distributions with Respect to Unexchanged Membership Interests. Any dividend or other distribution declared after the completion of the merger with respect to shares of ICE common stock into which NYBOT membership interests are convertible will not be paid (but will nonetheless accrue) until those membership interests are properly surrendered for exchange. ICE will pay to NYBOT members any unpaid dividends or other distributions, without interest, only after they have duly surrendered their book-entry interests. After the completion of the merger, there will be no transfers on the member records of the surviving corporation of the membership interests that were outstanding immediately prior to the completion of the merger.

Withholding. The exchange agent will be entitled to deduct and withhold from the merger consideration payable to any NYBOT member the amounts it is required to deduct and withhold under the Internal Revenue Code or any provision of any state, local or foreign tax law. If the exchange agent withholds any amounts, these amounts will be treated for all purposes of the merger as having been paid to the members from whom they were withheld.

Post-Closing Transfer Restrictions

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

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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).

Bonus Pool

Prior to the date on which the election forms are mailed to NYBOT members, NYBOT will deliver to ICE and the exchange agent an allocation schedule setting forth an allocation to certain governors and employees of NYBOT and its subsidiaries of up to an aggregate amount of $10,747,183.66, payable in cash and/or shares of ICE common stock valued at $63.127 per share (the bonus pool). If any of the bonus pool is not allocated to such governors and employees of NYBOT, the unallocated amount will be allocated to NYBOT members (the members allocation). The members allocation will be payable to the members in the relative proportions of cash and shares of ICE Common Stock (valued at $63.127 per share) in which such members are entitled to receive the merger consideration. ICE will not be required to distribute the bonus pool to the extent such distribution is not fully deductible by ICE, NYBOT or the surviving corporation under Section 162(m) or Section 280G of the Internal Revenue Code, and any such bonus pool not so distributed shall be distributed to the members.

Conditions to the Completion of the Merger

Conditions to Each Party s Obligations. Neither NYBOT nor ICE is required to complete the merger unless each of the following conditions is satisfied or waived:

- the merger agreement has been adopted by the affirmative vote of the holders of two-thirds of the votes cast by NYBOT members at a meeting where a quorum is present and the affirmative vote represents a quorum;
- the shares of ICE common stock to be issued in the merger have been authorized for listing on the NYSE (or, if this listing is not approved or permitted, another national securities exchange), upon official notice of issuance;
- the waiting period applicable to the merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or the HSR Act, has expired or been terminated;
- all consents or approvals from governmental authorities required to be obtained in connection with the merger have been obtained;
- no court or other governmental entity has enacted or issued any injunction, order, rule or law that restrains, enjoins or otherwise prohibits the completion of the merger or other transactions contemplated by the merger agreement and no governmental entity has instituted any proceeding seeking such an injunction, order, rule or law that, in each case, would result in or would be reasonably likely to result in a substantial detriment to ICE;
- the registration statement of which this document forms a part has been declared effective by the SEC, and no stop order suspending the effectiveness of the registration statement shall have been initiated or threatened by the SEC;
- the truth and accuracy of the representations and warranties of the other party, generally subject to any exceptions that, individually or in the aggregate, do not have, and would not reasonably be expected to have, a material adverse effect on the other party;
- the other party s performance in all material respects of all of its obligations that are required by the merger agreement to be performed on or prior to the closing date; and

all state securities and blue sky permits and approvals necessary to consummate the transactions contemplated by the merger agreement have been received.

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On November 1, 2006, the FTC granted early termination of the waiting period applicable to the merger under the HSR Act.

Additional ICE Closing Conditions. The obligation of ICE to complete the merger is also subject to the satisfaction or waiver of the following additional conditions:

- the receipt of all requisite regulatory approvals without the imposition of any term, condition or consequence that, if accepted, would reasonably be expected to result in a substantial detriment to ICE; and

- receipt by ICE of a private letter ruling from the Internal Revenue Service (or a copy of a private letter ruling issued by the Internal Revenue Service to NYBOT and reasonably acceptable to ICE) to the effect that the merger will be treated for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

Additional NYBOT Closing Conditions. The obligation of NYBOT to complete the merger is also subject to the satisfaction or waiver of the following additional condition:

- receipt by NYBOT of a private letter ruling from the Internal Revenue Service to the effect that (1) the merger will be treated for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, and (2) NYBOT members and holders of NYBOT permits will not recognize a gain in connection with the merger other than with respect to any cash consideration they receive.

For purposes of the merger agreement, the term material adverse effect means, with respect to NYBOT, a material adverse effect on:

- the business, results of operations or financial condition of (1) NYBOT and its subsidiaries, taken as a whole, or (2) NYCC; or

- the ability of NYBOT to complete the merger prior to the termination date of the merger agreement.

The following, however, will not be considered in determining whether a material adverse effect with respect to NYBOT has occurred:

- any change or development in economic, business or commodities exchange conditions generally to the extent that the change or development does not affect NYBOT and its subsidiaries, taken as a whole, or NYCC, separately, in a materially disproportionate manner relative to other commodities exchanges;

- any change or development to the extent resulting from the execution or announcement of the merger agreement or the transactions contemplated by the merger agreement;

- any change or development to the extent proximately resulting from any action or omission by NYBOT or any of its subsidiaries that is required by the merger agreement;

- the announcement, commencement or continuation of war or armed hostilities or the occurrence of any act or acts of terrorism; or

- any effect arising from or relating to any change in United States generally accepted accounting principles or any change in applicable laws, rules or regulations or the interpretation thereof.

For purposes of the merger agreement, the term material adverse effect means, with respect to ICE, a material adverse effect on:

the business, results of operations or financial condition of ICE and its subsidiaries, taken as a whole; or

the ability of ICE to complete the merger prior to the termination date of the merger agreement.

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The following, however, shall not be considered in determining whether a material adverse effect with respect to ICE has occurred:

- any change or development in economic, business or commodities market conditions generally to the extent that the change or development does not affect ICE and its subsidiaries, taken as a whole, in a materially disproportionate manner relative to other commodities exchanges or trading markets;
- any change or development to the extent resulting from the execution or announcement of the merger agreement or the transactions contemplated by the merger agreement;
- any change or development to the extent proximately resulting from any action or omission by ICE or any of its subsidiaries that is required by the merger agreement;
- the announcement, commencement or continuation of war or armed hostilities or the occurrence of any act or acts of terrorism; or
- any effect arising from or relating to any change in United States generally accepted accounting principles or any change in applicable laws, rules or regulations or the interpretation thereof.

For purposes of merger agreement, the term substantial detriment means, with respect to ICE, a material adverse effect on the business, results of operations or financial condition of ICE and its subsidiaries, taken as a whole, or on the surviving corporation and its subsidiaries, taken as a whole.

NYBOT may be required to re-solicit your vote in the event that a material condition to the merger is waived by one of us.

Reasonable Best Efforts to Obtain Required Approvals

NYBOT and ICE have agreed to cooperate with each other and use reasonable best efforts to take all actions necessary to complete the merger and the other transactions contemplated by the merger agreement, including taking such actions necessary to obtain any required consents from third parties and/or governmental entities or self-regulatory organizations. However, the merger agreement does not require ICE to agree to sell any assets, businesses, or interests in any assets or businesses of ICE or any of its affiliates or to consent to any sale, or agreement to sell, by NYBOT or any of its subsidiaries, of any of its assets or businesses, if such action would, individually or in the aggregate, reasonably be expected to result in a substantial detriment to ICE.

No Solicitation of Alternative Transactions

The merger agreement contains detailed provisions prohibiting NYBOT from seeking an alternative transaction to the merger. Under these no solicitation provisions, NYBOT has agreed not to:

- initiate, solicit, knowingly encourage (including by way of furnishing information), facilitate or induce any inquires or the making, submission or announcement of an acquisition proposal (as described below);
- hold any discussions with or provide any confidential information or data to any person or entity relating to an acquisition proposal, or engage in any negotiations concerning an acquisition proposal, or knowingly facilitate any effort or attempt to make or implement an acquisition proposal;

approve or recommend, or propose publicly to approve or recommend, any acquisition proposal; or

approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement related to any acquisition proposal or propose publicly or agree to do any of the foregoing.

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For purposes of the merger agreement, the term acquisition proposal means any offer or proposal for, or any indication of interest in (other than acquisitions permitted by the terms of the merger agreement):

- any direct or indirect acquisition or purchase of NYBOT, NYCC or any NYBOT subsidiary that constitutes 10% or more of the consolidated gross revenue or consolidated gross assets of NYBOT and its subsidiaries, taken as a whole. We will refer to NYCC and each such subsidiary as a major subsidiary;

- any direct or indirect acquisition or purchase of (1) 10% or more of any class of equity securities or voting power or 10% or more of the consolidated gross assets of NYBOT, or (2) 50% or more of any class of equity securities or voting power of any of its major subsidiaries;

- any tender offer that, if consummated, would result in any person or entity beneficially owning 10% or more of any class of equity securities or voting power of NYBOT; or

- any merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving NYBOT or any major subsidiary of NYBOT.

The merger agreement permits NYBOT and its board of governors to comply with Rule 14d-9 and Rule 14e-2 under the Securities Exchange Act of 1934 with regard to an acquisition proposal that NYBOT may receive and to make other disclosures required by law or the fiduciary duties of NYBOT s board of governors.

If NYBOT receives an unsolicited bona fide written acquisition proposal prior to the receipt of NYBOT member approval of the merger agreement, NYBOT may engage in discussions or negotiations with, or provide information to, the person making that acquisition proposal, if and only to the extent that:

- NYBOT s board of governors, after consultation with its outside legal counsel and financial advisors, concludes in good faith that there is a reasonable likelihood that the acquisition proposal would result in a superior proposal (as described below);

- NYBOT s board of governors, after consultation with its outside legal counsel, determines in good faith that failure to take the action would be inconsistent with the board s fiduciary duties under applicable law;

- prior to providing information or data to any person in connection with the acquisition proposal, NYBOT s board of governors receives from the person making the acquisition proposal an executed confidentiality agreement with terms that are no less restrictive, in the aggregate, than those contained in the confidentiality agreement between NYBOT and ICE; and

- NYBOT is not in material breach of its obligations with the no solicitation provisions in the merger agreement.

In addition, if NYBOT receives an unsolicited bona fide written acquisition proposal prior to the receipt of NYBOT member approval of the merger agreement, NYBOT may withdraw or change its recommendation in favor of adopting the merger agreement if:

- NYBOT s board of governors, after consultation with outside legal counsel and financial advisors, concludes in good faith that the acquisition proposal which has been received constitutes a superior proposal (as described below); and

NYBOT s board of governors, after consultation with outside legal counsel, determines in good faith that failure to take the action would be inconsistent with the board s fiduciary duties under applicable law.

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For purposes of the merger agreement, superior proposal means a bona fide written acquisition proposal obtained by NYBOT (other than any such proposal obtained in breach of the no solicitation provisions in the merger agreement) for or in respect of:

- all of the outstanding voting power of and economic interest in the membership interests or any other capital stock of NYBOT, or
- all of the assets of NYBOT and its subsidiaries, on a consolidated basis,

on terms that NYBOT s board of governors concludes in good faith, after receipt of the advice of its financial advisors and outside legal counsel, is more favorable, from a financial point of view to NYBOT members, than the merger contemplated by the merger agreement, after taking into account all legal, financial, regulatory, structural and other aspects of the acquisition proposal and the merger agreement and any improved terms that ICE has offered pursuant to the merger agreement that are deemed relevant by NYBOT s board of governors (including conditions to and the expected timing and risks of completion and the ability of the party making the acquisition proposal to obtain financing).

NYBOT has agreed in the merger agreement that it will:

- notify ICE, within two business days of receipt of any acquisition proposal or any request for nonpublic information or inquiry that NYBOT reasonably believes could lead to an acquisition proposal, of the material terms and conditions of the acquisition proposal, request or inquiry and the identity of the person making the acquisition proposal, request or inquiry; and
- thereafter provide ICE, as promptly as practicable, with oral and written notice containing information as is reasonably necessary to keep ICE informed in all material respects of the status and details of the acquisition proposal, request or inquiry.

As described in Termination Termination Rights, ICE will have an opportunity to match the terms of the superior proposal so that it would no longer constitute a superior proposal.

Members Meeting

NYBOT has agreed in the merger agreement to convene a meeting of its members on a date mutually agreed upon by NYBOT and ICE that shall be as promptly as practicable (but in no event more than 35 days) after the registration statement of which this document forms a part is declared effective, to consider and vote upon the adoption and approval of the merger agreement. Additionally, subject to fiduciary obligations under applicable law, NYBOT s board of governors agreed to recommend and solicit the approval and adoption of the merger agreement. In the event that NYBOT s board of governors determines that the merger agreement is no longer advisable and either (1) makes no recommendation or (2) recommends that its members reject the merger agreement, NYBOT shall nevertheless submit the merger agreement to its members for approval and adoption at their meeting unless the merger agreement has been terminated in accordance with the terms of the merger agreement.

Termination

Termination Rights

NYBOT and ICE may terminate the merger agreement at any time prior to the completion of the merger by mutual consent. In addition, the board of directors or governors, as applicable, of either NYBOT or ICE may terminate the merger agreement at any time prior to the completion of the merger if:

- the merger is not completed on or before June 14, 2007 (the termination date), except that this right to terminate will not be available to a party whose failure to perform any material covenant or obligation under the merger agreement was the cause of, resulted in, or proximately contributed to the failure of the merger to be completed by the termination date.

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NYBOT members do not approve and adopt the merger agreement at their meeting or any adjournment or postponement of the meeting, except that this right to terminate will not be available to NYBOT if NYBOT has breached in any material respect its obligations to properly convene and hold a members meeting in a manner that proximately contributes to NYBOT s members meeting not being held, or the vote of NYBOT members not being taken, prior to the termination date;

any governmental entity which must grant a regulatory approval that is required to be obtained in connection with the merger has (1) denied such grant and such denial has become final, binding and non-appealable or (2) has conditioned such grant in a manner that ICE reasonably determines would be reasonably likely to result in a substantial detriment to ICE, and such condition has become final, binding and non-appealable; or

any order permanently restraining, enjoining or otherwise prohibiting completion of the merger becomes final and non-appealable.

Each of NYBOT and ICE have the right to extend the termination date to September 14, 2007 if the only conditions to the completion of the merger that have not yet been satisfied are those conditions outlined in Conditions to the Completion of the Merger Conditions to Each Party s Obligations or those conditions relating to the receipt of a private letter ruling from the Internal Revenue Service.

Additionally, ICE may terminate the merger agreement at any time prior to the completion of the merger, if:

NYBOT s board of governors changes its recommendation for the merger or fails to reconfirm its recommendation within seven business days after a written request by ICE to do so;

NYBOT breaches in any material respect any of its representations, warranties, covenants or agreements contained in the merger agreement (which breach would prevent satisfaction of ICE s relevant closing conditions), and the breach is not curable or, if curable, is not cured prior to the earlier of (1) the date that is 30 days after written notice of the breach is given by ICE to NYBOT, or (2) the business day prior to the termination date of the merger agreement; or

NYBOT or any of its affiliates, agents or representatives breaches in any material respect the no solicitation provisions described under No Solicitation of Alternative Transactions.

NYBOT may terminate the merger agreement:

at any time prior to the approval of the merger agreement by NYBOT members, if NYBOT s board of governors authorizes NYBOT to enter into a binding agreement for an alternative transaction that constitutes a superior proposal (after notifying ICE of its intention to enter into this agreement and after providing ICE with an opportunity to match the terms of the alternative transaction so that it would not be a superior proposal), and NYBOT is not in material breach of the no solicitation provisions described under No Solicitation of Alternative Transactions, or any other terms of the merger agreement; or

before or after the approval of the merger agreement by NYBOT members, if ICE breaches in any material respect any of its representations, warranties, covenants or agreements contained in the merger agreement (which breach would prevent satisfaction of NYBOT s closing conditions), and the breach is not curable or if curable, is prior to the earlier of (x) the date that is 30 days after written notice of the breach is given by NYBOT to ICE, or (y) the business day prior to the termination date of the merger agreement.

Termination Fees and Expense Reimbursement

The merger agreement requires NYBOT to pay ICE a termination fee of $39,000,000 and also reimburse ICE for its out-of-pocket expenses in an aggregate amount up to $5,000,000 as follows:

if NYBOT terminates the merger agreement because the termination date has occurred, and at that time ICE would have been permitted to terminate the merger agreement on the ground that NYBOT s board of governors changed its recommendation or failed to reconfirm its recommendation for the merger as described above;

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if NYBOT terminates the merger agreement in order to enter into an alternative transaction that constitutes a superior proposal as described above; or

if ICE terminates the merger agreement because NYBOT s board of governors changed its recommendation or failed to reconfirm its recommendation for the merger.

In addition, if an acquisition proposal is made to NYBOT or its subsidiaries, or any person announces a bona fide intention to make an acquisition proposal with respect to NYBOT or its subsidiaries, and thereafter the merger agreement is terminated:

by either ICE or NYBOT because NYBOT members did not approve and adopt the merger agreement at their meeting convened for that purpose (including any adjournment or postponement of that meeting);

by either ICE or NYBOT because the termination date of the merger agreement has occurred and, at that time, the vote of NYBOT members to approve the merger agreement has not been taken and the only closing condition that is not satisfied is the failure to have received the approval for the merger by NYBOT members;

by ICE because NYBOT materially breached the no solicitation provisions described under No Solicitation of Alternative Transactions; or

by ICE because NYBOT materially breached its representations, warranties, covenants or agreements contained in the merger agreement (which breach would prevent satisfaction of ICE s closing conditions), and the breach is not curable or if curable, is not cured prior to the earlier of (x) the date that is 30 days after written notice of the breach is given by ICE to NYBOT, or (y) the business day prior to the termination date of the merger agreement;

then, in each case, NYBOT must:

pay the expense reimbursement within two days after termination; and

pay the termination fee if, within nine months of the termination, (1) any third party has acquired or has entered into an agreement with NYBOT or its subsidiaries to acquire (either through a purchase, merger, consolidation or otherwise) a majority of the voting power or economic interests in the outstanding membership interests or other equity securities of NYBOT or a majority of the consolidated assets of NYBOT and its subsidiaries, taken as a whole, or (2) a business combination transaction (such as a merger or consolidation) has been completed between NYBOT and a third party after which NYBOT members do not hold a majority of the voting power or economic interest in the surviving or successor company.

If NYBOT fails to pay all amounts of the termination fee and expense reimbursement due on the specified dates, then NYBOT must also pay ICE s expenses for actions taken to collect the unpaid amounts, including interest on the unpaid amounts, calculated at the prime rate plus 200 basis points.

Conduct of Business Pending the Merger

NYBOT and ICE agreed in the merger agreement that, until the earlier of the completion of the merger or the termination of the merger agreement, they would conduct their respective businesses in the ordinary and usual course consistent with past practice and use reasonable best efforts to preserve their respective business organizations and maintain relationships and goodwill with governmental entities, self-regulatory entities, providers of order flow, customers, other business associates, members and stockholders. NYBOT and ICE also agreed not to declare, set aside or pay any type of dividend in respect of any membership interests or capital stock, as appropriate, other than dividends payable by wholly-owned subsidiaries of each party to such party or such party s other wholly-owned subsidiaries.

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NYBOT and its subsidiaries also agreed to certain restrictions relating to the conduct of their businesses during this period. Specifically, NYBOT agreed not to do the following without the prior written consent of ICE (subject to exceptions specified in the merger agreement):

issue any new membership interests, other membership interests, capital stock or any securities convertible into or exchangeable or exercisable for any membership interests or shares of capital stock, trading rights, other trading permits, or any lease rights;

sell, pledge, dispose of or encumber, split, combine or reclassify, or repurchase, redeem or acquire any outstanding NYBOT membership interests, other membership interests, capital stock or any securities convertible into or exchangeable or exercisable for any membership interests or shares of capital stock, permits, trading rights, other trading permits, or any lease rights;

make any structural changes to NYCC, agree to (other than in the ordinary course of business) list or clear any additional products or markets, change its risk policies or reduce its guaranty fund, liquidity or credit resources;

(1) terminate, establish, amend or make new grants under any employee benefit plans or similar arrangements, (2) increase the compensation of any employees or fringe benefits of any governor, officer or employee (except increases occurring in the ordinary and usual course of business consistent with past practice), (3) grant any equity-related award, pay or grant change in control or severance benefits to any NYBOT employee or governor in connection with the merger, (4) accelerate the vesting or payment of compensation or benefits under NYBOT s benefit plans, (5) change actuarial or other assumptions with respect to NYBOT benefit plans, (6) adopt or amend a collective bargaining