

INTERCONTINENTALEXCHANGE INC

Form S-3ASR

August 01, 2007

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**As filed with the Securities and Exchange Commission on August 1, 2007**  
**Registration No. 333-**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Form S-3**  
**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)*

**58 2555 670**  
*(I.R.S. Employer  
Identification Number)*

**2100 RiverEdge Parkway**  
**Suite 500**  
**Atlanta, GA 30328**  
**(770) 857-4700**  
*(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)*

**Johnathan H. Short, Esq.**  
**Andrew J. Surdykowski, Esq.**  
**IntercontinentalExchange, Inc.**  
**2100 RiverEdge Parkway**  
**Suite 500**  
**Atlanta, GA 30328**

**(770) 857-4700**

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

*Copy to:*

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

**Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, 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, please 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(c) 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

#### **CALCULATION OF REGISTRATION FEE**

**Amount to be registered/Proposed  
maximum**

| <b>Title of each class of securities to be registered</b> | <b>offering price per unit/Proposed maximum offering price/Amount of registration fee</b> |
|---|---|
| Common Stock, par value \$0.01 per share(1)               | (2)   |

- (1) The common stock may be offered and sold by the Registrant and/or may be offered and sold from time to time by one or more selling shareholders to be identified in the future.
  - (2) An indeterminate aggregate initial offering price or number of shares of common stock is being registered as may from time to time be issued at indeterminate prices. In accordance with Rules 456(b) and 457(r) the Registrant is deferring payment of all of the registration fee.
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PROSPECTUS

**INTERCONTINENTALEXCHANGE, INC.**

**Common Stock**

This prospectus relates to shares of our common stock that we may offer and sell from time to time in amounts, at prices and on terms that will be determined at the time of the offering. In addition, selling shareholders to be named in a prospectus supplement may use this prospectus to offer and sell shares of our common stock from time to time as provided herein.

Each time any common stock is offered pursuant to this prospectus, we will provide a prospectus supplement and attach it to this prospectus. The prospectus supplement will contain more specific information about the offering, including the names of and other information relating to the selling shareholders, if applicable. A prospectus supplement may also add, update or change information contained in this prospectus. This prospectus may not be used to offer or sell securities unless accompanied by a prospectus supplement describing the method and terms of the applicable offering.

We and any selling shareholders may offer and sell shares of common stock directly, through agents, dealers or underwriters as designated from time to time, or through a combination of these methods. If any agents, dealers or underwriters are involved in the sale of any shares of our common stock, the applicable prospectus supplement will set forth any applicable commissions or discounts.

Our common stock is listed on the New York Stock Exchange and trades under the ticker symbol **ICE**.

You should carefully read this prospectus and the applicable prospectus supplement, together with the documents incorporated by reference, before you invest in our common stock.

*See Risk Factors beginning on page 23 of our Annual Report on Form 10-K for the year ended December 31, 2006 and on page 51 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, which are incorporated herein by reference, to read about factors you should consider before buying shares of our common stock.*

**Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**



**You should rely only on the information contained in this prospectus and the accompanying prospectus supplement, including the information incorporated by reference herein as described under Where You Can Find More Information , or any free writing prospectus that we prepare and distribute. Neither we nor any selling shareholder have authorized anyone to provide you with information different from that contained in or incorporated by reference into this prospectus and the accompanying prospectus supplement or any such free writing prospectus. This prospectus, the accompanying prospectus supplement and any such free writing prospectus may be used only for the purposes for which they have been published, and no person has been authorized to give any information not contained in or incorporated by reference into this prospectus and the accompanying prospectus supplement or any such free writing prospectus. If you receive any other information, you should not rely on it. You should not assume that the information contained in or incorporated by reference into this prospectus is accurate as of any date other than the date on the cover page of this prospectus. Neither we nor any selling shareholder are making an offer of these securities in any jurisdiction where the offer is not permitted.**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf process, we and the selling shareholders may sell the securities described in this prospectus in one or more offerings. Each time we or the selling shareholders sell securities, we will provide a prospectus supplement along with this prospectus that will contain specific information about the terms of the offering. The accompanying prospectus supplement may also add, update or change information contained in this prospectus. If information varies between this prospectus and the accompanying prospectus supplement, you should rely on the information in the accompanying prospectus supplement. You should read both this prospectus and the accompanying prospectus supplement together with the additional information described under **Where You Can Find More Information**.

**WHERE YOU CAN FIND MORE INFORMATION**

We are required to file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any documents filed by us at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Our filings with the SEC are also available to the public through the SEC's Internet site at <http://www.sec.gov> and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which our common stock is listed.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all of the information in the registration statement. Whenever a reference is made in this prospectus to a contract or other document of ours, please be aware that the reference is only a summary and that you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's public reference room in Washington, D.C., as well as through the SEC's Internet site.

**INCORPORATION OF CERTAIN INFORMATION BY REFERENCE**

The SEC's rules allow us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document. Any information referred to in this way is considered part of this prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus and before the date that the offering of the securities by means of this prospectus is terminated will automatically update and, where applicable, supersede any information contained in this prospectus or incorporated by reference in this prospectus.

We incorporate by reference into this prospectus the following documents or information filed by us with the SEC (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

(1) Annual Report on Form 10-K for the fiscal year ended December 31, 2006, filed on February 26, 2007 (File No. 001-32671);

(2) Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2007 and June 30, 2007, filed on May 4, 2007 and July 27, 2007, respectively (File No. 001-32671);



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- (3) Current Report on Form 8-K, dated and filed on January 12, 2007 (File No. 001-32671);
- (4) Current Report on Form 8-K, dated January 29, 2007 and filed on February 1, 2007 (File No. 001-32671);
- (5) Amendment to Current Report on Form 8-K, dated on January 12, 2007 and filed on February 14, 2007 (File No. 001-32671);

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- (6) Current Report on Form 8-K, dated March 6, 2007 and filed on March 9, 2007 (File No. 001-32671);
- (7) Current Report on Form 8-K, dated and filed on March 15, 2007 (File No. 001-32671);
- (8) Current Report on Form 8-K, dated and filed on March 26, 2007 (File No. 001-32671);
- (9) Current Report on Form 8-K, dated April 30, 2007 and filed on May 2, 2007 (File No. 001-32671);
- (10) Current Report on Form 8-K, dated May 30, 2007 and filed on June 5, 2007 (File No. 001-32671);
- (11) Current Report on Form 8-K, dated June 11, 2007 and filed on June 14, 2007 (File No. 001-32671);
- (12) Current Report on Form 8-K, dated June 15, 2007 and filed on June 20, 2007 (File No. 001-32671);
- (13) Current Report on Form 8-K, dated July 18, 2007 and filed on July 24, 2007 (File No. 001-32671);
- (14) the description of our common stock contained in our Registration Statement on Form S-1 (File No. 333-123500), as amended, which description is incorporated by reference in our Registration Statement on Form 8-A, dated November 14, 2005 (File No. 001-32671), filed with the SEC under Section 12(b) of the Securities Exchange Act of 1934; and
- (15) All documents filed by us under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 on or after the date of this prospectus and before the termination of the applicable offering.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all documents referred to above which have been or may be incorporated by reference into this prospectus excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You can request those documents from Investor Relations, 2100 RiverEdge Parkway, Suite 500, Atlanta, GA 30328, telephone (770) 857-4700.

When we refer to we, our or us in this prospectus we mean IntercontinentalExchange, Inc. and its consolidated subsidiaries.

**FORWARD-LOOKING STATEMENTS**

We have included or incorporated by reference in this prospectus statements that may constitute forward-looking statements within the meaning of the safe harbor provisions of The Private Securities Litigation Reform Act of 1995. These forward-looking statements are not historical facts but instead represent only our belief regarding future events, many of which, by their nature, are inherently uncertain and outside of our control. It is possible that our actual results may differ, possibly materially, from the anticipated results indicated in these forward-looking statements.

Information regarding important factors that could cause actual results to differ, perhaps materially, from those in our forward-looking statements is set forth in Item 1(A) under the caption Risk Factors and elsewhere in our Annual Report on Form 10-K for the fiscal year ended December 31, 2006 and our Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2007 and June 30, 2007, which are incorporated in this prospectus by reference (and in any of our annual or quarterly reports for a subsequent fiscal year or fiscal quarter that are so incorporated). See Available Information above for information about how to obtain a copy of these documents.



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**INTERCONTINENTALEXCHANGE, INC.**

We operate the leading electronic global futures and over-the-counter, or OTC, marketplace for trading a broad array of energy products as well as the leading global soft commodities exchange. We are the only marketplace to offer an integrated electronic platform for side-by-side trading of energy products in both futures and OTC markets. We also offer open-outcry trading in NYBOT's regulated futures and options markets, including soft commodities, foreign exchange and equity and commodity indices. We conduct our OTC business directly as an Exempt Commercial Market under the Commodity Exchange Act, and we conduct our regulated energy futures business through our wholly-owned subsidiary, ICE Futures. Following the completion of our acquisition of NYBOT on January 12, 2007, we conduct our regulated soft commodities and financial futures and options markets through NYBOT, which owns the ICE Clear US, Inc. (formerly known as New York Clearing Corp.), a clearing house. NYBOT plans to change its name to ICE Futures US in September 2007. We also offer a variety of market data services for both energy futures and OTC markets through ICE Data, our market data subsidiary. Our principal executive offices are located at 2100 RiverEdge Parkway, Suite 500, Atlanta, Georgia 30328, and our telephone number is 770-857-4700.

**DESCRIPTION OF CAPITAL STOCK**

*The following descriptions are summaries of the material terms of our amended and restated charter and bylaws. They may not contain all of the information that is important to you. To understand them fully, you should read our amended and restated charter and bylaws, copies of which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part. The following descriptions are qualified in their entirety by reference to the amended and restated charter and bylaws and applicable law.*

Pursuant to our amended and restated charter, our authorized capital stock consists of 300,000,000 shares, each with a par value of \$0.01 per share, of which:

25,000,000 shares are designated as preferred stock; and

275,000,000 shares are designated as common stock, divided into the following classes:

194,275,000 shares are designated as common stock, which we refer to as common stock, 69,288,488 shares of which are outstanding as of July 23, 2007; and

80,725,000 shares are designated as Class A common stock, divided into two series: Class A common stock, Series 1 and Class A common stock, Series 2, of which no shares are outstanding as of July 23, 2007.

In this prospectus, unless the context otherwise requires, we refer to the common stock and the Class A common stock, collectively, as our common stock. All outstanding shares of common stock are, and the shares of common stock offered hereby will be, when issued and sold, validly issued, fully paid and nonassessable.

**Preferred Stock**

Our authorized capital stock includes 25,000,000 shares of preferred stock, none of which is outstanding. Our board of directors is authorized to divide the preferred stock into series and, with respect to each series, to determine the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors could,

without shareholder approval, issue preferred stock with voting and other rights that could adversely affect the voting power of the holders of common stock and which could have certain anti-takeover effects.

Subject to the rights of the holders of any series of preferred stock, the number of authorized shares of any series of preferred stock may be increased or decreased (but not below the number of shares thereof then outstanding) by resolution adopted by our board of directors and approved by the affirmative vote of the

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holders of a majority of the voting power of all outstanding shares of capital stock entitled to vote on the matter, voting together as a single class.

### **Common Stock**

Our authorized capital stock includes 275,000,000 shares of common stock, divided into two classes: common stock and Class A common stock. Of the Class A common stock, no shares are outstanding or may be issuable. Following the conversion of all outstanding shares of Class A1 and Class A2 common stock to common stock, the Class A1 shares and the Class A2 shares were cancelled and may no longer be issued. The terms of our common stock are discussed below.

Our common stock has the following rights and privileges:

*Voting:* Each holder of shares of common stock is entitled to one vote for each share owned of record on all matters submitted to a vote of shareholders. Except as otherwise required by law or as described below, holders of shares of common stock will vote together as a single class on all matters presented to the shareholders for their vote or approval, including the election of directors. There are no cumulative voting rights. Accordingly, the holders of a majority of the total shares of common stock voting for the election of directors can elect all the directors if they choose to do so, subject to the voting rights of holders of any preferred stock to elect directors.

*Dividends and distributions:* The holders of shares of common stock have the right to receive dividends and distributions, whether payable in cash or otherwise, as may be declared from time to time by our board of directors from legally available funds.

*Liquidation, dissolution or winding-up:* In the event of our liquidation, dissolution or winding-up, holders of the shares of common stock are entitled to share equally, share-for-share, in the assets available for distribution after payment of all creditors and the liquidation preferences of our preferred stock.

*Restrictions on transfer:* Neither our charter nor our bylaws contain any restrictions on the transfer of shares of common stock. In the case of any transfer of shares, there may be restrictions imposed by applicable securities laws.

*Redemption, conversion or preemptive rights:* Holders of shares of common stock have no redemption or conversion rights or preemptive rights to purchase or subscribe for our securities.

*Other provisions:* There are no redemption provisions or sinking fund provisions applicable to the common stock, nor is the common stock subject to calls or assessments by us.

The rights, preferences, and privileges of the holders of common stock are subject to and may be adversely affected by, the rights of the holders of any series of preferred stock that we may designate and issue in the future. As of the date of this prospectus, there are no shares of preferred stock outstanding.

### **Limitation of Liability and Indemnification Matters**

Our charter provides that none of our directors will be liable to us or our shareholders for monetary damages for breach of fiduciary duty as a director, except in those cases in which liability is mandated by the Delaware General Corporation Law, and except for liability for breach of the director's duty of loyalty, acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, or any transaction from which the director derived

any improper personal benefit. Our bylaws provide for indemnification, to the fullest extent permitted by law, of any person made or threatened to be made a party to any action, suit or proceeding by reason of the fact that such person is or was one of our directors or senior officers or, at our request, serves or served as a director, officer, employee or agent of any other enterprise, against all expenses, liabilities, losses and claims actually incurred or suffered by such person in connection with the action, suit or proceeding. Our bylaws also provide that, to the extent authorized from time to time by our board of directors, we may provide to any one or more other persons rights of indemnification and rights to receive payment or reimbursement of expenses, including attorneys' fees.

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**Section 203 of the Delaware General Corporation Law**

We are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested shareholder for a period of three years after the date of the transaction in which the person became an interested shareholder, unless the business combination is approved in a prescribed manner. A business combination includes a merger, asset sale or a transaction resulting in a financial benefit to the interested shareholder. An interested shareholder is a person who, together with affiliates and associates, owns (or, in certain cases, within three years prior, did own) 15% or more of the corporation's outstanding voting stock. Under Section 203, a business combination between us and an interested shareholder is prohibited during the relevant three-year period unless it satisfies one of the following conditions:

prior to the time the shareholder became an interested shareholder, our board of directors approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;

on consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of our voting stock outstanding at the time the transaction commenced (excluding, for purposes of determining the number of shares outstanding, shares owned by persons who are directors and officers); or

the business combination is approved by our board of directors and authorized at an annual or special meeting of the shareholders by the affirmative vote of at least 66<sup>2</sup>/<sub>3</sub>% of our outstanding voting stock that is not owned by the interested shareholder.

**Certain Anti-Takeover Matters**

Our charter and bylaws include a number of provisions that may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include:

***Board of Directors***

Vacancies and newly created seats on our board may be filled only by our board of directors. Only our board of directors may determine the number of directors on our board. The inability of shareholders to determine the number of directors or to fill vacancies or newly created seats on the board makes it more difficult to change the composition of our board of directors, but these provisions promote a continuity of existing management.

***Advance Notice Requirements***

Our bylaws establish advance notice procedures with regard to shareholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our shareholders. These procedures provide that notice of such shareholder proposals must be timely given in writing to our secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year. The notice must contain certain information specified in the bylaws.

***Adjournment of Meetings of Shareholders Without a Shareholder Vote***



Our bylaws permit the chairman of the meeting of shareholders, who is appointed by the board of directors, to adjourn any meeting of shareholders for a reasonable period of time without a shareholder vote.

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### ***Special Meetings of Shareholders***

Our bylaws provide that special meetings of the shareholders may be called by the board of directors, the chairman of the board, the chief executive officer, or at the request of holders of at least 50% of the shares of common stock outstanding at the time.

### ***No Written Consent of Shareholders***

Our charter requires all shareholder actions to be taken by a vote of the shareholders at an annual or special meeting. Our charter generally does not permit our shareholders to act by written consent without a meeting.

### ***Amendment of Bylaws and Charter***

Our charter requires the approval of not less than 66 $\frac{2}{3}$ % of the voting power of all outstanding shares of our capital stock entitled to vote to amend any bylaw by shareholder action or to amend the charter provisions described in this section. This supermajority voting requirement makes it more difficult to alter the anti-takeover provisions of our bylaws and our charter. Our charter also authorizes the board of directors to amend the bylaws at any time without shareholder action.

### ***Blank Check Preferred Stock***

Our charter provides for 25,000,000 authorized shares of preferred stock. The existence of authorized but unissued shares of preferred stock may enable the board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal is not in our best interests, the board of directors could cause shares of preferred stock to be issued without shareholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent shareholder or shareholder group. In this regard, the charter grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of preferred stock. The issuance of shares of preferred stock could decrease the amount of earnings and assets available for distribution to holders of shares of common stock. The issuance may also adversely affect the rights and powers, including voting rights, of such holders and may have the effect of delaying, deterring or preventing a change in control. The board of directors currently does not intend to seek shareholder approval prior to any issuance of shares of preferred stock, unless otherwise required by law.

### **Listing**

Our common stock is listed on the New York Stock Exchange under the symbol ICE .

### **Transfer Agent**

The transfer agent for our common stock is Computershare Investor Services.

## **USE OF PROCEEDS**

We intend to use the net proceeds we receive from the sale of shares of our common stock as set forth in the applicable prospectus supplement. We will not receive any proceeds from the sale of shares of common stock by any selling shareholder.

**PLAN OF DISTRIBUTION**

The shares of common stock offered by this prospectus may be sold from time to time by us or by certain selling shareholders (or by such shareholder's pledgees, donees, transferees or other successors in interest) directly or, alternatively, through broker-dealers acting as underwriters, dealers or agents. The shares of common stock may be sold on the New York Stock Exchange, in the over-the-counter market or otherwise, in

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one or more transactions at fixed prices (which may be changed), at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. The sales may be made by one or more, or a combination, of the following methods:

a block trade in which a broker-dealer will attempt to sell the shares as agent, but may resell all or a portion of the block as a principal to facilitate the transaction;

a broker-dealer may purchase the common stock as a principal and then resell the common stock for its own account;

an exchange distribution in accordance with the rules of the applicable exchange;

ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;

privately negotiated transactions;

by pledge to secure debts or other obligations;

through the issuance of derivative securities, including warrants, exchangeable securities, forward delivery contracts and the writing of options;

to cover hedging transactions;

underwritten offerings; or

any other legally available means.

In connection with sales of the common stock or otherwise, we or any selling shareholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. We or any selling shareholder may also sell common stock short and deliver common stock to close out short positions, or loan or pledge common stock to broker-dealers that in turn may sell these securities.

We or any selling shareholder may select broker-dealers to sell shares. Broker-dealers that we or any selling shareholder engage may arrange for other broker-dealers to participate in selling the shares. We or any selling shareholder may give these broker-dealers commissions, discounts or other concessions in amounts to be negotiated at the time of sale. In connection with these sales and except as disclosed in the next paragraph, the participating broker-dealers, as well as any selling shareholder (and any such shareholder's pledgees, donees, transferees and other successors in interest), may be deemed to be underwriters within the meaning of Section 2(11) of the Securities Act of 1933 (the Securities Act) in connection with the sales of the shares. Accordingly, any commission, discount or other concession received by them and any profit on the resale of the shares received by them may be deemed to be underwriting discounts or commissions under the Securities Act. The applicable prospectus supplement will include any required information about underwriting compensation we pay to underwriters and any discounts, concessions or commissions underwriters allow to participating dealers, in connection with an offering of our common stock.

Any of the shares of common stock held by selling shareholders that qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than pursuant to this prospectus. In addition, this prospectus may be used by broker-dealers to resell any such shares of common stock that are being sold by a selling shareholder (or any such shareholder's successors in interest described above) pursuant to Rule 144. If any selling shareholder sells

pursuant to Rule 144, such selling shareholder will not be deemed to be an underwriter under the Securities Act with respect to those sales.

We or any selling shareholder may have agreements with the participating broker-dealers to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments which the participating broker-dealers may be required to make.

In connection with an offering, any participating broker-dealers may purchase and sell common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the participating broker-dealers of a greater

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number of shares than they own or are required to purchase in an offering. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the common stock while an offering is in progress.

The participating broker-dealers also may impose a penalty bid. This occurs when a particular broker-dealer repays to the others a portion of the underwriting discount or other concession received by it because the broker-dealers have repurchased shares sold by or for the account of that broker-dealer in stabilizing or short-covering transactions.

These activities by the participating broker-dealers may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the participating broker-dealers at any time. These transactions may be effected on the NYSE or any other exchange or automated quotation system, if the common stock is listed on that exchange or admitted for trading on that automated quotation system, or in the over-the-counter market or otherwise.

**VALIDITY OF THE COMMON STOCK**

The validity of the common stock offered hereby will be passed upon for us by Sullivan & Cromwell LLP, New York, New York.

**EXPERTS**

The consolidated financial statements of IntercontinentalExchange, Inc. appearing in IntercontinentalExchange, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2006 (including the schedule appearing therein), and IntercontinentalExchange, Inc. management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006 included therein, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated herein by reference. Such financial statements and management's assessment are, and audited financial statements and IntercontinentalExchange, Inc. management's assessments of the effectiveness of internal control over financial reporting to be included in subsequently filed documents will be, incorporated herein in reliance upon the reports of Ernst & Young LLP pertaining to such financial statements and management's assessments (to the extent covered by consents filed with the Securities and Exchange Commission) given on the authority of such firm as experts in accounting and auditing.

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The following is a statement of the estimated expenses to be incurred by the Registrant in connection with the distribution of the securities registered under this registration statement:

|                              | <b>Amount<br/>to be paid</b> |
|------------------------------|------------------------------|
| SEC registration fee         | \$ *                         |
| Legal fees and expenses      | **                           |
| Accounting fees and expenses | **                           |
| Miscellaneous                | **                           |
| <br>Total                    | <br>**                       |

\* Deferred in reliance on Rule 456(b) and 457(r). A portion of these expenses may be paid by selling shareholders in connection with sales of our common stock registered under this registration statement made by such selling shareholders.

\*\* The amount of these expenses is not presently known.

**Item 15. *Indemnification of Directors and Officers***

Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify directors and officers, as well as other employees and individuals, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee or agent of the Corporation, subject to certain limitations. The statute provides that it is not exclusive of other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise. Section 7.6 of our bylaws provides for indemnification by us of our directors, officers and employees to the fullest extent permitted by the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide in its charter that a director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its shareholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) for payments of unlawful dividends or unlawful stock purchases or redemptions, or (4) for any transaction from which the director derived an improper personal benefit. Our charter provides for such limitation of liability.

We expect to maintain standard policies of insurance under which coverage is provided (1) to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and (2) to us with

respect to payments which may be made by us to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The Merger Agreement incorporated by reference to Exhibit 2.1 to our registration statement on Form S-4 filed with the SEC on November 16, 2006 provides for indemnification of the past and present directors, officers and employees of Board of Trade of the City of New York, Inc. and its subsidiaries, for acts or omissions occurring at or prior to the completion of the merger, to the same extent as these individuals had rights of indemnification prior to the completion of the merger and to the fullest extent permitted by law.

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**Item 16. Exhibits**

| <b>Exhibit No.</b> | <b>Description of Document</b>  |
|--------------------|---|
| 1.1                | Form of Underwriting Agreement.*  |
| 5.1                | Opinion of Sullivan & Cromwell LLP regarding the validity of the securities being registered.** |
| 23.1               | Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.**                  |
| 24.1               | Power of Attorney (included on signature page).   |

\* To be filed as an exhibit to a Current Report on Form 8-K and incorporated herein by reference.

\*\* Filed herewith.

**Item 17. Undertakings**

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by a Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule

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415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of a Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, each undersigned Registrant undertakes that in a primary offering of securities of an undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of an undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of an undersigned Registrant or used or referred to by an undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about an undersigned Registrant or its securities provided by or on behalf of an undersigned Registrant; and

(iv) Any other communication that is an offer in the offering made by an undersigned Registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of each Registrant pursuant to the foregoing provisions, or otherwise, each Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a Registrant of expenses incurred or paid by a director, officer or controlling person of a Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, that Registrant will, unless in the opinion of its counsel the has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.



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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Atlanta, State of Georgia, on the 1st day of August, 2007.

INTERCONTINENTALEXCHANGE, INC.

By: /s/ Scott A. Hill

Name: Scott A. Hill

Title: Senior Vice President,

Chief Financial Officer

The undersigned directors and officers do hereby constitute and appoint Jeffrey C. Sprecher and Richard V. Spencer and either of them, with full power of substitution, our true and lawful attorneys-in-fact and agents to do any and all acts and things in our name and behalf in our capacities as directors and officers, and to execute any and all instruments for us and in our names in the capacities indicated below, that such person may deem necessary or advisable to enable the Registrant to comply with the Securities Act of 1933 (the Act) and any rules, regulations and requirements of the Securities and Exchange Commission in connection with this registration statement, including specifically, but not limited to, power and authority to sign for us, or any of us, in the capacities indicated below, any and all amendments hereto (including pre-effective and post-effective amendments or any other registration statement filed pursuant to the provisions of Rule 462(b) under the Act); and we do hereby ratify and confirm all that such person or persons shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on the 1st day of August, 2007.

| <b>Signature</b>                               | <b>Title(s)</b>  |
|--|--|
| /s/ Jeffrey C. Sprecher<br>Jeffrey C. Sprecher | Chairman of the Board and Chief Executive Officer<br>(principal executive officer)             |
| /s/ Scott A. Hill<br>Scott A. Hill             | Senior Vice President, Chief Financial Officer<br>(principal financial and accounting officer) |
| /s/ Charles R. Crisp<br>Charles R. Crisp       | Director   |
| /s/ Jean-Marc Forneri<br>Jean-Marc Forneri     | Director   |
| /s/ Fred W. Hatfield                           | Director   |

Fred W. Hatfield

/s/ Terrence F. Martell

Director

Terrence F. Martell

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| <b>Signature</b>   | <b>Title(s)</b> |
|--|-----------------|
| /s/ Sir Robert Reid<br>Sir Robert Reid                   | Director        |
| /s/ Frederic V. Salerno<br>Frederic V. Salerno           | Director        |
| /s/ Richard L. Sandor, Ph.D.<br>Richard L. Sandor, Ph.D. | Director        |
| /s/ Frederick W. Schoenhut<br>Frederick W. Schoenhut     | Director        |
| /s/ Judith A. Sprieser<br>Judith A. Sprieser             | Director        |
| /s/ Vincent Tese<br>Vincent Tese                         | Director        |