

INTERCONTINENTALEXCHANGE INC  
Form S-3ASR  
May 05, 2010  
Table of Contents

As filed with the Securities and Exchange Commission on May 5, 2010

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)

2100 RiverEdge Parkway

**58 2555 670**  
(I.R.S. Employer

Identification Number)

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

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.

## Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

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.    x

**Table of Contents**

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. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered/Proposed maximum offering price per unit/Proposed maximum offering price/Amount of registration fee
Common Stock, par value \$0.01 per share (1)	(2)(3)(4)
Debt Securities	(2)(4)

- (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 stockholders to be identified in the future.
- (2) An indeterminate aggregate initial offering price or number or amount of shares of common stock and debt securities of IntercontinentalExchange, Inc. is being registered as may from time to time be offered and sold at indeterminate prices. We will determine the proposed maximum offering price per security from time to time in connection with offer and sale of securities registered under this registration statement. Separate consideration may or may not be received for securities issued upon conversion, exchange or exercise of securities registered hereunder.
- (3) In accordance with Rules 456(b) and 457(r) of the Securities Act of 1933, as amended (the *Securities Act*), the Registrant is deferring payment of all of the registration fees, which will be paid from time to time in one or more offerings of securities to be made hereunder.
- (4) Pursuant to Rule 416 under the Securities Act, this registration statement also covers any additional shares that may be offered or issued in connection with any stock split, stock dividend or similar transaction.

**Table of Contents**

PROSPECTUS

**INTERCONTINENTALEXCHANGE, INC.**

**Common Stock**

**Debt Securities**

IntercontinentalExchange, Inc. may, from time to time, offer to sell shares of common stock or debt securities. The debt securities may be convertible into or exercisable for shares of our common stock or other securities. We may offer and sell these securities from time to time in amounts, at prices and on terms that will be determined at the time of the applicable offering. In addition, selling stockholders 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 securities are 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 terms of the offering, including the names of and other information relating to the selling stockholders, if applicable, and the offered securities. 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 may offer and sell the securities, and the selling stockholders 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 securities, the applicable prospectus supplement will set forth any applicable commissions or discounts. See *Plan of Distribution* for a further description of the manner in which we or the selling stockholders, if applicable, may sell the securities covered by this prospectus.

Our common stock is currently listed on the New York Stock Exchange and trades under the ticker symbol **ICE**. On May 4, 2010, the closing sale price of our common stock on the New York Stock Exchange was \$113.43 per share.

You should carefully read this prospectus and the applicable prospectus supplement, together with the documents incorporated by reference, before you make your investment decision.

*See **Risk Factors** beginning on page 3 of this prospectus and 39 of our Annual Report on Form 10-K for the year ended December 31, 2009, which are incorporated herein by reference, to read about factors you should consider before buying any shares of our common stock or debt securities.*

**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.**

Prospectus dated May 5, 2010

**Table of Contents**

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 *Incorporation of Certain Information by Reference*, or any free writing prospectus that we prepare and distribute. Neither we nor any selling stockholder 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 stockholder is making an offer of these securities in any jurisdiction where the offer is not permitted.

**TABLE OF CONTENTS**

	Page
<b><u>ABOUT THIS PROSPECTUS</u></b>	1
<b><u>WHERE YOU CAN FIND MORE INFORMATION</u></b>	1
<b><u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u></b>	1
<b><u>FORWARD-LOOKING STATEMENTS</u></b>	2
<b><u>INTERCONTINENTALEXCHANGE, INC.</u></b>	2
<b><u>RISK FACTORS</u></b>	3
<b><u>RATIO OF EARNINGS TO FIXED CHARGES</u></b>	3
<b><u>USE OF PROCEEDS</u></b>	3
<b><u>SUMMARY DESCRIPTION OF THE SECURITIES WE MAY ISSUE</u></b>	3
<b><u>DESCRIPTION OF CAPITAL STOCK</u></b>	4
<b><u>DESCRIPTION OF DEBT SECURITIES</u></b>	8
<b><u>PLAN OF DISTRIBUTION</u></b>	23
<b><u>VALIDITY OF SECURITIES</u></b>	24
<b><u>EXPERTS</u></b>	24

**Table of Contents**

**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 may sell the securities and the selling stockholders may sell the shares of common stock described in this prospectus in one or more offerings. Each time we sell securities or the selling stockholders sell shares of common stock, 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>.

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, 2009, filed on February 10, 2010 (File No. 001-32671);
- (2) Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2010, filed on May 5, 2010 (File No. 001-32671);
- (3) Current Report on Form 8-K, dated and filed on January 29, 2010 (File No. 001-32671);
- (4) Current Report on Form 8-K, dated March 31, 2010 and filed on April 2, 2010 (File No. 001-32671);
- (5) Current Report on Form 8-K, dated April 30, 2010 and filed on May 4, 2010 (File No. 001-32671);

---

**Table of Contents**

- (6) Current Report on Form 8-K, dated and filed May 5, 2010, with respect to Item 8.01 only (File No. 001-32671);
- (7) 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 which description is amended by the description contained in this prospectus;
- (8) Definitive Proxy Statement on Schedule 14A for the Annual Meeting of Stockholders on May 21, 2010 and filed on April 5, 2010 (File No. 001-32671), as supplemented by the Supplement to the Definitive Proxy Statement filed on May 5, 2010 (File No. 001-32671); and
- (9) 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 or implied by these forward-looking statements. See *Risk Factors* below for information regarding important risk factors that could cause actual results to differ, perhaps materially, from those in our forward-looking statements.

**INTERCONTINENTALEXCHANGE, INC.**

We are a leading global operator of regulated futures exchange and over-the-counter, or OTC, markets and derivatives clearing houses. We operate electronic futures and OTC marketplaces for trading a broad array of energy and agricultural commodities, credit default swaps, or CDS, currencies and equity index products. We offer an integrated electronic trading platform for side-by-side trading of products in both futures and OTC markets, together with clearing, post-trade and market data services. Through our widely-distributed electronic marketplace, we bring together buyers and sellers of derivative and physical commodities and financial contracts and offer a range of services to support our participants' risk management needs.

We conduct our regulated energy futures markets through our wholly-owned subsidiary, ICE Futures Europe, which is based in the United Kingdom, or U.K. ICE Futures Europe is the largest energy futures exchange outside of the United States, or U.S., as measured by 2009 traded contract volume according to the Futures Industry Association. We conduct our regulated U.S. futures markets through our wholly-owned subsidiary, ICE Futures U.S. We conduct our regulated Canadian futures markets through our wholly-owned subsidiary, ICE Futures Canada. ICE Futures Europe clears its business through ICE Clear Europe, ICE Futures U.S. clears its business through ICE Clear U.S. and ICE Futures Canada clears its business through ICE Clear Canada. We completed our acquisition of ICE Futures U.S. in January 2007 and our acquisition of ICE Futures Canada in August 2007. The launch of ICE Clear Europe occurred in November 2008, completing our strategic plan to offer clearing services through wholly-owned clearing businesses in North America and Europe.



**Table of Contents**

We conduct our OTC business directly through IntercontinentalExchange pursuant to the Commodity Exchange Act as an Exempt Commercial Market and through Creditex Group Inc., or Creditex, an interdealer broker for CDS. We completed our acquisition of Creditex in August 2008. Creditex is a market leader and innovator in the execution and processing of CDS with markets spanning the United States, Europe and Asia. In March 2009, we completed our acquisition of The Clearing Corporation as part of our strategy to offer clearing in the CDS market and launched ICE Trust U.S. LLC, or ICE Trust. ICE Trust began clearing North American CDS in March 2009, while ICE Clear Europe began clearing European CDS in July 2009.

Headquartered in Atlanta, Georgia, we also have offices in London, New York, Chicago, Houston, Washington D.C., Calgary, Winnipeg and Singapore. Our principal executive offices are located at 2100 RiverEdge Parkway, Suite 500, Atlanta, Georgia 30328, and our telephone number is 770-857-4700.

**RISK FACTORS**

Before you invest in any of our debt securities or shares of our common stock, in addition to the other information in this prospectus, you should carefully consider the risk factors contained in Item 1A under the caption *Risk Factors* and elsewhere in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, 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 we file with the SEC and that are so incorporated). See *Where You Can Find More Information* above for information about how to obtain a copy of these documents.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth information regarding our ratio of earnings to fixed charges for the periods shown. For purposes of determining the below ratios, earnings consist of pre-tax income from continuing operations before adjustment for fixed charges, and adjusted for non-controlling interests in consolidated subsidiaries that have not incurred fixed charges. Fixed charges consist of interest expenses, amortization of debt issuance costs and an appropriate portion of rentals representative of the interest factor.

	Three Months Ended March 31,		Year Ended December 31,			
	2010	2009	2008	2007	2006	2005
Ratio of Earnings to Fixed Charges	19.5	18.2	21.2	17.3	158.4	40.5

**USE OF PROCEEDS**

Unless otherwise specified in the applicable prospectus supplement or other offering material, we intend to use the net proceeds from the sales of the securities for general corporate purposes. We may temporarily invest the net proceeds or use them to repay short term debt until they are used for their stated purpose. We will not receive any proceeds from the sale of common stock by any selling stockholder.

**SUMMARY DESCRIPTION OF THE SECURITIES WE MAY ISSUE**

We may use this prospectus to offer from time to time:

Common stock, par value \$0.01 per share.

*Senior and subordinated debt securities.* These debt securities may be convertible or exchangeable into shares of our common stock or other securities. They will be unsecured and, in the case of senior debt, will rank equally with any of our other unsecured and unsecured debt and, in the case of subordinated debt, will rank junior in right of payment and priority to any senior debt.

We may issue securities denominated in U.S. dollars, but we may choose to issue securities in any other currency, including the Euro or Pounds Sterling.

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

The applicable prospectus supplement will describe the specific types, amounts, price and detailed terms of any of these securities.

-3-

**Table of Contents**

**DESCRIPTION OF CAPITAL STOCK**

*The following descriptions are summaries of the material terms of our fourth amended and restated certificate of incorporation (the certificate ) and amended and restated bylaws (the bylaws ). They may not contain all of the information that is important to you. To understand them fully, you should read our certificate 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 certificate, bylaws and applicable law.*

Pursuant to our certificate, 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, 73,944,474 shares of which are outstanding as of May 3, 2010; 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 March 30, 2010.

In this prospectus, unless the context otherwise requires, we refer to the common stock and the Class A common stock, collectively, as 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 stockholder 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 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:

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

*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 stockholders. Except as otherwise required by law or as

-4-

## **Table of Contents**

described below, holders of shares of common stock will vote together as a single class on all matters presented to the stockholders 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 certificate 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 certificate provides that none of our directors will be liable to us or our stockholders 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, partner, member, 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.

## **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 stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder, 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 stockholder. An interested stockholder 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 stockholder is prohibited during the relevant three-year period unless it satisfies one of the following conditions:

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



## **Table of Contents**

on consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder 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 stockholders 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 stockholder.

### **Certain Anti-Takeover Matters**

Our certificate 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 stockholders 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 stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of such stockholder 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 Stockholders Without a Stockholder Vote***

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

#### ***Special Meetings of Stockholders***

Our bylaws provide that special meetings of the stockholders 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 Stockholders***

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

## **Table of Contents**

### ***Amendment of Bylaws and Certificate***

Our certificate requires the approval of not less than 66<sup>2</sup>/<sub>3</sub>% of the voting power of all outstanding shares of our capital stock entitled to vote to amend any bylaw by stockholder action or to amend the certificate provisions described in this section. This supermajority voting requirement makes it more difficult to alter the anti-takeover provisions of our bylaws and our certificate. Our certificate also authorizes the board of directors to amend the bylaws at any time without stockholder action.

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

Our certificate 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 stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group. In this regard, the certificate 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 stockholder 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.



---

**Table of Contents**

**DESCRIPTION OF DEBT SECURITIES**

**Senior and Subordinated Debt Securities**

As used in this prospectus, debt securities means the debentures, notes, bonds and other evidences of indebtedness that we may issue from time to time. The debt securities will either be senior debt securities or subordinated debt securities.

As required by U.S. federal law for all bonds and notes of companies that are publicly offered, our debt securities will be governed by a document called an indenture. Senior debt securities will be issued under the senior indenture and subordinated debt securities will be issued under the subordinated indenture, in each case with the specific terms and conditions set forth in a supplemental indenture. The identity of the trustee will be set forth in a prospectus supplement that we will issue related to this prospectus that will describe the specific terms of any series of debt securities that we may issue that are covered by this prospectus.

The trustee has two main roles:

First, the trustee can enforce your rights against us if we default. There are some limitations on the extent to which the trustee acts on your behalf, described later under *Default and Related Matters Remedies if an Event of Default Occurs*.

Second, the trustee performs administrative duties for us, such as sending you interest payments, if any, transferring your securities to new buyers and sending you notices. Unless otherwise indicated in a prospectus supplement, the trustee will perform these administrative duties.

This prospectus sometimes refers to the senior indenture and the subordinated indenture collectively as the indentures. The indentures and their associated documents, including the debt securities themselves and a supplemental indenture relating to a particular series of debt securities, contain the full text of the matters summarized in this section and your prospectus supplement. The forms of the indentures are filed as exhibits to the registration statement of which this prospectus forms a part, and the debt securities and supplemental indentures will be filed as exhibits with future SEC filings from time to time. See *Where You Can Find More Information* above for information on how to obtain copies. Section references in the description that follows relate to the indentures.

**General**

Unless otherwise specified in a prospectus supplement, the debt securities will be direct unsecured obligations of IntercontinentalExchange, Inc. The senior debt securities will rank equally with any of our other unsubordinated and unsecured debt. The subordinated debt securities will be subordinate and rank junior in right of payment and priority to any senior debt, as defined, and described more fully, under *Subordination* to the extent and in the manner set forth in the subordinated indenture.

As of March 31, 2010, we had no amounts outstanding under our unsecured revolving facility and we had \$285 million outstanding under our term loan facilities (together, the *Facility*). The amounts drawn by us under the Facility rank equally in right of payment to any of our unsecured debt securities issued under the senior indenture and will rank senior in right of payment to any unsecured debt securities issued under the subordinated indenture. The Facility contains a number of negative covenants that limit our ability to incur additional indebtedness.

The indentures do not limit the aggregate principal amount of debt securities that we may issue and provide that we may issue debt securities from time to time in one or more series, in each case with the same or various maturities, at par or at a discount. Unless indicated in a prospectus supplement, we may issue additional debt securities of a particular series without the consent of the holders of the debt securities of such series outstanding at the time of the issuance. Any such additional debt securities, together with all other outstanding debt securities of that series, will constitute a single series of debt securities under the applicable indenture and will be equal in ranking.

## **Table of Contents**

### **This Section Is Only a Summary**

The statements and descriptions in this prospectus or in any prospectus supplement regarding provisions of the indentures and debt securities are summaries, do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all the provisions of the indentures (and any amendments or supplements validly entered into by us from time to time) and the debt securities, including the definitions therein of certain terms. We will include in a supplement to this prospectus the specific terms of each series of debt securities being offered, including the terms, if any, on which a series of debt securities may be convertible into or exchangeable for shares of our common stock or other securities. The indentures (together with any related amendments or supplements thereto) and the debt securities, and not any summary of the terms thereof, will govern the rights of holders of the debt securities.

### **Terms Contained in Prospectus Supplement**

The applicable prospectus supplement will contain the terms relating to the specific series of debt securities being offered. The applicable prospectus supplement will include some or all of the following:

the identity of the trustee;

the title of the debt securities and whether they are senior debt securities or subordinated debt securities;

any limit on the aggregate principal amount of debt securities of such series;

the person to whom any interest on a debt security of the series shall be payable, if other than the person in whose name that debt security (or one or more predecessor debt securities) is registered at the close of business on the regular record date for such interest;

the date or dates on which the principal of any debt securities is payable;

the rate or rates at which any debt securities of the series shall bear interest, if any, and the date or dates from which any such interest shall accrue;

the dates on which any interest will be payable and the regular record date for determining who is entitled to the interest payable on any interest payment date;

the place or places where the principal of and any premium and interest on any debt securities of the series shall be payable and the manner in which any payment may be made;

the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities of the series may be redeemed, in whole or in part, at our option and, if other than by a board resolution, the manner in which our election to redeem the debt securities shall be evidenced;

our obligation, if any, to redeem or purchase any debt securities of the series pursuant to any sinking fund or analogous provision and the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

the denominations of the debt securities if other than denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof;

any provisions regarding the manner in which the amount of principal of or any premium or interest on any debt securities of the series may be determined with reference to a financial or economic measure or pursuant to a formula, if applicable;

**Table of Contents**

if the principal of or any premium or interest on any debt securities of the series is to be payable in one or more currencies or currency units other than that or those in which such debt securities are stated to be payable, the currency, currencies, or currency units in which the principal of or any premium or interest on such debt securities shall be payable, the periods within which and the terms and conditions upon which such payments are to be made, and the amount so payable (or the manner in which such amount shall be determined);

if other than the entire principal amount, the portion of the principal amount of any debt securities of the series which shall be payable upon declaration of acceleration of the maturity;

if the principal amount payable at the stated maturity of any debt securities of the series will not be determinable as of any one or more dates prior to the stated maturity, the amount which shall be deemed to be the principal amount of such debt securities as of any such date for any purpose, including the principal amount which shall be due and payable upon any maturity other than the stated maturity or which shall be deemed to be outstanding as of any day prior to the stated maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

that the debt securities of the series shall be subject to full defeasance or covenant defeasance, as described further below, if applicable;

that any debt securities shall be issuable in whole or in part in the form of one or more global securities and, in such case, the depositaries for such global securities and the form of any legend or legends that shall be borne by such global security, if applicable;

any addition to, elimination of or other change in the events of default which applies to any debt securities of the series and any change in the right of the trustee or the requisite holders of such debt securities to declare the principal amount due and payable;

any addition to, elimination of or other change in the covenants which apply to any debt securities of the series;

the terms and conditions, if any, pursuant to which the debt securities of the series are convertible for shares of our common stock or other securities; and

any other terms of the debt securities not inconsistent with the indenture.

Unless otherwise specified in the applicable prospectus supplement, the debt securities will not be listed on any securities exchange. Holders of the debt securities may present their securities for exchange and may present registered debt securities for transfer in the manner described in the applicable prospectus supplement. Debt securities may bear interest at a fixed rate or a variable rate, as specified in the applicable prospectus supplement. In addition, if specified in the applicable prospectus supplement, we may sell debt securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate, or at a discount below their stated principal amount. We will describe in the applicable prospectus supplement any material special federal income tax considerations applicable to any such discounted debt securities.

**Overview of Remainder of This Section**

The remainder of this section summarizes:

*Additional mechanics* relevant to the debt securities under normal circumstances, such as how you transfer ownership and where we make payments;

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

Your rights under several *special situations*, such as if we merge with another company, or if we want to change a term of the debt securities;

## **Table of Contents**

*Your rights if we default or experience other financial difficulties; and*

The *subordination* of the debt securities relative to senior indebtedness issued by us.

### **Additional Mechanics**

#### ***Form***

The debt securities will be initially issued as a registered global security as described below under *What Is a Global Security?* unless otherwise specified in the applicable prospectus supplement. If any debt securities cease to be issued in registered global form, they will be issued in fully registered form, without coupons (*Section 302*), although we may issue the securities in bearer form if so specified in the applicable prospectus supplement. Debt securities will be issued in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof, unless otherwise specified in the applicable prospectus supplement. (*Section 302*)

#### ***Exchange and Transfer***

You may have fully registered securities broken into more securities of smaller denominations (but not into denominations smaller than any minimum denomination applicable to the securities) or combined into fewer securities of larger denominations, as long as the total principal amount is not changed. This is called an *exchange*. (*Section 305*)

If you are holding bearer securities and if permitted by the terms of your series of debt securities, you may exchange bearer debt securities for an equal amount of registered debt securities of the same series and date of maturity. No bearer debt securities will be exchanged for registered securities if in doing so we would suffer adverse consequences under any U.S. law applicable to the exchange. Registered debt securities may not be exchanged for bearer debt securities.

You may exchange or transfer your fully registered securities at the office of the registrar. The registrar acts as our agent for registering securities in the names of holders and for transferring and exchanging securities, as well as maintaining the list of registered holders. The paying agent acts as the agent for paying interest, principal and any other amounts on securities. Unless otherwise specified in the applicable prospectus supplement, the trustee will perform the roles of registrar and paying agent, and will perform other administrative functions. We may change these appointments to another entity or perform them ourselves. (*Section 305*)

We may designate additional or alternative registrars or paying agents, acceptable to the trustee, and they would be named in the applicable prospectus supplement. We may cancel the designation of any particular registrar or paying agent. We may also approve a change in the office through which any registrar or paying agent acts. We must maintain a paying agent office at the place of payment for each series of debt securities. (*Sections 305 and 1002*)

*There is no service charge for exchanges and transfers.* You will not be required to pay a service charge to transfer or exchange securities, but you may be required to pay for any tax or other governmental charge that may be imposed in connection with the exchange or transfer. (*Section 305*)

*At certain times, you may not be able to transfer or exchange your securities.* If we redeem any series of securities, or any part of any series, then we may prevent you from transferring or exchanging these securities for certain periods. We may do this during the period beginning 15 days before the day we mail the notice of redemption and ending at the close of business on the day of that mailing, in order to freeze the list of holders so we can prepare the mailing. We may also refuse to register transfers or exchanges of securities selected for redemption, except that we will continue to permit transfers and exchanges of the unredeemed portion of any security being partially redeemed. (*Section 305*)

## **Table of Contents**

### ***Replacing Your Lost or Destroyed Certificates***

If you bring a mutilated certificate to the registrar, we will issue a new certificate to you in exchange for the mutilated one, or we may elect to pay the security. *(Section 306)*

If you claim that a certificate has been lost, completely destroyed, or wrongfully taken from you, then the trustee will give you a replacement certificate if you meet our and the trustee's requirements, including satisfactory evidence of loss, destruction or theft. Also, we and the trustee may require you to provide reasonable security or indemnity to protect us and the trustee from any loss we may incur from replacing your certificates or coupons. *(Section 306)*

In either case, we may also charge you for our expenses in replacing your security and for any tax or other governmental charge that may be incurred. *(Section 306)*

### ***Payment and Paying Agents***

We will pay interest to you if you are a direct holder listed in the registrar's records at the close of business on a particular day in advance of each due date for interest, even if you no longer own the security on the interest due date. That particular day is called the regular record date and is stated in the applicable prospectus supplement. Holders buying and selling securities must work out between them how to compensate for the fact that we will pay all the interest for an interest period to the one who is the registered holder on the record date. The most common manner is to adjust the sales price of the securities to prorate interest fairly between buyer and seller. This prorated interest amount is called accrued interest. *(Section 307)*

We will pay interest, principal and any other money due on the debt securities of a series at the place of payment specified in the applicable prospectus supplement for that series. You must make arrangements to have your payments picked up at or wired from that office. We may also choose to pay interest by mailing checks. If we have designated additional paying agents, they will be named in the applicable prospectus supplement. We may cancel the designation of any particular paying agent or approve a change in the office through which any paying agent acts, but we must have a paying agent in each place of payment for the securities. *(Section 1002)*

All money we forward to the trustee or a paying agent that remains unclaimed will, at our request, be repaid to us at the end of two years after the amount was due to the direct holder. After that two-year period, you may look only to us as an unsecured general creditor for payment and not to the trustee, any other paying agent or anyone else. *(Section 1003)*

We will make payments on a global debt security in accordance with the applicable policies of the depository as in effect from time to time. Under those policies, we will pay directly to the depository, or its nominee, and not to any indirect owners who own beneficial interests in the global debt security. An indirect owner's right to receive those payments will be governed by the rules and practices of the depository and its participants, as described below in the section entitled *What Is a Global Security?*. *(Section 1002)*

***Street name and other indirect holders should consult their banks or brokers for information on how they will receive payments.***

### ***Payment of Bearer Securities***

We will only pay interest on bearer debt securities when you present and surrender the coupons for the interest installments evidenced by the bearer securities as they mature. You must present your coupons at a paying agency of IntercontinentalExchange, Inc. located outside of the United States. Unless otherwise specified in the applicable prospectus supplement, we will maintain a non-U.S. paying agent for two years after the principal of a series of bearer debt securities has become due. We will continue to maintain the paying agent after that period, if it is necessary to comply with U.S. tax law or regulations. We will provide the paying agent with the necessary funds for payment upon reasonable notice. We generally will not make any payments in the United States. However, if payment outside of the United States is illegal or precluded by exchange controls or similar restrictions in a foreign country, we may instruct the trustee to make payments at a paying agent located in the United States.

## **Table of Contents**

Unless otherwise specified in the applicable prospectus supplement, you can prove your ownership of a bearer security by presenting the actual security, or a certificate or affidavit executed by the person holding the bearer security or executed by a depository with whom the bearer securities were deposited, if the trustee is satisfied with the certificate or affidavit.

### ***Notices***

We and the trustee will send notices regarding the securities only to direct holders, using their addresses as listed in the register kept at the office of the registrar. (*Section 106*)

### **Special Situations**

#### ***Mergers and Similar Transactions***

We are generally permitted to consolidate or amalgamate with or merge into another company. We are also permitted to convey, transfer or lease all or substantially all of our assets to another company. However, we may not take any of these actions unless the company certifies to the trustee that both of the following conditions are met:

the successor company (if any) is organized under the laws of any U.S. jurisdiction, any full member state of the European Union, Canada, Australia, Switzerland, Singapore, Japan or the People's Republic of China (or any subdivision thereof) and it expressly assumes our obligations on the securities; and

immediately after giving effect to the transaction, no event of default (and no event which, after notice or lapse of time or both, would become an event of default) shall have happened and be continuing. (*Section 801*)

#### ***Modification and Waiver of Your Contractual Rights***

Under certain circumstances, we can make changes to the indentures and the securities. Some types of changes require the approval of each security holder affected, some require approval by a vote of a majority of the security holders of the particular series affected, and some changes do not require any approval at all. (*Sections 901 and 902*)

*Changes Requiring Your Approval.* First, there are changes that cannot be made to your securities without your specific approval. These include changes that:

reduce the percentage of holders of securities who must consent to a waiver or amendment of the indenture;

reduce the rate of interest on any security or change the time for payment of interest;

reduce the principal or premium due on any security or change the stated maturity date of any security;

change the place or currency of payment on a security;

change the right of holders to waive an existing default by majority vote;

modify the provisions of the indenture with respect to the subordination of the debt securities in a manner adverse to you;



impair your right to sue for payment; or

make any change to this list of changes that requires your specific approval. (*Section 902*)

-13-

## **Table of Contents**

*Changes Requiring a Majority Vote.* The second type of change to the indentures and the securities requires a vote in favor by security holders owning a majority of the principal amount of the particular series affected. Most changes fall into this category, except for clarifying changes and certain other specified changes that would not adversely affect holders of the securities in any material respect. A majority vote is required to waive any past default, except a failure to pay principal or interest and default in the certain covenants and provisions of the indenture that cannot be amended without the consent of the holder of each security. *(Sections 513 and 902)*

*Further Details Concerning Voting.* When taking a vote, we will use the following rules to decide how much principal amount to attribute to a security:

For original issue discount securities, we will use the principal amount that would be due and payable on the date in question if the maturity of the securities were accelerated to that date because of a default.

For securities the principal amount of which is not determinable, an amount determined in the manner prescribed for such security.

For securities denominated in one or more foreign currencies or currency units, we will use the U.S. dollar equivalent determined on the date of original issuance of these securities.

Securities will not be considered outstanding, and therefore not eligible to vote, if we have deposited or set aside in trust for you money for their payment or redemption. *(Section 101)*

We will generally be entitled to set any day as a record date for the purpose of determining the holders of outstanding securities that are entitled to vote or take other action under the indenture. If we set a record date for a vote or other action to be taken by holders of a particular series, that vote or action may be taken only by persons who are holders of outstanding securities of that series on the record date and must be taken within 180 days following the record date. *(Section 104)*

***Street name and other indirect holders, including holders of any securities issued as a global security, should consult their banks or brokers for information on how approval may be granted or denied if we seek to change the indenture or the securities or request a waiver.***

## **Subordination**

The securities may be subordinated debt securities and, as a result, the payment of principal, any premium and interest on the debt securities will be subordinated in right of payment to the prior payment in full of all our senior debt. This means that in certain circumstances where we may not be making payments on all of our debt obligations as they come due, the holders of all our senior debt will be entitled to receive payment in full of all amounts that are due or will become due on the senior debt before you and the other direct holders of subordinated debt securities will be entitled to receive any amounts on such securities. These circumstances include:

Any liquidation, dissolution or winding up of our company.

An assignment or marshalling of our assets and liabilities for the benefit of our creditors.

We file for bankruptcy or certain other events in bankruptcy, insolvency or similar proceedings occur.

The maturity of the securities is accelerated. For example, the entire principal amount of a series of securities may be declared to be due and immediately payable or may be automatically accelerated due to an event of default. *(Sections 1402 and 1403)*

The applicable prospectus supplement relating to any offering of subordinated securities will describe the specific subordination provisions. However, unless otherwise noted in the applicable prospectus supplement, subordinated debt securities will be subordinate and junior in right of

payment to any existing and outstanding senior debt of IntercontinentalExchange, Inc.

## **Table of Contents**

In addition, we are not permitted to make payments of principal, any premium or interest on the subordinated debt securities if we default in our obligation to make payments on senior debt and do not cure such default, or if an event of default that permits the holders of senior debt to accelerate the maturity of the senior debt occurs. (*Sections 1401, 1402 and 1404*)

These subordination provisions mean that if we are insolvent a holder of our senior debt may ultimately receive out of our assets more than a holder of the same amount of our subordinated debt and a creditor of ours that is owed a specific amount but who owns neither our senior debt nor the securities may ultimately receive less than a holder of the same amount of senior debt or securities.

The subordinated indenture defines **senior debt**, with respect to any series of subordinated debt securities, as the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to IntercontinentalExchange, Inc., whether or not such claim for post-petition interest is allowed in such proceeding), on debt, which includes, among other items, all indebtedness and obligations of, or guaranteed or assumed by, IntercontinentalExchange, Inc. for borrowed money or evidenced by bonds, debentures, notes or other similar instruments, whether incurred on or prior to the date of the subordinated indenture or thereafter incurred; provided, however, that senior debt shall not be deemed to include any debt that by its terms is subordinate to, or ranks equally with, the subordinated debt securities of such series, and trade accounts payable and other accrued liabilities arising in the ordinary course of business. (*Section 101*)

## **Restrictive and Maintenance Covenants**

We will describe any material restrictive and maintenance covenants, including restrictions on any subsidiary, for any series of debt securities in the prospectus supplement and/or other offering material for each offering of such debt securities.

## **Discharge and Defeasance of Our Obligations**

The following discussion of full defeasance and covenant defeasance will be applicable to your series of debt securities only if we choose to have them apply to that series. If we do so choose, we will state that in the applicable prospectus supplement. (*Section 1301*)

### ***Full Defeasance***

If there is a change in federal tax law, as described below, we can legally release ourselves from any payment or other obligations on the securities, called **full defeasance**, if we put in place the following other arrangements for you to be repaid:

We must deposit in trust for your benefit and the benefit of all other direct holders of the securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make interest, principal and any other payments on the securities on their various due dates.

There must be a change in current federal tax law or an IRS ruling that lets us make the above deposit without causing you to be taxed on the securities any differently than if we did not make the deposit and just repaid the securities ourselves.

We must deliver to the trustee a legal opinion of our counsel confirming the tax law change described above. (*Sections 1302 and 1304*)

If we accomplish full defeasance, as described above, you would have to rely solely on the trust deposit for repayment on the securities. You could not look to us for repayment in the event of any shortfall. Moreover, the trust

## **Table of Contents**

deposit would most likely be protected from claims of our lenders and other creditors if we ever become bankrupt or insolvent. In the case of subordinated securities, you would also be released from the subordination provisions on the securities.

However, we cannot discharge ourselves from the obligations under any convertible or exchangeable securities, unless we provide for it in the terms of these securities and the applicable prospectus supplement.

We will indemnify the trustee against any tax, fee or other charge imposed on the U.S. government obligations we deposited with the trustee or against the principal and interest received on these obligations. (*Section 1305*)

### ***Covenant Defeasance***

Under current federal tax law, we can make the same type of deposit described above and be released from some of the restrictive covenants in the securities. This is called covenant defeasance. In that event, you would lose the protection of those restrictive covenants but would gain the protection of having money and securities set aside in trust to repay the securities and, in the case of subordinated securities, you would be released from the subordination provisions on the securities. In order to achieve covenant defeasance, we must do the following:

We must deposit in trust for your benefit and the benefit of all other direct holders of the securities a combination of money and U.S. government or U.S. government agency notes or bonds that will generate enough cash to make interest, principal and any other payments on the securities on their various due dates.

We must deliver to the trustee a legal opinion of our counsel confirming that under current federal income tax law we may make the above deposit without causing you to be taxed on the securities any differently than if we did not make the deposit and just repaid the securities ourselves.

If we accomplish covenant defeasance, the following provisions of the indenture and the securities would no longer apply:

Any covenants applicable to the series of securities and described in the applicable prospectus supplement.

The events of default relating to breach of covenants and acceleration of the maturity of other debt.

The subordination provisions on the securities, as applicable.

If we accomplish covenant defeasance, you can still look to us for repayment of the securities if a shortfall in the trust deposit occurs. In fact, if one of the remaining events of default occurred (such as our bankruptcy) and the securities become immediately due and payable, there may be such a shortfall. Depending on the event causing the default, you may not be able to obtain payment of the shortfall. (*Sections 1303 and 1304*)

### **Additional Amounts**

With respect to any payments made by us, all such payments under, or with respect to, the debt securities will, but only to the extent provided in the applicable prospectus supplement, be made free and clear of, and without withholding or deduction for or on account of, any present or future tax, duty, levy, impost, assessment or other governmental charge, including penalties, interest and other liabilities related thereto ( *taxes* ), imposed or levied on behalf of the United States or any other jurisdiction in which we are engaged in business, resident for tax purposes or generally subject to tax on a net income basis, or any political subdivision or taxing authority of or in any of the foregoing, unless we are required to withhold or deduct taxes by law or by the official interpretation or administration thereof.

## **Table of Contents**

If we are so required to withhold or deduct any amount for, or on account of, such taxes from any payment made under or with respect to the notes, we will, but only to the extent provided in the applicable prospectus supplement, pay such additional amounts ( *additional amounts* ), as may be necessary so that the net amount received by each holder (including additional amounts) after such withholding or deduction will not be less than the amount such holder would have received if such taxes had not been required to be withheld or deducted.

The foregoing provisions will, to the extent provided in the applicable prospectus supplement, survive any termination or discharge of the indenture and any defeasance of the debt securities.

Whenever either in the indenture, this prospectus or any prospectus supplement, there is mentioned, in any context, payment of principal (and premium, if any), redemption price, interest or any other amount payable under or with respect to any debt securities, such mention shall be deemed to include mention of the payment of additional amounts to the extent that, in such context, additional amounts are, were or would be payable by us in respect thereof.

## **Redemption**

### ***We May Choose to Redeem Your Securities***

We may be able to redeem your securities before their normal maturity. If we have this right with respect to your specific securities, the right will be described in the applicable prospectus supplement. It will also specify when we can exercise this right and how much we will have to pay in order to redeem your securities.

If we choose to redeem your securities, we will mail written notice to you not less than 30 days nor more than 60 days prior to redemption. (*Section 1104*) Also, you may be prevented from exchanging or transferring your securities when they are subject to redemption, as described under *Additional Mechanics Exchange and Transfer* above. (*Section 305*)

## **Liens on Assets**

A particular series of debt securities may contain provisions that restrict us from pledging or otherwise encumbering any of our assets and those of our subsidiaries. If applicable, these restrictions will be described in the applicable prospectus supplement.

## **Default and Related Matters**

### ***Ranking Compared to Other Creditors***

The securities are not secured by any of our property or assets. Accordingly, your ownership of securities means you are one of our unsecured creditors. The senior debt securities will not be subordinated to any of our other debt obligations and therefore rank equally with all our other unsecured and unsubordinated indebtedness. The subordinated debt securities will be subordinate and junior in right of payment to any of our senior debt. The trustee has a right to receive payment for its administrative services prior to any payment to security holders after a default. (*Section 506*)

### ***Events of Default***

You will have special rights if an event of default occurs and is not cured, as described later in this subsection. The term *event of default* with respect to any series of securities means any of the following:

We fail to make any interest payment on a security when such interest becomes due, and we do not cure this default within the number of days specified in the applicable prospectus supplement.

We fail to make any payment of principal or premium when it is due at the maturity of any security.



## **Table of Contents**

We do not deposit a sinking fund payment with regard to any debt security of that series on the due date, but only if the payment is required under provisions described in the applicable prospectus supplement.

We fail to comply with any of our other agreements regarding a particular series of securities or with a supplemental indenture, and after we have been notified of the default by the trustee or holders of a specified percentage in principal amount of the series, we do not cure the default within a specified number of days, in both cases, as set forth in the applicable prospectus supplement.

We file for bankruptcy, or other events in bankruptcy, insolvency or reorganization occur.

Any other event of default described in the prospectus supplement occurs, subject to any applicable cure period. *(Section 501)*

### ***Remedies if an Event of Default Occurs***

You and the trustee will have the following remedies if an event of default occurs:

*Acceleration.* If an event of default has occurred and has not been cured or waived, then the trustee or the holders of 25% in principal amount of the securities of the affected series may declare the entire principal amount of, and premium, if any, and all accrued and unpaid interest on all the securities of that series to be due and immediately payable. If the event of default occurs because of events in bankruptcy, insolvency or reorganization relating to us, the entire principal amount, and premium, if any, and all accrued and unpaid interest of the debt securities of that series will be automatically accelerated, without any action by the trustee or any holder. An acceleration of maturity may be cancelled by the holders of at least a majority in principal amount of the securities of the affected series, if all events of default have been cured or waived. *(Section 502)*

*Other Remedies of Trustee.* If an event of default occurs, the trustee is authorized to pursue any available remedy to collect defaulted principal and interest and to enforce other provisions of the securities and the indentures, including bringing a lawsuit. *(Section 503)*

*Majority Holders May Direct the Trustee to Take Actions to Protect Their Interests.* Except in cases of default, where the trustee has some special duties, the trustee is not required to take any action under the indentures at the request of any holders unless the holders offer the trustee reasonable protection from expenses and liability. This is called an indemnity. If the trustee is provided with an indemnity reasonably satisfactory to it, the holders of a majority in principal amount of the relevant series of debt securities may direct the time, method and place of conducting any lawsuit or other formal legal action seeking any remedy available to the trustee. These majority holders may also direct the trustee in performing any other action under the indentures. *(Sections 512 and 603)*

*Individual Actions You May Take if the Trustee Fails to Act.* Before you bypass the trustee and bring your own lawsuit or other formal legal action or take other steps to enforce your rights or protect your interests relating to the securities, the following must occur:

You must give the trustee written notice that an event of default has occurred and remains uncured.

The holders of 25% in principal amount of all outstanding securities of the relevant series must make a written request that the trustee take action because of the default, and must offer indemnity reasonably satisfactory to the trustee against the cost and other liabilities of taking that action.

The trustee must not have taken action for 60 days after receipt of the above notice and offer of indemnity. *(Section 507)*  
However, you are entitled at any time to bring an individual lawsuit for the payment of the money due on your security on or after its due date. *(Section 508)*





## **Table of Contents**

### ***Waiver of Default***

The holders of a majority in principal amount of any series of debt securities may waive a past default for all such series of debt securities. If this happens, the default will be treated as if it had not occurred. No one can waive a payment default on your debt security, however, without your individual approval. (*Section 513*)

### ***We Will Give the Trustee Information About Defaults Annually***

Every year we will give to the trustee a written statement of one of our officers certifying that to the best of his or her knowledge we are in compliance with the indenture and the debt securities, or else specifying any default. (*Section 1004*)

***Street name and other indirect holders should consult their banks or brokers for information on how to give notice or direction to or make a request of the trustee and how to make or cancel a declaration of acceleration.***

### **Original Issue Discount Securities**

The debt securities may be issued as original issue discount securities, which will be offered and sold at a discount from their principal amount. Only a discounted amount will be due and payable when the trustee declares the acceleration of the maturity of these debt securities after an event of default has occurred and continues, as described under *Default and Related Matters Remedies if an Event of Default Occurs* above.

### **Conversion of Convertible Debt Securities**

Your debt securities may be convertible into shares of our common stock or other securities if the applicable prospectus supplement so provides. If your debt securities are convertible or exchangeable, the applicable prospectus supplement will include provisions as to whether conversion or exchange is mandatory, at your option or at our option. The applicable prospectus supplement would also include provisions regarding the adjustment of the number of shares of our common stock or other securities you will receive upon conversion or exchange. In addition, the applicable prospectus supplement will contain the conversion price or exchange price and mechanisms for adjusting this price.

### **Governing Law**

The indentures and debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

### **Regarding the Trustee**

The senior indenture and the subordinated indenture provide that, except during the continuance of an event of default, the trustee will perform only such duties as are specifically set forth therein. Each indenture and the provisions of the Trust Indenture Act of 1939 (the *TIA*) contain limitations on the rights on the trustee, should it become a creditor of ours, to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The trustee is permitted to engage in other transactions; provided, however, that if it becomes subject to any conflicting interest (as defined under the TIA), it must eliminate such conflict or resign.

### **Legal Ownership of Debt Securities**

Unless the applicable prospectus supplement specifies otherwise, we will issue debt securities initially in the form of a global security. However, we may elect to issue debt securities in fully registered or bearer form or both. We refer to those who have debt securities registered in their own names on the books that we or our agent maintain for this purpose, or who hold bearer certificates representing bearer debt securities, as the *holders* of those debt securities. These persons are the legal holders of the debt securities. We refer to those who, indirectly through others, own beneficial interests in debt securities that are not registered in their own names as *indirect holders* of those debt securities. As we discuss below, indirect holders are not legal holders, and investors in debt securities issued in book-entry form or in street name will be indirect holders.

## **Table of Contents**

### ***Book-Entry Holders***

If we issue debt securities in global i.e., book-entry form, the debt securities will be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary's book-entry system. These participating institutions, in turn, hold beneficial interests in the debt securities on behalf of themselves or their customers.

For registered debt securities, only the person in whose name a debt security is registered is recognized under the indenture as the holder of that debt security. Debt securities issued in global form will be issued in the form of a global security registered in the name of the depositary or its participants. Consequently, for debt securities issued in global form, we will recognize only the depositary as the holder of the debt securities and we will make all payments on the debt securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the debt securities.

As a result, investors in a book-entry security will not own debt securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary's book-entry system or holds an interest through a participant. As long as the debt securities are issued in global form, investors will be indirect holders, and not holders, of the debt securities.

### ***Street Name Holders***

In the future we may terminate a global security under the circumstances specified under *What is a Global Security? Special Situations When a Global Security Will Be Terminated* or issue debt securities initially in non-global form. In these cases, investors may choose to hold their debt securities in their own names or in street name. Debt securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those debt securities through an account he or she maintains at that institution.

For debt securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the debt securities are registered as the holders of those debt securities and we will make all payments on those debt securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold debt securities in street name will be indirect holders, not holders, of those debt securities.

### ***Legal Holders***

Our obligations, as well as the obligations of the trustee and those of any third parties employed by us or the trustee, run only to the legal holders of the debt securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a debt security or has no choice because we are issuing the debt securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depositary participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, if we want to obtain the approval of the holders for any purpose for example, to amend the applicable indenture or to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the applicable indenture we would seek approval only from the holders, and not the indirect holders, of the debt securities. Whether and how the holders contact the indirect holders is up to the holders.

## **Table of Contents**

When we refer to you, we mean those who invest in the debt securities being offered by this prospectus, whether they are the holders or only indirect holders of those debt securities. When we refer to your debt securities, we mean the debt securities in which you hold a direct or indirect interest.

### ***Special Considerations for Holders of Bearer Debt Securities***

If we issue debt securities in bearer form, they may be issued only outside of the United States to non-U.S. persons. In addition, we may offer bearer securities to offices of some U.S. financial institutions that have offices located outside the United States. We will describe any special restrictions on the offer, sale and delivery of bearer debt securities and any special federal income tax considerations applicable to bearer debt securities in the applicable prospectus supplement.

### ***Special Considerations for Indirect Holders***

If you hold debt securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

how it handles securities payments and notices;

whether it imposes fees or charges;

how it would handle a request for the holders' consent, if ever required;

whether and how you can instruct it to send you debt securities registered in your own name so you can be a holder, if that is permitted in the future;

how it would exercise rights under the debt securities if there were a default or other event triggering the need for holders to act to protect their interests; and

if the debt securities are in book-entry form, how the depository's rules and procedures will affect these matters.

### **What Is a Global Security?**

A global security is a security that represents one or more debt securities and is held by a depository. Generally, all debt securities represented by the same global securities will have the same terms.

Each debt security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution that we select or its nominee. The financial institution that we select for this purpose is called the depository. Unless we specify otherwise in the applicable prospectus supplement, The Depository Trust Company, New York, New York, known as "DTC", will be the depository for all debt securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depository, its nominee or a successor depository, unless special termination situations arise. We describe those situations below under "*Special Situations When a Global Security Will Be Terminated*". As a result of these arrangements, the depository, or its nominee, will be the sole registered owner and holder of all debt securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depository or with another institution that does. Thus, an investor whose security is represented by a global security will not be a holder of the debt security, but only an indirect holder of a beneficial interest in the global security.

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

If the applicable prospectus supplement for a particular debt security indicates that the debt security will be issued in global form only, then the debt security will be represented by a global security at all times unless and until

## **Table of Contents**

the global security is terminated. We describe the situations in which this can occur below under *Special Situations When a Global Security Will Be Terminated*. If termination occurs, we may issue the debt securities through another book-entry clearing system or decide that the debt securities may no longer be held through any book-entry clearing system.

### ***Special Considerations for Global Securities***

As an indirect holder, an investor's rights relating to a global security will be governed by the account rules of the investor's financial institution and of the depositary, as well as general laws relating to securities transfers. We do not recognize this type of investor as a holder of debt securities and instead deal only with the depositary that holds the global security.

If debt securities are issued only in the form of a global security, an investor should be aware of the following:

An investor cannot cause the debt securities to be registered in his or her name, and cannot obtain nonglobal certificates for his or her interest in the debt securities, except in the special situations we describe below;

An investor will be an indirect holder and must look to his or her own bank or broker for payments on the debt securities and protection of his or her legal rights relating to the debt securities, as we describe under *Legal Ownership of Debt Securities* above;

An investor may not be able to sell interests in the debt securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;

An investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the debt securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;

The depositary's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security. We and the trustee have no responsibility for any aspect of the depositary's actions or for its records of ownership interests in a global security. We and the trustee also do not supervise the depositary in any way;

The depositary may (and we understand that DTC will) require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds and your broker or bank may require you to do so as well; and

Financial institutions that participate in the depositary's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the debt securities. There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

### ***Special Situations When a Global Security Will Be Terminated***

In the special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own bank or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above under *Legal Ownership of Debt Securities*.

The global security will terminate when the following special situations occur:

Edgar Filing: INTERCONTINENTALEXCHANGE INC - Form S-3ASR

if the depositary notifies us that it is unwilling, unable or no longer permitted under applicable law to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;

-22-

## **Table of Contents**

if we notify the trustee that we wish to terminate that global security; or

if an event of default has occurred with regard to debt securities represented by that global security and has not been cured or waived.

We discuss defaults above under *Default and Related Matters*.

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the prospectus supplement. When a global security terminates, the depository and not we or the trustee is responsible for deciding the names of the institutions that will be the initial direct holders. (*Section 305*).

## **PLAN OF DISTRIBUTION**

We may sell securities or the selling stockholders (or any such stockholders pledgee, donees, transferees, or other successors-in-interest) may sell shares of common stock from time to time to purchasers directly, through broker-dealers acting as agents, dealers, or underwriters or through a combination of any of those methods of sale or as otherwise described in the applicable prospectus supplement.

The distribution of the securities may be made from time to time in one or more transactions at a fixed price or prices, which may be changed, at market prices prevailing at the time of sale, at prices related to these prevailing market prices or at negotiated prices.

The securities may be sold by us or by one or more of our subsidiaries that previously acquired the securities from us, from other of our subsidiaries, from third parties or in the open market. Any such subsidiary may be deemed to be an underwriter under the Securities Act of 1933, as amended (the *Securities Act*).

Any of the shares of common stock held by selling stockholders 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 stockholder (or any such stockholder's successors in interest described above) pursuant to Rule 144. If any selling stockholder sells pursuant to Rule 144, such selling stockholder will not be deemed to be an underwriter under the Securities Act with respect to those sales.

### **Through Agents**

We, the selling stockholders and the agents designated by either of us may solicit offers to purchase securities. Agents that participate in the distribution of securities may be deemed underwriters under the Securities Act. We will name any agent that will participate in the distribution of the securities, and any commission we or any selling stockholder will pay to it will be described in the applicable prospectus supplement. Any agent will be acting on a best efforts basis for the period of its appointment, unless we indicate differently in the applicable prospectus supplement.

### **To Dealers**

The securities may be sold to a dealer as principal. The dealer may then resell the securities to the public at varying prices determined by it at the time of resale. The dealer may be deemed to be an underwriter under the Securities Act.

### **To Underwriters**

The securities may also be sold to one or more underwriters and we or any selling stockholder, as the case may be, will then execute an underwriting agreement with them at the time of sale. The names of the underwriters will be set forth in the applicable prospectus supplement, which will be used by the underwriters to resell the securities.



**Table of Contents**

**Indemnification Arrangements**

We or any selling stockholder may enter into indemnification agreements with underwriters, dealers, agents and other persons participating in the distribution of securities, who will then be entitled to indemnification by us against some civil liabilities. The indemnification covers liabilities under the Securities Act.

**VALIDITY OF SECURITIES**

Unless otherwise indicated in the prospectus supplement, the validity of the securities offered by this prospectus 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, 2009 (including the schedule appearing therein), and the effectiveness of IntercontinentalExchange, Inc.'s internal control over financial reporting as of December 31, 2009, 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 are, and audited financial statements 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 (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.

**Table of Contents****PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution**

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 to be paid</b>
SEC registration fee	\$ *
Legal fees and expenses	\$ 32,000**
Accounting fees and expenses	\$ 25,000**
Miscellaneous	\$ 8,000**
<b>Total</b>	<b>\$ 65,000**</b>

\* Deferred in reliance on Rule 456(b) and 457(r).

\*\* Estimated.

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

Section 145 of the Delaware General Corporation Law ( DGCL ) permits a corporation to indemnify its directors and officers against expenses, including attorneys fees, judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties. The directors or officers must have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, an action only by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors and officers in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification shall be made if such person shall have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that the defendant officers or directors are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability. Section 7.6 of our bylaws provides for indemnification by us of our directors, senior 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 stockholders 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 stockholders, (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 certificate provides for such limitation of liability.

We maintain standard policies of insurance under which coverage is provided (1) to our directors and officers against loss rising 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.

**Table of Contents****Item 16. Exhibits**

(a) The following exhibits are filed herewith or incorporated herein by reference unless otherwise indicated:

**Exhibit**

No.	Description of Document
1.1	Form of Underwriting Agreement.*
4.1	Form of Senior Debt Indenture.**
4.2	Form of Senior Debt Security (included in Exhibit 4.1)
4.3	Form of Subordinated Debt Indenture.**
4.4	Form of Subordinated Debt Security (included in Exhibit 4.3)
5.1	Opinion of Sullivan & Cromwell LLP regarding the validity of the securities being registered.**
12.1	Ratio of Earnings to Fixed Charges.**
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.**
23.2	Consent of Sullivan & Cromwell LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended (senior indenture)***
25.2	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended (subordinated indenture)***

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

\*\* Filed herewith.

\*\*\* To be filed in accordance with Section 305(b)(2) of the Trust Indenture Act of 1939, as amended, and Rule 5b-3 thereunder.

**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.



**Table of Contents**

(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 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.

**Table of Contents**

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 matter 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.

(7) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

**Table of Contents**

**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 5th day of May, 2010.

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 Scott A. Hill 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 5th day of May, 2010.

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

**Table of Contents**

<b>Signature</b>	<b>Title</b>
/s/ Sir Callum McCarthy (Sir Callum McCarthy)	Director
/s/ Sir Robert Reid (Sir Robert Reid)	Director
/s/ Frederic V. Salerno (Frederic V. Salerno)	Director
/s/ Frederick W. Schoenhut (Frederick W. Schoenhut)	Director
/s/ Judith A. Sprieser (Judith A. Sprieser)	Director
/s/ Vincent Tese (Vincent Tese)	Director