

INTERCONTINENTALEXCHANGE INC

Form S-4

October 31, 2006

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

Registration No. 333-[•]

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

INTERCONTINENTALEXCHANGE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

6200
(Primary Standard Industrial
Classification Code Number)

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

c/o IntercontinentalExchange, Inc.

2100 RiverEdge Parkway, Suite 500

Atlanta, Georgia 30328

(770) 857-4700

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

Johnathan H. Short, Esq.
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2100 RiverEdge Parkway, Suite 500
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(Name, address, including zip code, and telephone number, including area code, of agent for service)

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

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

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

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

Calculation of registration fee

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

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

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

SUBJECT TO COMPLETION, DATED OCTOBER 31, 2006

PROSPECTUS OF ICE

PROXY STATEMENT OF NYBOT

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

MERGER PROPOSALS YOUR VOTE IS VERY IMPORTANT

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

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

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

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

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

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

voting against the approval and adoption of the merger agreement.

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

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

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

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

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CERTAIN FREQUENTLY USED TERMS

Unless otherwise specified or if the context so requires:

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

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

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

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

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

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

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

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

SEC refers to the United States Securities and Exchange Commission.

IMPORTANT

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

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

REGISTERED TRADEMARKS

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

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ADDITIONAL INFORMATION

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

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

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

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

Notice of Special Meeting of Members

To Be Held on

[•]

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

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

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

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

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

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

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

By order of the board of governors,

Frederick W. Schoenhut, Chairman

On behalf of the board

[•], 200 [•]

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

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

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QUESTIONS AND ANSWERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETING

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

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

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