

INTERCONTINENTALEXCHANGE INC  
Form 10-K  
February 06, 2013  
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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2012

**Or**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission File Number 001-32671

**INTERCONTINENTALEXCHANGE, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**2100 RiverEdge Parkway,**

**Suite 500, Atlanta,**

**Georgia**  
*(Address of principal executive offices)*

**58-2555670**  
*(IRS Employer*

*Identification Number)*

**30328**

*(Zip Code)*

**(770) 857-4700**

**Registrant's telephone number, including area code**

**Securities registered pursuant to Section 12(b) of the Act:**

| Title of Each Class                      | Name of Each Exchange on Which Registered |
|--|---|
| Common Stock, \$0.01 par value per share | New York Stock Exchange                   |

**Securities registered pursuant to Section 12(g) of the Act:**

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Annual Report on Form 10-K or any amendment to this Form 10-K.

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 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  Smaller reporting company

(Do not check if a smaller company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the registrant's voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold as of the last business day of the registrant's most recently completed second fiscal quarter was \$9,686,450,992. As of January 31, 2013, the number of shares of the registrant's Common Stock outstanding was 72,652,467 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Certain information contained in the registrant's Proxy Statement for the 2013 Annual Meeting of Stockholders is incorporated herein by reference in Part III of this Annual Report on Form 10-K. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year to which this report relates.



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**INTERCONTINENTALEXCHANGE, INC.**

**ANNUAL REPORT ON FORM 10-K**

**For the Fiscal Year Ended December 31, 2012**

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**PART I**

In this Annual Report on Form 10-K, unless otherwise specified or the context otherwise requires:

IntercontinentalExchange, ICE, we, us, our, our company and our business refer to IntercontinentalExchange, Inc. and its consolidated subsidiaries. References to ICE products mean products listed on one of our markets.

ICE Futures Europe refers to our wholly-owned subsidiary that we acquired on June 18, 2001, which prior to October 25, 2005 operated as the International Petroleum Exchange of London, Ltd.

ICE Clear Europe refers to our wholly-owned European clearing subsidiary that we established and launched on November 3, 2008.

ICE Futures U.S. refers to our wholly-owned subsidiary that we acquired on January 12, 2007, which prior to our acquisition operated as the Board of Trade of the City of New York, Inc.

ICE Clear U.S. refers to ICE Futures U.S.'s wholly-owned clearing subsidiary, which previously operated as the New York Clearing Corporation.

ICE Futures Canada refers to our wholly-owned subsidiary that we acquired on August 27, 2007, which prior to our acquisition operated as the Winnipeg Commodity Exchange, Inc.

ICE Clear Canada refers to ICE Futures Canada's wholly-owned clearing subsidiary, which previously operated as WCE Clearing Corporation.

Creditex refers to our wholly-owned subsidiary that we acquired on August 29, 2008.

ICE Clear Credit refers to our clearing subsidiary that we established and launched on March 9, 2009. Prior to July 16, 2011, ICE Clear Credit operated as ICE Trust.

Due to rounding, figures in tables may not sum exactly. All references to options or options contracts in the context of our futures products refer to options on futures contracts.

**Forward-Looking Statements**

This Annual Report on Form 10-K, including the sections entitled Business, Legal Proceedings, Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements that are based on our present beliefs and assumptions and on information currently available to us. You can identify forward-looking statements by terminology such as may, will, should, could, would, targets, goal, expect, intend, plan, anticipate, believe, estimate, predict, potential, continue, or other comparable terminology. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from those expressed or implied by these forward-looking statements. These risks and other factors include those set forth in Item 1(A) under the caption Risk Factors and elsewhere in this Annual Report on Form 10-K and other filings with the Securities and Exchange Commission, or SEC. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We caution you not to place undue reliance on these forward-looking statements. Forward-looking statements and other factors that may affect our performance include, but are not limited to:

our expectations regarding the business environment in which we operate and trends in our industry, including trading volumes, changing regulations and increasing competition and consolidation;

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conditions in global financial markets and domestic and international economic conditions;

volatility in commodity prices and price volatility of financial contracts such as equity indexes and foreign exchange;

the impact of any changes in domestic and foreign laws, regulations or government policy with respect to financial markets, including any changes in previously issued regulations and policies;

our ability to identify and effectively pursue acquisitions and strategic alliances and successfully integrate the companies we acquire;

our ability to complete the acquisition of NYSE Euronext and to do so in a timely manner, realize the anticipated benefits of the proposed acquisition within the expected time frame, and integrate NYSE Euronext's operations with our business;

the success of our clearing houses and our ability to minimize the risks associated with operating multiple clearing houses in multiple jurisdictions;

our ability to keep pace with rapid technological developments and to ensure that the technology we utilize is not vulnerable to security risks;

the accuracy of our cost estimates and expectations;

our belief that cash flows from operations will be sufficient to service our current levels of debt and fund our working capital needs and capital expenditures for the foreseeable future;

our ability, on a timely and cost-effective basis, to offer additional products and services, leverage our risk management capabilities and enhance our technology;

our ability to maintain existing market participants and attract new ones;

our ability to protect our intellectual property rights, including the costs associated with such protection, and our ability to operate our business without violating the intellectual property rights of others;

our ability to identify trends and adjust our business to benefit from such trends;

potential adverse results of litigation; and

the soundness of our electronic platform and disaster recovery system technologies.

For a detailed discussion of these and other factors that may affect our performance, please see Item 1(A), Risk Factors, below. Any forward-looking statement speaks only as of the date on which such statement is made, and we undertake no obligation to update any

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forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of an unanticipated event. New factors emerge from time to time, and it is not possible for management to predict all factors that may affect our business and prospects. Further, management cannot assess the impact of each factor on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

The following discussion should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.



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**ITEM 1. BUSINESS**

**General**

We are a leading operator of regulated global markets and clearing houses, including futures exchanges, over-the-counter, or OTC, markets, derivatives clearing houses and post-trade services. We operate these global marketplaces for trading and clearing a broad array of energy, environmental and agricultural commodities, credit default swaps, or CDS, equity indexes and currency contracts. We offer electronic platforms for the trading of products in both the futures and OTC markets together with clearing services, post-trade processing and market data. Through our widely-distributed electronic markets, we bring together buyers and sellers of derivative and physical commodities and financial contracts by offering a range of services to support our participants' risk management and trading activities.

We were formed in May 2000 as an OTC energy marketplace. Since that time, we have expanded our business into commodity futures markets and clearing houses through acquisitions and internal development. We conduct our regulated energy futures markets through our wholly-owned subsidiaries, ICE Futures Europe and ICE Futures U.S. ICE Futures Europe is the largest energy futures exchange outside of the United States as measured by 2012 traded contract volumes according to the Futures Industry Association. We conduct our regulated U.S. agricultural and financial futures markets through ICE Futures U.S. We conduct our regulated Canadian agricultural futures markets through our wholly-owned subsidiary, ICE Futures Canada. Our energy futures contracts are cleared by ICE Clear Europe, ICE Futures U.S. agricultural and financial contracts are cleared by ICE Clear U.S. and ICE Futures Canada's agricultural contracts are cleared by ICE Clear Canada, each of which is a separate wholly-owned subsidiary.

As a result of completed and pending regulatory changes in the United States that offer greater regulatory and operational certainty to futures market participants relative to the swaps market, on October 15, 2012, we transitioned all of our OTC cleared energy contracts to futures contracts. Our OTC cleared energy contracts, including North American natural gas, North American power and physical environmental swaps, transitioned to futures listed at ICE Futures U.S. and continue to be cleared at ICE Clear Europe, which is a U.S. Derivatives Clearing Organization, or DCO. Our cleared OTC global oil and refined products, freight, iron ore and natural gas liquid swaps transitioned to futures contracts and are listed at ICE Futures Europe, along with our European energy futures contracts, and continue to be cleared at ICE Clear Europe in its capacity as a U.K. Recognized Clearing House.

We continue to conduct our OTC bilateral physical energy markets through ICE U.S. OTC Commodity Markets, LLC as an Exempt Commercial Market under the Commodity Exchange Act. We conduct our CDS trade execution business through Creditex Group Inc. and its subsidiaries, or Creditex, an interdealer broker for CDS. ICE Clear Credit offers clearing for North American CDS and ICE Clear Europe offers clearing for European CDS.

On December 20, 2012, we announced an agreement to acquire NYSE Euronext in a stock and cash transaction. The transaction, which was unanimously approved by the board of directors of both companies, is currently valued at approximately \$8.6 billion, based on the closing price of our stock on January 31, 2013. The final purchase price will be based on the actual market price per share of ICE common stock on the closing date of the acquisition, which is anticipated in the second half of 2013, subject to regulatory approvals. NYSE Euronext is a holding company that, through its subsidiaries, operates the following securities exchanges: the New York Stock Exchange, NYSE Arca, Inc. and NYSE MKT LLC in the United States and the European-based exchanges that comprise Euronext N.V. — the Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the NYSE Liffe derivatives markets in London, Paris, Amsterdam, Brussels and Lisbon. Upon the closing of the acquisition, NYSE Euronext will merge with and into a wholly-owned subsidiary of ICE.

On December 20, 2012, we entered into a Clearing Services Agreement with Liffe Administration and Management, or NYSE Liffe, pursuant to which ICE Clear Europe will provide clearing services to NYSE Liffe

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as a result of the exchange's requirement for a clearing provider following its planned exit from its current provider in June 2013 and the risks associated with the continued development of its own new clearing house. The arrangement will enable us to deliver clearing services to NYSE Liffe customers through our European clearing house.

### **Our Business**

We operate regulated global futures, options and swaps markets and derivatives clearing houses that promote price transparency and offer participants the opportunity to hedge and trade a variety of commodities and financial derivatives in regulated markets. Our core products include contracts based on crude and refined oil, natural gas, power, coal, emissions, sugar, cotton, coffee, cocoa, canola, frozen concentrated orange juice, CDS, currencies and equity indexes. Our markets provide participants with a means for trading and managing risks associated with price volatility, securing physical delivery of certain contracts, as well as enabling asset allocation or diversification. The majority of our contract volume is either financially or cash settled, meaning that settlement is made through cash payments based upon the difference between the contract price and the value of the underlying commodity at contract expiry rather than through physical delivery of the commodity itself.

The majority of our contract volume is cleared through one of our central counterparty clearing houses. Our global customer base includes corporations, manufacturers, utilities, commodity producers and refiners, financial institutions, institutional and individual investors and governmental bodies.

We operate our futures and OTC bilateral physical energy markets primarily on our electronic trading platforms and we offer trading in CDS through a hybrid model in which trading is offered both electronically and through voice brokerage operations. In addition to trade execution, our technology infrastructure provides for comprehensive trading-related services, including pre- and post-trade risk management, connectivity, electronic trade confirmation, market data and clearing services to enable integration of front-, back- and middle-office trading, processing and risk management capabilities.

Historically, we operated and managed our business on the basis of three reportable segments. However, as of December 31, 2012, to be consistent with the manner in which our chief operating decision maker reviews and analyzes our business, we now report all of our financial information under one segment.

### ***History***

IntercontinentalExchange was established in May 2000, with our founding shareholders representing some of the world's leading energy companies and global financial institutions. Our mission was to transform the OTC energy markets by providing an open, accessible, around-the-clock electronic marketplace to a previously fragmented and opaque market structure. We offered the energy community improved price transparency, efficiency, liquidity and lower costs than were available through traditional methods of trade execution, such as voice brokered or open outcry markets.

In June 2001, we expanded our business into the futures markets by acquiring ICE Futures Europe, formerly the International Petroleum Exchange of London. As the leading regulated energy futures exchange outside of the United States, ICE Futures Europe's markets are fully electronic and for the year ended December 31, 2012, hosted trading for 56% of the world's crude and refined oil futures contract volume. ICE Data was formed in 2002 to meet the demand for increased market data in the OTC energy markets and it provides daily futures and OTC commodity market data globally.

In November 2005, we completed our initial public offering on the NYSE under the ticker symbol "ICE" and have since become a member of the Russell 1000 and the S&P 500 indexes.

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In January 2007, we acquired ICE Futures U.S., formerly the New York Board of Trade. Following the introduction of electronic futures trading in 2007, ICE Futures U.S. transitioned from a fully floor-based futures market to largely an electronic futures market. Options markets were available for trading on the floor of the exchange until open outcry was discontinued in October 2012 as a result of customer migration to screen trading.

In August 2007, we acquired ICE Futures Canada, formerly the Winnipeg Commodity Exchange, which is the world's largest canola futures market. In August 2008, we completed our acquisition of Creditex, a leading interdealer broker for the execution and processing of credit derivatives. We launched ICE Clear Europe in November 2008 and launched ICE Clear Credit in March 2009 following the acquisition of The Clearing Corporation, or TCC. TCC's CDS risk model was utilized by ICE Clear Credit and ICE Clear Europe to develop clearing for CDS instruments.

In July 2010, we acquired Climate Exchange plc, or CLE, an operator of environmental markets in the United States and Europe. CLE was the parent company of European Climate Exchange. In July 2011, we acquired a 12% stake in Cetip, S.A., or Cetip. Based in Brazil, Cetip is a publicly traded company and is the country's leading operator of registration and custodial services for securities, fixed-income bonds and OTC derivatives.

In September 2012, we entered into an agreement to acquire a majority stake in the derivatives and spot gas business of APX-ENDEX, a leading European natural gas exchange. Under the terms of the agreement, we will acquire 79.12% of the derivatives and spot gas business of APX-ENDEX. Gasunie, an existing stockholder of APX-ENDEX, will retain the remaining 20.88% stake. Subject to regulatory approval and customary closing conditions, the transaction is expected to close by the end of the first quarter of 2013.

As discussed above, on December 20, 2012, we entered into an agreement to acquire NYSE Euronext in a stock and cash transaction. The acquisition is expected to close during the second half of 2013, subject to regulatory approvals in Europe and the United States, approval by stockholders of both companies and customary closing conditions.

## ***Our Markets***

We currently operate three regulated futures exchanges in the United States, the United Kingdom and Canada. Each futures exchange has an affiliated clearing house in order to provide settlement and risk management services for the contracts initiated on the exchange.

ICE Futures Europe operates as a Recognized Investment Exchange in the United Kingdom, where it is regulated by the U.K. Financial Services Authority, or FSA. ICE Futures Europe is a leading exchange for crude and refined oil futures contracts, as well as futures based on European emissions, natural gas and power and global coal. In connection with the transition of cleared energy swaps to futures, ICE Futures Europe also lists futures on global oil and refined products, freight, iron ore and natural gas liquids. Its members and market participants include many of the world's largest energy companies, commercial energy consumers and financial institutions. ICE Futures Europe contracts are cleared by ICE Clear Europe, which is regulated by the FSA as a Recognized Clearing House. ICE Clear Europe is also registered as a DCO in the United States.

ICE Futures U.S. is a leading global futures and options exchange for trading in a range of agricultural commodities, including sugar, coffee, cotton, cocoa and frozen concentrated orange juice. In addition, ICE Futures U.S. lists futures and options contracts for financial products, including the Russell Indexes, currencies and the U.S. Dollar Index, or USDIX. In connection with the transition of cleared energy swaps to futures, ICE Futures U.S. also lists futures on North American natural gas, North American power and physical environmental products. ICE Futures U.S. operates as a designated contract market under the Commodity Exchange Act and is regulated by the Commodity Futures Trading Commission, or CFTC. ICE Clear Europe clears the energy contracts traded on ICE Futures U.S. and ICE Clear U.S. clears the agricultural and financial contracts traded on ICE Futures U.S., and each of them is a DCO, regulated by the CFTC with respect to those activities.

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ICE Futures Canada is Canada's leading agricultural commodity futures and options exchange. ICE Futures Canada offers futures and options contracts on canola, milling wheat, durum wheat and barley. ICE Futures Canada is a recognized commodity futures exchange under the provisions of The Commodity Futures Act (Manitoba) and is regulated by the Manitoba Securities Commission. ICE Clear Canada, which clears contracts traded on ICE Futures Canada, is a recognized clearing house under the provisions of The Commodity Futures Act (Manitoba) and is regulated by the Manitoba Securities Commission.

We operate OTC markets for CDS instruments and bilateral energy contracts, as well as clearing houses for CDS instruments. We conduct our bilateral energy markets through ICE U.S. OTC Commodity Markets, LLC pursuant to the Commodity Exchange Act as an Exempt Commercial Market. We offer trading of contracts based on physically settled natural gas, power and crude and refined oil product markets.

In our CDS business, we offer electronic and voice brokered trade execution for CDS through Creditex Brokerage LLP, which is authorized and regulated by the FSA, and Creditex, our U.S. based interdealer broker. We offer clearing services for the European CDS markets through ICE Clear Europe in a risk management framework that is separate from our energy clearing operations. We offer clearing services for the North American CDS markets through ICE Clear Credit, which is a DCO regulated by the CFTC and a securities clearing agency regulated by the SEC. Both CDS clearing houses are open-access pursuant to regulatory requirements and therefore accept qualifying trades for clearing that are executed on other venues.

We offer market data services for our markets through our subsidiaries, ICE Data. ICE Data compiles and packages market data derived from trading activity on our platform into products that are relied upon by customers in over 140 countries. Market data services include publication of daily indexes, historical price and other transaction data, view-only and mobile access to our trading platform, end of day settlements and price data. ICE Data also offers a service that provides independent validation of participants' own valuations for futures and OTC products.

### **Our Competitive Strengths**

We have established ourselves as a leading operator of global futures exchanges, derivative clearing houses and post-trade services. We believe our key strengths include our:

liquid, diverse global markets and benchmark contracts;

geographic and product diversity across regulated exchanges and CDS markets;

secure central counterparty clearing operations and risk management for our markets;

widely-distributed, leading edge technology for trading and trade processing; and

innovative, growth-oriented and customer-focused management.

#### ***Liquid, Diverse Global Markets and Benchmark Contracts***

Many of our futures contracts serve as global benchmarks for managing risk relating to exposure to price movements in the underlying products, including energy and agricultural commodities and financial products. For example, we operate the leading market for trading in Brent crude oil futures, as measured by the volume of contracts traded in 2012 according to the Futures Industry Association. The ICE Brent Crude futures contract is the leading benchmark for pricing light, sweet crude oil produced and consumed outside of the U.S. The ICE

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Brent Crude futures contract is part of the Brent complex, which forms the price reference for approximately two-thirds of the world's physical oil. Similarly, the ICE Gas Oil futures contract is the leading benchmark for the pricing of refined oil products globally, including diesel and heating oil. Based on 2012 contract volume, over half of the world's crude and refined oil futures are traded through ICE Futures Europe. We also offer leading agricultural benchmark contracts, including sugar, cotton and coffee that serve as global price references. In addition, we offer futures markets in the benchmark Russell indexes, and U.S. Dollar index.

The following table shows the number and notional value of commodity and equity index contracts traded in our most significant markets. The notional value of contracts represents the aggregate value of the underlying commodities and instruments covered by the contracts.

|   | 2012                                  |                                 | Year Ended December 31, 2011          |                                 | 2010                                  |                                 |
|---|---------------------------------------|---------------------------------|---------------------------------------|---------------------------------|---------------------------------------|---------------------------------|
|   | Number of Contracts<br>(In thousands) | Notional Value<br>(In billions) | Number of Contracts<br>(In thousands) | Notional Value<br>(In billions) | Number of Contracts<br>(In thousands) | Notional Value<br>(In billions) |
| North American natural gas futures and options and cleared OTC contracts(1) | 356,294                               | \$ 2,719                        | 319,350                               | \$ 3,539                        | 240,777                               | \$ 2,442                        |
| ICE Brent Crude futures and options contracts                               | 156,334                               | 16,212                          | 134,248                               | 14,493                          | 100,217                               | 8,103                           |
| ICE Gasoil futures and options contracts                                    | 64,182                                | 6,032                           | 66,202                                | 6,111                           | 52,583                                | 3,565                           |
| North American power futures and options and cleared OTC contracts(1)       | 95,490                                | 233                             | 62,510                                | 289                             | 62,959                                | 315                             |
| ICE emission futures and options contracts                                  | 9,312                                 | 70,440                          | 7,570                                 | 118,889                         | 6,166                                 | 103,349                         |
| Sugar futures and options contracts   | 32,316                                | 779                             | 31,455                                | 952                             | 37,910                                | 943                             |
| Russell Index futures and options contracts                                 | 33,657                                | 2,664                           | 44,416                                | 3,366                           | 40,352                                | 2,680                           |

(1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas and cleared OTC North American power contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

The following table shows the gross notional value of CDS contracts traded through Creditex and cleared by ICE Clear Credit and ICE Clear Europe:

|                      | 2012   |   | Year Ended December 31, 2011                 |   | 2010   |   |
|----------------------|--|---|--|---|--|---|
|                      | Gross Notional Value Traded<br>(In billions) | Gross Notional Value Cleared<br>(In billions) | Gross Notional Value Traded<br>(In billions) | Gross Notional Value Cleared<br>(In billions) | Gross Notional Value Traded<br>(In billions) | Gross Notional Value Cleared<br>(In billions) |
| Credit default swaps | \$ 1,144                                     | \$ 10,243                                     | \$ 1,810                                     | \$ 11,627                                     | \$ 2,270                                     | \$ 9,988                                      |

**Geographic and Product Diversity Across Regulated Exchanges and CDS Markets**

Our regulated exchanges and electronic trading platform offer qualified market participants a single interface to our markets, covering a range of categories, including energy, agricultural, equity index,

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environmental and currency products. In addition, Creditex offers credit derivatives products on its trade execution platform. By offering trading in multiple markets and products we provide our participants with flexibility to implement their trading and risk management strategies across a variety of asset classes and geographies. We serve customers in dozens of countries as a result of listing products that are relevant globally, such as crude and refined oil products, credit derivatives, agricultural commodities, the USDX and currencies.

Through our globally accessible trading platform, we offer real-time market transparency to participants, observers and regulators for the energy, agricultural and financial markets. This access and transparency has increased liquidity and the ability of participants to transact in our markets. Our range of market data meets or surpasses those offered by other execution venues and data providers, which may be beneficial to us in a regulatory and market environment that favors price transparency and reporting.

In addition, we believe that our growth has been driven in part by the depth of our product offerings in our markets. We believe that our ability to develop specialized technology and launch new products provides us with competitive advantages, including a larger addressable market, extensive domain knowledge in our markets, insight into commercial market participants' needs, the ability to offer cross margining for correlated products, and the ability to offer a broad range of market data services. In addition to futures markets, we continue to offer the ability to offer bilateral markets for physical energy contracts where clearing is not possible or available, as well as execution services for the CDS markets.

### ***Secure Central Counterparty Clearing Operations and Risk Management for Our Markets***

We offer a range of risk management services, including trade execution, market data, post-trade processing and clearing services on an integrated electronic platform. The transparency and regulation in our markets, along with our clearing houses, help ensure the security of our markets. The credit and performance assurance provided by our clearing houses to their clearing members substantially reduces counterparty risk and is a critical component of our exchanges' identities as reliable and secure marketplaces for global transactions.

Our clearing houses are designed to protect the financial integrity of our markets by maintaining collateral, facilitating payments and collections, and limiting counterparty credit risk. Positions are marked to market at least daily, and in some cases at regular intervals throughout the day. The clearing houses maintain a comprehensive set of rules and policies in addition to customer protection, risk management and governance frameworks.

In addition to clearing, our markets provide important risk management tools based on changes in market conditions, regulations, market structure and technological advancements. These tools cover the development of new traded contracts and instruments, platforms for post-trade services including connectivity and reporting, market data, mobile technology and credit event auctions, each of which is designed to enable market participants to better manage risks inherent in their businesses.

### ***Widely-Distributed, Leading Edge Technology for Trading and Trade Processing***

Our integrated, leading edge technology infrastructure provides centralized and direct access to trade execution, processing and clearing for a variety of energy and agricultural commodities and financial products. We operate the majority of our energy, agricultural and financial markets on our electronic trading platforms. Our trading platforms have enabled us to attract significant liquidity from traditional market participants, as well as new market entrants seeking the access, efficiency and ease of execution offered by electronic trading. We have developed a significant global presence with active screens at over 2,600 participant firms as of December 31, 2012.

Our participants may connect to our electronic platform via one of our telecommunication hubs, the Internet, dedicated lines, or through co-location at our data center. We have telecommunication hubs available in

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the United States, Europe, Canada and Asia. Participants may access our electronic platform for trading in our markets through our own front-end, known as WebICE, or using our application programming interfaces, or APIs. Our APIs allow access via proprietary integrations, brokerage firms, and multiple Independent Software Vendors, or ISVs. ISVs allow market participants to access multiple exchanges through a single interface, which may be integrated with the participant's risk management systems. We do not depend on the services of any one ISV for access to a significant portion of our participant base.

Market participants in our CDS markets may trade through Creditex's trading platform or other electronic trade processing tools developed by Creditex. During the years ended December 31, 2012, 2011 and 2010, 61%, 61% and 49%, respectively, of our revenues from our Creditex business were generated through electronic trading and processing.

We develop and maintain our own clearing systems across five clearing houses. In 2011, ICE Clear Europe completed its extensive migration from outsourced clearing technology to internally developed technology and related software. The benefits of this transition include modernizing the clearing technology standards to allow our clearing houses to benefit from technology enhancements and increasing our ability to introduce new products, markets and services. Details on each of these and other system offerings are discussed in the Technology section, below.

### ***Innovative, Growth-Oriented and Customer-Focused Management***

We strive to foster a culture of customer service, innovation and growth within our management team and staff. We put an emphasis on the integrity of our systems and infrastructure to maintain confidence in our marketplace and in our company. We have been recognized both within and outside of our industry for innovation and service across our exchange, clearing and corporate initiatives. We work closely with our customers to create products and services that meet their needs and requirements, and these customer relationships help us to anticipate and lead industry change. We offer performance-based compensation that includes various forms of equity ownership in our common stock by a broad base of our employees to reflect our shared, company-wide objectives, which include achieving key financial profitability metrics, growth, innovation and a high level of customer service.

Our board of directors is independent from our participants and the trading activity in our markets, which allows our board to act impartially in making decisions regarding our business. In addition to an independent governance structure at the parent level, we have implemented similar governance structures at the individual exchange and clearing house levels. Each of our exchanges and clearing houses also have boards that are majority independent and include representatives from the parent board, members of our senior management and other independent directors with industry experience.

### **Our Growth Strategy**

The record consolidated revenues and trading volume we achieved in 2012 reflect our focus on the implementation and execution of our long-term growth strategy. We have expanded our core business both organically and through acquisitions, developed innovative new products for global markets, and provided trading-related services to a larger and more diverse participant base. In addition, we have completed a number of strategic alliances to leverage our core strengths and grow our business. We seek to advance our leadership position in our markets by focusing our efforts on the following key strategies for growth:

attract new market participants;

offer additional products and asset classes and services across our markets;

expand on our extensive clearing and risk management capabilities;

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continue to enhance our technology infrastructure and increase distribution; and

pursue select acquisitions and strategic opportunities.

### ***Attract New Market Participants***

Our customer base has grown and diversified due to the continued emergence of new participants in the commodities and financial markets, the increased use of hedging programs by commercial enterprises, our expansion into new markets, the increased access to our markets as a result of electronic trading, an increase in market participants across the U.S., European and Asian markets, and the increased allocation to commodities by institutional investors. Market participants include producers and refiners, utilities and governments, financial services companies, such as investment banks, hedge funds, proprietary trading firms and asset managers, as well as industrial and manufacturing businesses that are increasingly engaging in hedging, trading and risk management strategies. We believe that many participants are attracted to our markets in part, due to transparency, the need to hedge price volatility and the reduced barriers to market access. We intend to continue to expand our customer base by leveraging our existing relationships and our global sales and marketing team to promote participation in our markets, and by expanding our range of products and services.

### ***Offer Additional Products and Asset Classes and Services Across Our Markets***

We have grown, and intend to expand, as a result of our unique position in our markets, our extensive clearing services and our ability to develop new and innovative products. Through our acquisition of Creditex and the formation of ICE Clear Credit and ICE Clear Europe, we offer a number of innovative products and services. We have also enhanced our product offerings by entering into strategic relationships and licensing arrangements, including the arrangements for Russell Index futures, Platts products through licenses with The McGraw Hill Companies, the Natural Gas Intelligence, or NGI, indexes, Natural Gas Exchange, or NGX, indexes, and Argus products, among others. We also continue to pursue opportunities in markets we do not currently serve. We intend to continue to expand the range of products we offer, both by product type and contract design, and by continuing to work with our customers and potential partners to develop new products. We may also seek to license our platform to other exchanges for the operation of their markets on our platform, as we have done in the past with the NGX, CLE, or our Brix Energia e Futuros S.A., or BRIX, partnership.

During August 2012, we and Cetip, Latin America's largest private fixed income depository, launched the beta version of a Brazilian fixed income trading platform. Following regulatory approval in January 2013, the production version was launched. The new platform is called Cetip | Trader and it brings together electronic trading, voice confirmation, straight through processing and data that is expected to provide transparency, price formation, and workflow automation to Brazilian fixed income markets. Cetip is responsible for product strategy and the promotion of the platform in Brazil, and we developed the trading platform based on our existing fixed income technology.

On December 20, 2012, we entered into an agreement to acquire NYSE Euronext. If the NYSE Euronext acquisition is successful, it will allow us to expand our markets into equities, equity options and additional derivatives markets, as well as additional market data products and technology solutions. We have also entered into an agreement to acquire a majority stake in the derivatives and spot gas business of APX-ENDEX, a leading European energy exchange. If the APX-ENDEX acquisition is successful, it will allow us to expand our markets into the Title Transfer Facility (TTF) Virtual Trading Point in the Netherlands, one of continental Europe's leading natural gas trading hubs, as well as the U.K. On-the-Day Commodity Market (OCM) and the Belgian Zeebrugge Trading Point (ZTP). The APX-ENDEX acquisition is expected to close by the end of the first quarter of 2013 and the NYSE Euronext acquisition is expected to close during the second half of 2013, subject to regulatory approvals and customary closing conditions and, in the case of the NYSE Euronext acquisition, stockholder approvals.



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### ***Expand on Our Extensive Clearing and Risk Management Capabilities***

By establishing and maintaining our own clearing operations, we are able to respond to market demand for central clearing and related risk management services. With the November 2008 launch of ICE Clear Europe, the March 2009 launch of ICE Clear Credit and the October 2011 migration of ICE Clear Europe from outsourced clearing technology to internally developed clearing technology and related software, we now manage our product development cycle and risk management and are better able to introduce products that our customers require in a timely manner, subject to regulatory approvals. As new markets evolve, we intend to leverage our domain knowledge in clearing to meet additional demand for clearing globally. For example, on December 20, 2012 we entered into a Clearing Services Agreement with NYSE Liffe pursuant to which ICE Clear Europe will provide clearing services to the London market of NYSE Liffe. The arrangement will enable us to deliver clearing services to NYSE Liffe customers through our European clearing house. We also announced our intention to clear non-deliverable forward foreign exchange contracts beginning in 2013.

### ***Continue to Enhance Our Technology Infrastructure and Increase Distribution***

We develop and maintain our own network infrastructure, electronic trading platform and clearing systems to ensure the delivery of leading-edge technology that meets our customers' demands for price transparency, reliability, risk management and transaction efficiency. Our participants may connect to our electronic platform via one of our telecommunication hubs, the Internet, dedicated lines or through co-location at our data center. Participants may access our electronic platform for trading in our markets through our own graphical user interface, known as WebICE, which is offered on a desktop and mobile basis, or by using our APIs. Our APIs provide access for proprietary integrations, brokerage firms, and multiple ISVs. Our participants can currently access our platform using order routing and trade capture conformed ISVs. We intend to continue to increase ease of access and connectivity with our existing and prospective market participants.

### ***Pursue Select Acquisitions and Strategic Opportunities***

As an early consolidator in global futures exchanges and OTC markets, we intend to continue to explore and pursue acquisition and other strategic opportunities to strengthen our competitive position globally, broaden our products and services for our customers, and support the growth of our company. We may enter into business combinations, make acquisitions or enter into strategic partnerships, joint ventures or alliances, any of which may be material. In addition to growing our business, we may enter into these transactions for a variety of reasons, including to leverage our existing strengths to enter new markets, expand our risk management products and services, address underserved markets, advance our technology, anticipate or respond to regulatory change, or take advantage of new developments and potential changes in the industry.

### ***Our Products and Services***

As a leading operator of global futures exchanges, OTC marketplaces and clearing houses, we seek to provide our participants with centralized access to our markets for price transparency, electronic trade execution, clearing and other services that support their trading and risk management activities. The primary services we provide are price discovery and transparency, trade execution, trade processing, clearing and market data services, as well as the development and delivery of technology to facilitate these and other risk management activities.

Our futures markets are fully regulated and are responsible for carrying out self-regulatory functions. Each regulated exchange has its own governance, compliance, surveillance and market supervision functions, as well as a framework for disciplining members and other market participants that do not comply with exchange rules and policies. Trading in our regulated futures markets is available to our members and market participants. Once trades are executed on our platform, they are matched and forwarded to a trade registration system that routes

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them to the applicable clearing house for clearing and settlement. In our clearing houses, the trades are maintained by our risk management systems until the positions are closed out by our customer.

***Regulated Energy Futures Products***

We operate regulated markets for energy futures contracts and options on those contracts through our subsidiaries, ICE Futures Europe and ICE Futures U.S. Our core products include contracts based on crude and refined oil, natural gas, power, emissions and coal. Our largest contract is the ICE Brent Crude futures contract and it is based on forward physical delivery of a blend of light, sweet crude oil that originates from oil fields in the North Sea that comprise the Brent complex. Brent crude is the leading global benchmark used to price a range of traded oil products, including approximately two-thirds of the world's physical oil. The ICE Gasoil futures contract is a European heating oil contract that offers physical delivery and serves as a significant pricing benchmark for refined oil products, particularly in Europe and Asia. We also operate the world's second largest market for trading in West Texas Intermediate, or WTI, crude oil futures, as measured by the volume of contracts traded in 2012 according to the Futures Industry Association. The WTI Crude futures contract is the leading benchmark for pricing light, sweet crude oil delivered and consumed within the United States.

As discussed above, on October 15, 2012, our cleared OTC energy swaps transitioned to futures and we transitioned approximately 800 cleared OTC swaps contracts to our futures markets. Our cleared North American natural gas and power swaps were transitioned to ICE Futures U.S. For the fourth quarter of 2012, our transitioned energy futures contracts comprised 83% of ICE Futures U.S. average daily volume, with the remainder being agricultural and financial futures contract volume. Also in October 2012, our cleared oil swaps were transitioned to ICE Futures Europe and comprised 5% of ICE Futures Europe's average daily volume for the fourth quarter, with the exchange's traditional energy futures contract volume comprising the remainder. The balance of the OTC swaps products that did not transition to futures remain bilaterally traded in our OTC markets; these products are discussed in the "OTC Energy Products" section below.

***Regulated Agricultural Futures Products***

ICE Futures U.S. is a regulated leading commodity futures exchange for the trading of agricultural commodities. ICE Futures U.S. and its predecessor companies have offered trading in contracts based on agricultural commodities for over 130 years and have maintained a strong franchise in these products. These contracts are designed to provide effective pricing and hedging tools to industry users worldwide, as well as strategic trading opportunities for investors. The prices for our agricultural contracts serve as global benchmarks for the physical commodity markets, including Sugar No. 11 (world raw sugar), Coffee C (Arabica coffee), Cotton No. 2 (cotton) and frozen concentrated orange juice. In 2012, ICE Futures U.S. began offering trading in cash-settled futures and options on futures on corn, wheat, soybeans, soybean oil and soybean meal. Although these contracts do not serve as the primary global benchmark contracts for the respective markets, they offer market participants a cash-settled alternative to the physical benchmark contracts. Agricultural products accounted for 31%, 50% and 55% of ICE Futures U.S.'s trading volume in 2012, 2011 and 2010, respectively. The 2012 decrease in trading volume percentage for the agricultural products is primarily due to the launch of the new energy futures contracts at ICE Futures U.S. in October 2012.

ICE Futures Canada is the only regulated commodity futures exchange in Canada and it facilitates the trading of futures and options on futures contracts for canola, milling wheat, durum wheat and barley. ICE Futures Canada contracts are designed to provide effective pricing, trading and hedging tools to market participants worldwide. ICE Futures Canada's canola futures contract is the worldwide price benchmark for canola.

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### ***Regulated Financial Futures Products***

ICE Futures U.S. also offers financial products in currency and equity index markets. ICE Futures U.S. lists futures and options contracts on certain Russell indexes, including the Russell 2000, Russell 1000 and related style indexes. We entered into a licensing arrangement with Russell with respect to Russell Index futures and options and we have certain exclusive rights throughout the remainder of the licensing agreement, which extends through June 2017, subject to achieving specified trading volumes for the various indexes. Trading volumes in the Russell equity index products represented 18%, 41% and 38%, respectively, of ICE Futures U.S.'s exchange volume in 2012, 2011 and 2010, respectively. The 2012 decrease in trading volume percentage for the Russell equity index products is primarily due to the launch of the new energy futures contracts at ICE Futures U.S. in October 2012.

ICE Futures U.S. also provides futures and options markets for approximately 56 currency pair contracts including euro-based, U.S. dollar-based, yen-based, sterling-based and other cross-rates, as well as the benchmark USDX futures contract.

### ***Credit Derivatives Products***

Widely used types of credit derivatives are credit default swaps, or CDS, that involve the transfer between two parties of credit risk related to fixed income instruments such as corporate debt securities. The buyer of the CDS contract, who may own the underlying credit or otherwise has a credit risk exposure to the writer of the credit, will make a payment or series of payments to the seller of the CDS contract in return for protection against default, a credit rating downgrade or other negative credit event with respect to the underlying debt security. CDS are principally used to hedge against the default of a particular reference entity on a specified credit obligation or debt instrument.

In August 2008, we acquired Creditex, a market leader and innovator in the execution and processing of CDS, with markets spanning the United States, Europe and Asia. Creditex is a dealer-to-dealer execution agent that facilitates trading in the global CDS markets and serves the most liquid segments of the market, including indexes and single-name instruments. Creditex offers voice, hybrid, and electronic trading services, which are provided through the Creditex RealTime trading platform.

We offer electronic and voice brokered OTC trade execution for CDS through Creditex Brokerage LLP, which is authorized and regulated by the FSA, and Creditex, our U.S. based interdealer broker. We offer clearing services for the European CDS markets through ICE Clear Europe. We offer clearing services for the North American CDS markets through ICE Clear Credit, which is a DCO regulated by the CFTC, and a securities clearing agency regulated by the SEC. Both CDS clearing houses are open-access and therefore accept qualifying trades for clearing that are executed on other venues.

The flexibility to provide voice, hybrid, or electronic trading solutions maximizes value for Creditex clients who can select the execution venue that best suits their needs. Electronic trading is the dominant trading means in the European market and has become an increasingly large portion of CDS global trading.

We also operate an electronic platform known as ICE Link, which is an automated trade workflow and connectivity platform for affirming credit derivatives transactions. ICE Link also provides connectivity between market participants, facilitating straight-through processing to the Depository Trust & Clearing Corporation's Trade Information Warehouse for non-cleared CDS transactions or to a clearing house for CDS transactions that are clearing eligible. ICE Link enables market participants to capture and affirm trade details and to electronically deliver the information to downstream systems for novation, confirmation and clearing.

Our CDS clearing solutions were designed to address the operational and risk management needs of the credit derivatives market. We launched the first North American CDS clearing house through ICE Clear Credit in March 2009, and the first European CDS clearing house through ICE Clear Europe in July 2009.

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We have established separate CDS risk pools for ICE Clear Credit and ICE Clear Europe, including separate guaranty funds and margin accounts, meaning that the CDS positions are not combined with positions in our traditional futures and OTC energy clearing houses. The CDS clearing houses have risk management systems that are designed specifically for CDS instruments and have independent governance structures. As of December 31, 2012, ICE CDS clearing houses clear 278 single name instruments and 100 CDS indexes.

### ***OTC Energy Products***

Our OTC energy markets currently comprise the trading of bilateral energy contracts. We operate our bilateral energy markets through ICE U.S. OTC Commodity Markets, LLC. We offer trading of contracts based on physically settled natural gas, power and crude and refined oil products.

Our OTC energy markets are offered directly through our transparent, electronic trading platform, which offers real-time access to liquidity in our markets including the complete range of bids, offers, trades and volume posted for all contracts. Our electronic platform displays a live price ticker for all contracts and provides information relating to each trade, such as the transaction price, as well as aggregate information such as the volume weighted average price and transacted volumes for each contract or strip. We offer fast, secure and anonymous trade matching services, which we believe, generally are offered at a lower cost compared to traditional means of execution.

Participants executing in our markets benefit from straight-through processing whereby trades are automatically confirmed and routed to back office departments and risk management systems. We believe that the broad availability of real-time OTC energy market access and data has allowed us to achieve a critical mass of liquidity in these markets.

As of December 31, 2012, we list over 600 OTC energy contracts on our electronic trading platform that are available for bilateral trading. A substantial portion of our OTC volume relates to approximately 130-140 contracts in North American natural gas, North American power, and global oil. For these contracts, the highest degree of market liquidity resides in the prompt, or front month, contracts, with decreasing liquidity for longer-dated contracts. As of December 31, 2012, we no longer list cleared OTC energy contracts following the transition of those products to futures in October 2012.

### ***Market Data Services***

We offer market data services for our markets through ICE Data. ICE Data compiles, formats and offers packages of market data derived from trading activity on our platform into information products that are relied upon by customers in over 140 countries.

Market data services include publication of daily indexes, historical price and other transaction data, view-only and mobile access to our trading platform, end of day settlements and price data. ICE Data also offers a service that provides independent validation of participants' own valuations for OTC products.

We generate market information and indexes based primarily upon auditable transaction data derived from actual bid and offer postings and trades executed in our markets. Therefore, this information is not affected by subjective estimation or selective polling, the methodologies that are prevalent in certain other markets.

ICE Data publishes complementary ICE daily indexes for our spot natural gas and power markets for over 110 of the most active gas hubs and over 20 of the most active power hubs in North America. In addition, the ICE Data end of day report is a comprehensive electronic summary of trading activity in our energy markets and

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this information is sold as various subscription-based products. We also offer view-only access to market participants who are not active traders but who desire access to real-time energy prices.

ICE Data's market price validation, or MPV, service provides independent, consensus forward curve and option values for long-dated global energy contracts on a monthly basis. MPV service participants use these consensus values to validate internal forward curves, mark-to-market their month-end portfolios and establish profit and loss valuations in accordance with the Financial Accounting Standards Board and the International Accounting Standards Board's recommendations concerning the treatment and valuation of energy derivative contracts.

We also provide our real-time futures data to data distributors, commonly called quote vendors. These companies, such as Bloomberg or Reuters, then package this data into real-time, tick, intra-day, delayed, end-of-day and historical data packages to sell to end users. The real-time packages are accessed on a subscription basis and the appropriate exchange fee is paid for each screen. End users include financial information providers, futures commission merchants, pension funds, financial services companies, funds, insurance companies, commodity pools and individual investors.

### ***Clearing Services***

We operate the following five clearing houses:

ICE Clear U.S. for all non-energy ICE Futures U.S. contracts;

ICE Clear Canada for ICE Futures Canada contracts;

ICE Clear Europe for ICE Futures Europe contracts, energy futures contracts traded at ICE Futures U.S. and European CDS contracts;

ICE Clear Credit for North American CDS contracts, an emerging market sovereign CDS index contract and some Latin American sovereign CDS contracts; and

TCC for certain OTC benchmark treasury futures contracts.

These clearing houses clear, settle and guarantee to their clearing members the financial performance of all futures contracts and options on futures contracts matched through our execution facilities, with the exception of ICE Clear Europe which clears futures contracts, options on futures contracts and European OTC CDS transactions, and ICE Clear Credit which acts as a central counterparty in the registration and clearing of North American OTC CDS transactions. Through our clearing houses, we maintain a system for performance of financial obligations related to transactions in products we clear. These financial obligations are between the clearing members through which buyers and sellers conduct transactions. This system is supported by several mechanisms, including rigorous clearing membership requirements, the calculation and posting of original margin deposits, daily mark-to-market of positions and payment of variation margin, maintenance of guaranty funds in which clearing members maintain deposits with our clearing houses, and broad assessment powers to recoup financial losses should they arise due to a clearing member default. The amount of margin deposits on hand fluctuates over time as a result of, among other things, the extent of open positions held at any point in time by market participants and the volatility of the market as reflected in the margin rates then in effect for such contracts.

By operating our own clearing houses, we are able to prioritize and introduce new products to meet new product demand in our markets, as well as ensure technology and operational service levels meet the efficiency and quality standards of our execution business. This flexibility allows us to increase our speed-to-market for new cleared products.

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It is our objective to provide a clearing model that benefits our customers and clearing firms alike, through technological innovation, offering a competitive clearing alternative for new products and new exchanges, competitive pricing, and value-added services. In 2011, we transitioned ICE Clear Europe technology from a licensed, outsourced software environment to our proprietary clearing technology. In 2012, additional work was completed that will enable ICE Clear U.S. to transition to an updated version of the clearing technology, which will provide consistency for common clearing members and ensure the compliance of both ICE Clear U.S. and ICE Clear Europe with specific Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, requirements and CFTC rulemakings. This updated clearing technology was rolled out in January 2013. The new clearing technology provides flexibility in managing our volume growth and product development. Our clearing strategy is designed to complement our diverse markets while meeting the risk management, capital and regulatory requirements of a dynamic global marketplace.

We believe the services offered by our clearing houses are a significant attraction to our market participants, and an important part of the functioning of our exchanges. Because the role of the clearing house is to serve as a central counterparty for each matched trade, trading parties do not need to evaluate the credit of each potential counterparty on each transaction or limit themselves to a select group of counterparties. In addition, the daily mark-to-market and margin replenishment cycle helps protect the financial integrity of our clearing houses, clearing members and market participants. This discipline and counterparty risk intermediation contributes to increased liquidity in cleared markets.

To ensure performance, our clearing houses have risk management systems and financial requirements for clearing members, and set minimum margin requirements for our cleared products. Our clearing houses use software based on either an industry standard margining convention or on our proprietary models uniquely customized to our products to determine the appropriate margin requirements for each clearing member by simulating the possible gains and losses of complex portfolios based on price movements.

For each daily settlement cycle, our clearing houses mark-to-market or value all open positions at the prevailing market price and require payments from clearing members whose positions have lost value and make payments to clearing members whose positions have gained value. Our clearing houses mark-to-market all open positions at least once per day, and in some cases more often if market volatility warrants, or on a near real-time basis. Marking-to-market provides both participants in a transaction with an accounting of their financial obligations under the contract. ICE Clear Europe uses an intraday risk management methodology based on real-time price and trade data feeds from our energy markets. The methodology provides calculations of original margin and realized and unrealized variation margin, and fully revalues all positions at regular intervals throughout the day. Trade, position, profit and loss reports are available to ICE Clear U.S. throughout the trading day thereby substantially reducing intraday price risk. Mark-to-market allows our clearing houses to identify any clearing members that may not be able to satisfy the financial obligations resulting from changes in the prices of their open contracts before those financial obligations become exceptionally large and jeopardize the ability of our clearing houses to ensure financial performance of their open positions. The clearing houses may make multiple intraday original margin calls in circumstances where market conditions require that they take additional steps to protect the clearing house.

Each of our clearing houses has instituted its own multi-layered risk management system of rules, policies and procedures to protect itself in the event of a clearing member default. In addition, each of our clearing houses engages in the following activities as part of our clearing risk management systems:

performs near real-time monitoring of the risk to clearing members from trading activities in our markets;

limits the risk exposure of open positions based upon a clearing member's capital;

monitors the financial and operational standing of clearing members and potential risks posed by large traders; and

has broad authority to recoup financial losses following depletion of guaranty fund resources.

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In the event of a payment default by a clearing member, the applicable clearing house would follow the default procedures specified in the rules of that clearing house. In general, the clearing houses would first apply assets of the clearing member to cover its payment obligation. These assets include original margin, variation margin, positions held at the clearing house and guaranty fund deposits of the member. In addition, the clearing houses could make a demand for payment pursuant to any available guarantee provided to the clearing houses by the parent or affiliate of a clearing member. Thereafter, if the defaulted payment obligation remains unsatisfied, the clearing houses would use the guaranty fund contributions of other clearing members and funds collected through an assessment against all other non-defaulting clearing members to satisfy the deficit.

ICE Clear Europe has committed \$110.0 million of our cash as part of its guaranty fund for its energy and CDS business, of which \$100.0 million would be utilized once an energy clearing member's deposits are depleted and default occurs and \$10 million would be utilized for a CDS default. Of the \$100.0 million contribution available to energy clearing members, \$50.0 million will be available on a priority basis in the event an energy clearing member defaults and ICE Clear Europe has utilized all such clearing member's other default resources to settle the position. This amount will be used before other funds in the guaranty fund are used. If additional cash is required to settle positions, then the remaining \$50.0 million of our contribution will be called pro-rata along with other non-defaulting ICE Clear Europe energy clearing members' deposits in the energy guaranty fund. ICE Clear Credit and ICE Clear Europe have each committed to provide identical guaranty fund contributions for the default of a CDS clearing member totaling \$50.0 million of our cash in each clearing house, \$25.0 million of which is treated as a priority in a similar manner as the ICE Clear Europe energy guaranty fund arrangement described above. We have contributed \$50.0 million to the ICE Clear Credit guaranty fund and \$10.0 million, as discussed above, to the ICE Clear Europe CDS guaranty fund as of December 31, 2012. We are obligated to increase our total contribution up to a total of \$100.0 million. The remaining \$40.0 million contribution to ICE Clear Europe will be made over a two-year period that commences upon the introduction of client clearing for European CDS and the timing has not yet been determined.

As part of the powers and procedures designed to backstop financial obligations in the event of a default, each of our clearing houses may levy assessments on all of their clearing members if there are insufficient funds available to cover a deficit following the depletion of all assets in the guaranty fund prior to such assessment.

We have also committed borrowing capacity under our credit facility to assist our clearing houses with liquidity that may be needed to both operate and manage a default during a time of financial stress. We have a \$2.1 billion five-year senior unsecured multicurrency revolving credit facility and have reserved \$303.0 million of this amount for our clearing houses. We have reserved (i) up to \$150.0 million of such amount to provide liquidity or required financial resources for the clearing operations of ICE Clear Europe, (ii) up to \$100.0 million of such amount to provide liquidity or required financial resources for the clearing operations of ICE Clear Credit, (iii) up to \$50.0 million of such amount to provide liquidity or required financial resources for the clearing operations of ICE Clear U.S. and (iv) up to \$3.0 million to provide liquidity or required financial resources for certain of the clearing operations of ICE Clear Canada.

ICE Clear Credit is a Delaware limited liability company as well as a CFTC-regulated DCO and an SEC-regulated securities clearing agency. On July 18, 2012, the Financial Stability Oversight Council designated ICE Clear Credit as a systemically important financial market utility under Title VIII of the Dodd-Frank Act. ICE Clear Credit filed an application with the CFTC and the SEC to provide portfolio margining for proprietary and customer (buy-side) accounts in October 2011. ICE Clear Credit received regulatory approval late in 2011 for proprietary positions and began portfolio margining for clearing members' positions in January 2012. Approvals for buy-side portfolio margining were granted by the SEC on December 14, 2012, and by the CFTC on January 14, 2013.

Our clearing houses have an excellent track record of risk management. ICE Clear Europe, ICE Clear U.S., ICE Clear Canada, ICE Clear Credit and TCC have never experienced an incident of a clearing member default which has required the use of the guaranty funds of non-defaulting members or the assets of the clearing house.

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### **Our Participant Base**

#### ***Energy Participant Base***

Our participants include representatives from segments of the underlying industries served by our energy markets, including, among others, the oil, gas and power industries. Participants currently trade in our energy futures markets, either directly as members or through an ICE Futures Europe member, or an ICE Futures U.S. member. To become a member of ICE Futures Europe, an applicant must undergo a thorough review and application process and agree to be bound by ICE Futures Europe rules. ICE Futures Europe offers its screens for electronic trading in 60 jurisdictions. Memberships in our energy futures markets totaled 174 member firms as of December 31, 2012.

Energy participants include many of the world's largest energy companies, financial institutions and other active participants in the global commodities markets. These include oil and gas producers and refiners, power stations and utilities, chemical companies, transportation companies, banks, funds and other energy market participants. Our participant base is global in breadth, with thousands of participants located in 36 countries.

The five most active clearing members of our energy futures and cleared OTC businesses, which handle cleared trades for their own accounts and on behalf of market participants, accounted for 54%, 57% and 65% of our energy futures and cleared OTC revenues for the years ended December 31, 2012, 2011 and 2010, respectively. Revenues from two clearing members accounted for 19% and 12% of our energy futures and cleared OTC revenues for the year ended December 31, 2012 and 18% and 17% of our energy futures and cleared OTC revenues for the year ended December 31, 2011. Revenues from three clearing members accounted for 25%, 11% and 10% of our energy futures and cleared OTC revenues for the year ended December 31, 2010.

#### ***Agricultural & Financial Participant Base***

Our agricultural and financial participants include representatives from segments of the underlying industries served by our agricultural and financial markets, including, among others, the sugar, coffee, canola and cotton industries. Traders in these futures markets include hedgers, speculators and investors. Investors and speculators typically place orders through futures commission merchants, or through introducing brokers, who have clearing relationships with futures commission merchants. Investors may also pool their funds with other investors in collective investment vehicles known as commodity pools, which are managed by commodity pool operators and commodity trading advisors.

To gain membership status to ICE Futures U.S., an applicant must meet the eligibility requirements of ICE Futures U.S. and be bound by ICE Futures U.S. rules. All firms conducting business as futures commission merchants must register with the CFTC as such. All traders that have direct trading status must be cleared by a clearing member of ICE Clear U.S. or ICE Clear Europe as applicable. ICE Futures U.S. offers its screens for electronic trading in 31 jurisdictions.

Individuals and companies can access ICE Futures Canada's markets by registering as participants with ICE Futures Canada, or trading through a registered participant. To become a registered participant of ICE Futures Canada, an applicant must submit standard written application and agreement forms and must meet the criteria applicable to the category of registration requested. All futures commission merchants must be appropriately registered with the statutory regulatory authority in their home jurisdiction and any other jurisdiction in which they provide services to customers, and with any self-regulatory organizations required by their statutory regulatory authority. All entities that have direct trading status must be cleared by a registered clearing participant of ICE Clear Canada. ICE Futures Canada can offer its screens in 18 jurisdictions.

The five most active clearing members of our agricultural and financial futures markets, which handle cleared trades for their own accounts and on behalf of market participants, accounted for 36%, 39% and 40% of



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our agricultural and financial revenues for the years ended December 31, 2012, 2011 and 2010, respectively. Revenues from one clearing member accounted for 16%, 17% and 17% of our agricultural and financial revenues for the years ended December 31, 2012, 2011 and 2010, respectively.

A substantial portion of the trading activity of our clearing members has typically represented trades executed on behalf of market participants, rather than by the clearing firm for their own account. If a clearing member ceased its operations, we believe that the underlying customer would continue to conduct transactions and would clear those transactions through another clearing member in each of our futures exchanges.

### ***Credit Participant Base***

Participants of Creditex's RealTime electronic CDS trading platform are comprised primarily of trading desks at major international financial institutions. Clients of ICE Link's post-trade affirmation, confirmation and processing platform include most major CDS market participants on both the buy-side and sell-side, as well as inter-dealer brokers. To become a user of either the Creditex or ICE Link platforms, participants must meet applicable jurisdictional and regulatory requirements.

Participants in our CDS clearing business, ICE Clear Credit, currently consist of 27 clearing members. ICE Clear Europe has 16 CDS clearing members. As neutral and independent clearing houses, all qualified CDS market participants have the ability to access ICE Clear Credit and ICE Clear Europe either directly or indirectly through clearing members. Membership is available to institutions that meet the financial and other eligibility standards set forth in the clearing house rules. Each member firm provides ICE Clear Credit and/or ICE Clear Europe with authority to obtain their respective transaction information for the purpose of facilitating the novation of its CDS contracts that are warehoused within The Depository Trust & Clearing Corporation. For those firms that do not meet the membership criteria or do not wish to become members, our buy-side clearing solution provides for indirect clearing in North America, and in the near-term in Europe, subject to regulatory approval.

The five most active trading participants together accounted for 45%, 41% and 45% of our CDS revenues, net of intersegment fees, during the years ended December 31, 2012, 2011 and 2010, respectively. No single participant accounted for more than 10% of our CDS revenues for the years ended December 31, 2012 or 2011 and revenues from one participant accounted for 10% of our CDS revenues, net of intersegment fees, for the year ended December 31, 2010.

### ***Market Data Participant Base***

Market data participants include the world's largest commodity companies, leading financial institutions, proprietary trading firms, natural gas distribution companies and utilities, hedge funds and private investors. A large proportion of our market data revenues are derived from companies executing trades on our platform. We continue to see a growing number of non-participant companies purchasing our data and subscribing to view-only screens. The primary customer base for our futures market data are market data redistributors such as Bloomberg, CQG, Interactive Data Corporation and Reuters, who redistribute our real-time pricing data and remit to us a real-time exchange fee based on the user's access to our data. For both OTC and futures market data, end users include corporate traders, risk managers, individual speculators, consultants and analysts. No participant accounted for more than 10% of our market data revenues for the years ended December 31, 2012, 2011, or 2010.

### ***Product Development***

We leverage our customer relationships, global distribution, technology infrastructure and software development capabilities to diversify our products and services. New product development is an ongoing process,

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and we are continually developing, evaluating and testing new products for introduction into our markets to better serve our participant base. The majority of our product development relates to evaluating new contracts or markets. New contracts in our futures markets must be reviewed and approved by relevant regulators. Outside of standard licensing costs, we typically do not incur separate, identifiable material costs in connection with the development of new products – such costs are embedded in our normal costs of operation.

While we have historically developed our products and services internally, we also periodically evaluate and enter into strategic partnerships to identify opportunities to develop meaningful new products and services. If we believe our success will be enhanced by collaboration with a third party, we may enter into a licensing or other strategic arrangement.

## **Technology**

Technology is a key component of our business strategy, and we regard effective execution of our technology initiatives as crucial to our success. We design and build our software systems and believe that having control over our technology allows us to be more responsive to the needs of our customers, better support the dynamic nature of our business and deliver the highest quality markets and data. Our systems are built using state-of-the-art software technologies, including component-based architectures and a combination of leading-edge open source and proprietary technology products. We leverage proven industry standards from leading hardware, software and networking providers, as well as employing emerging technologies that we believe will give us a competitive edge. We take a customer-focused, iterative and results-driven approach to software design and development that allows us to deliver innovative, high quality solutions quickly and effectively.

As of December 31, 2012, we employed 547 experienced technology specialists including product managers, project managers, system architects, software developers, network engineers, security specialists, performance engineers, systems and quality analysts, database administrators, web developers, helpdesk personnel and support personnel.

### ***ICE Trading Platforms Technology***

#### ***Trading Platforms***

The ICE trading platform supports trading in futures and options markets, as well as bilateral OTC markets. For futures products, the platform supports several order types, matching algorithms, price reasonability checks, inter-commodity spread pricing and real-time risk management. In addition, we have developed a multi-generation implied matching engine that automatically discovers best bid and offer prices throughout the forward curve. For OTC products we also support bilateral trading with real-time credit risk management between counterparties by commodity and company. We also offer voice brokers a facility for submitting block trades for products that are eligible for clearing. Our core functionality is available on a single platform for most products we offer electronically, rendering it highly flexible and straightforward to maintain.

#### ***Trading Platform Performance***

Speed, reliability, scalability and capacity are critical performance criteria for electronic trading platforms. A substantial portion of our operating budget is dedicated to system design and development in order to achieve high levels of overall system performance. Our platform currently delivers the fastest round-trip transaction times in the commodity markets, with average transaction times of approximately 650 microseconds in our futures markets, and a blended average of less than one millisecond for futures and OTC markets. We measure round trip performance end to end within our data center and through our matching engine.

High speed trading must not only be fast, but it must also be consistently fast particularly during peak trading periods. Our platform offers a high level of consistency, with more than 99.5% of transactions being completed in less than twenty milliseconds during peak trading periods. Our platform is also highly reliable,

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having achieved greater than 99.99% availability during 2012. Planning for capacity, performance and reliability is a core requirement and competency of our technology operations. We continually run benchmark tests and monitor our production systems to make adjustments to ensure that our systems can handle two to three times our peak transactions in our highest volume products.

### **WebICE & ICE mobile**

Connectivity to our trading platform for our markets is available through our web-based front-end, multiple ISVs and APIs. We provide secure access to our electronic platform via our front-end, WebICE. WebICE serves as a customizable, feature-rich front-end to our trading platform. WebICE also provides an easy to use and easily accessible front-end for the entire suite of products we offer. Participants can access our platform globally via the Internet by logging in via our website homepage. Generally, we have over 10,000 connections to our electronic platform globally each trading day via WebICE and over 5,000 connections to our platform through multiple ISVs, co-location data centers, dedicated lines and global telecommunication hubs. In 2010, we introduced ICE mobile for iPhone, iPod Touch and iPad, and in 2011, we added support for Android and Blackberry enabled devices. ICE mobile allows WebICE customers to receive real-time data for our markets on their mobile devices. ICE mobile allows WebICE users the ability to view and manage their WebICE orders from their mobile device, as well as the option to enter new orders and trade from certain mobile devices, including the iPhone, iPad, and Android devices.

### **Application Programming Interfaces (APIs)**

For our futures markets we offer participants the use of APIs, which allow developers to create customized applications and services around our electronic platform to suit their specific needs. Participants using APIs are able to link their own internal computer systems to our platform and enable algorithmic trading, risk management, data services, and straight-through processing. Our APIs also enable ISVs to adapt their products to our platform, thereby offering our participants a wide variety of front-end choices in addition to our WebICE interface.

We offer the following APIs for direct access customers and ISVs of our futures markets:

**Order Routing** We offer order routing based on the industry standard Financial Information eXchange, or FIX protocol. The FIX message specification is fully compliant with the standard protocol.

**Market Data** We offer an independent market data feed called iMpacT. This feed provides full depth of book information and can be used by both trading clients and quote vendors.

**Trade Capture** We offer a FIX-based API to capture all trades done by a given company for all of our products which can be used by firms to manage positions and the risk of their participants.

**Private Order Feed** We offer a FIX-based API that supports the real-time dissemination of all orders submitted by a given company. This can be used by firms to monitor orders that are submitted by its traders.

### **Creditex and ICE Link Technology**

For credit derivatives, Creditex's proprietary RealTime trading platform connects buyers and sellers of credit derivatives, including single-name CDS, index CDS, emerging market CDS, and structured products and bonds, and serves as a facilitator of price discovery. RealTime's functionality is highly scalable and quickly integrates into dealers' existing trading systems. The RealTime platform technology can easily accommodate

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enhancements and add-ons in order to support additional products and rapidly respond to market demands for new functionality. The RealTime trading platform also serves as the centralized electronic site for accessing credit event fixings and credit event auctions for the CDS marketplace. ICE Link is an API-based affirmation platform that is connected to over 500 customers, including most of the major buy-side, sell-side and inter-dealer participants within the credit derivatives market.

### ***ICE Chat Communication and Negotiation Technology***

ICE Chat is a peer-to-peer communication and negotiation application designed to meet the advanced needs of traders and brokers in the complex markets for structured swaps, futures and options. ICE Chat integrates with multiple instant messaging networks, and transforms messages into actionable market data that is consolidated in a grid, along with exchange prices, to provide an aggregated view of the market. ICE Chat integrates with pricing and risk management systems, providing participants with the information to make better decisions with more speed and accuracy. Voice brokers may use ICE Chat tools for contact organization and quote distribution. Negotiated trades can be easily blocked into our clearing systems. The ICE Chat application supports the strict security, reliability, data control and compliance requirements of regulated trading firms.

### ***WhenTech Option Pricing and Risk Management Technology***

WhenTech is an advanced front-end option pricing and risk management platform that offers a platform for traders to price and manage sophisticated derivatives products with a simple yet powerful user interface. Its patented method for creating an option spread allows users to create most common multi-legged option strategies. WhenTech offers a range of APIs that allow users to connect their back-office systems with WhenTech data, and allows business partners access to WhenTech valuations for integration with industry standard platforms including ICE Chat and WebICE. WhenTech's risk reports provide the user with analysis of complex options and futures portfolios that organize a wide array of complex related instruments and an audit trail feature ensures that changes are tracked on a user by user basis.

### ***ICE Match***

ICE Match is an electronic trading platform that is expected to go live during the first quarter of 2013 and is designed to help institutional clients source liquidity from other institutional traders and market makers in the off-exchange market for equity derivatives. Leveraging ICE Chat's proprietary instant messaging quote recognition technology, ICE Match allows users to send a request for quote, or RFQ, or receive notification of an RFQ, over any instant messaging platform, integrating into participants' existing workflow. Once the message is received, ICE Match conducts a fast, fair and efficient auction process to match buyers and sellers, reducing costs and leveling the playing field. ICE Match screens can be accessed through a web browser or used in conjunction with ICE Chat to increase trading efficiency through better organization of instant messaging market data and integration of pricing and risk models.

### ***Clearing Technology***

#### **Trade Management and Clearing Services Technology**

A broad range of trade management and clearing services are offered through our clearing houses. ICE clearing systems are currently used at ICE Clear U.S. and ICE Clear Europe. ICE Clear Credit currently leverages specialized risk management and clearing systems tailored to the credit derivatives market. We are in the process of migrating ICE Clear Credit to the banking capability technology within the ICE clearing systems and other aspects such as risk management remains proprietary to ICE Clear Credit. ICE Clear Canada is currently on the Kansas City Board of Trade clearing system and we are currently in the process of migrating ICE Clear Credit to the ICE clearing systems. Both of the migration projects are estimated to be completed during 2013.

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The ICE clearing systems encompass a number of integrated systems, most importantly the Post-Trade Management System, or PTMS, and the Extensible Clearing System, or ECS. PTMS provides real-time trade processing services enabling clearing members to offer real-time risk management services. ECS supports open and delivery position management, real-time trade and post-trade accounting, risk management (daily and intra-day cash, mark-to-market/option premium, and original margin using algorithms based on the CME SPAN<sup>®</sup> algorithm), collateral management, daily settlement and banking. ECS is a state-of-the art system offering open, Internet-based connectivity and integration options for clearing member access to user and account management, position reporting and collateral management. ECS also has an extensive reporting system which delivers on-line access to daily and historical reports in multiple formats, as well as an extensive currency delivery system to manage the delivery and payment of currency settlements.

We offer real-time trade confirmations of trades booked for clearing over standard FIX API and support a multitude of post trade management functions including trade corrections, trade adjustment, position transfers, average pricing and give-up processing. As with the trading platform, we take a proactive approach to enhancing the reliability, capacity and performance of our clearing systems.

### ***Clearing Risk Technology***

A core component of our clearing houses is risk management of clearing firm members. We enforce rigorous risk mitigation policies, covering market, liquidity, credit and operational risk. The risk teams at each of our clearing houses set margin rates and monitor on-hand collateral of clearing members. Our risk system provides analytical tools to determine margin, to determine credit risk, and monitor risk of the clearing members. The risk system also monitors trading activities of the clearing members.

The CDS risk system self-adjusts to market conditions, accounts for the highly asymmetric risk profiles of CDS instruments, and captures the specificities of CDS trading behavior. Because the ICE CDS risk management model is self-adjusting, new original margin requirements are computed daily, as CDS spreads and volatility change. In addition to normal clearing functions, CDS clearing technology facilitates a daily auction-style price discovery process in which all clearinghouse members provide end-of-day quotes for all index and single name CDS instruments in which they have open interest. From these quotes the CDS clearing systems establish final prices for mark-to-market and variation margin calculations, as well as for computing original margin requirements and guaranty fund contributions.

### ***Compliance and Regulatory Reporting Technology***

We have invested in extensive internal compliance and external regulatory reporting systems for post trade analysis. For compliance, we developed ICEcap, which is used by our futures exchanges and OTC energy markets. The foundation for ICEcap is our enterprise data warehouse which combines data from multiple exchanges and clearing platforms. A flexible, customizable reporting front-end is then used to deliver the data to users, such as market supervision or regulators. ICEcap also services enterprise-wide business intelligence needs for our finance, operations and sales departments. For real time trade analysis, we have a license and maintenance agreement with SMARTS Market Surveillance PTY Limited to use the SMARTS system, which provides a real time graphical view of the trading in our markets and is coupled with real time alerts.

### ***Data Centers, Global Network and Distribution***

We offer a state-of-the-art hosting center in Illinois and maintain a disaster recovery site for our technology systems in Georgia. We offer access to our electronic markets through a broad range of interfaces including dedicated lines, server co-location data centers, telecommunications hubs in the United States, Europe and Asia, and directly via the Internet. The ICE global network consists of high speed dedicated data lines connecting data hubs in New York, Atlanta, Chicago, London and Singapore with the exchanges and clearing houses primary

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and disaster recovery data centers. This network offers customers an inexpensive, high speed, high-bandwidth solution for routing data between these hub locations and to the primary and secondary data centers.

In addition to our global network, the accessibility of our platform through the Internet differentiates our markets and serves to attract liquidity in our markets. As of the fourth quarter of 2012, there was an average of 14,000 simultaneous active connections daily during peak trading hours. One active connection can represent many individual traders. In addition, we have 44 order routing and 34 trade capture conformed ISVs interfacing to our trading platform. Many ISVs present a single connection while facilitating numerous individual participants entering orders and trading on our exchange. As a result, we have the potential to attract thousands of additional participants who may trade in our markets through ISVs or through our own front-end.

We offer server co-location space at our data centers to all of our customers. This service allows customers to deploy their trading servers and applications which virtually eliminate data transmission latency between the customer and the exchange.

### ***Security and Disaster Recovery Technology***

Physical and digital security are critical to the operation of our services. We employ leading-edge security technology and processes, including encryption, complex passwords, multiple firewalls, virus detection, intrusion detection systems and secured servers. We use a multi-tiered firewall scheme to control access to our network and have incorporated protective features into our electronic platform at the application layers to ensure the integrity of participant data and connectivity. While our electronic platform is accessible via the Internet, we have added functionality that allows us to restrict platform access to designated IP addresses if so desired by a participant.

We use a remote data center to provide a point of redundancy for our services. Our back-up disaster recovery facility fully replicates our primary data center and is designed to provide continuity of operations. Our primary data center continuously collects and saves all trade data and replicates it to our disaster recovery site. For that reason, we expect that our disaster recovery system would have current, and in most cases, real-time, information in the event of a platform outage.

### **Competition**

The markets in which we operate are global and highly competitive. We face competition in all aspects of our business from a number of different enterprises, both domestic and international, including traditional exchanges, electronic trading platforms and voice brokers. Prior to the passage of the Commodity Futures Modernization Act of 2000, or CFMA, futures trading was generally required to take place on, or subject to the rules of, a designated contract market. The costs and difficulty of obtaining contract market designation and corresponding regulatory requirements created significant barriers to entry for competing exchanges. The CFMA and changing market dynamics have led to increased competition from a number of different domestic and international sources of varied size, business objectives and resources.

We believe we compete on the basis of a number of factors, including:

depth and liquidity of markets;

price transparency;

reliability and speed of trade execution and processing;

technological capabilities and innovation;

breadth of product range;



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rate and quality of new product developments;

quality of service;

distribution and ease of connectivity;

mid- and back-office service offerings, including differentiated and value-added services;

transaction costs; and

reputation.

We believe that we compete favorably with respect to these factors, and that our deep, liquid markets, breadth of product offerings, new product development, and efficient, secure settlement, clearing and support services distinguish us from our competitors. We believe that in order to maintain our competitive position, we must continue to develop new and innovative products and services, enhance our technology infrastructure, maintain liquidity and offer competitive transaction costs.

### ***Our Principal Competitors***

The financial services segment is highly competitive, with competition increasing as markets have globalized and following the implementation of financial reform regulation. Currently, our principal competitors include exchanges that replicate our futures contracts. Currently, only CME Group Inc., or CME, lists duplicative contracts. CME, the largest derivatives exchange in the United States with 94% market share of all U.S. futures traded, competes with ICE Futures U.S. in its markets for its domestic agricultural and energy commodities, currency and equity index contracts. In addition, we compete with voice brokers active in certain of the OTC energy and credit derivatives markets, other electronic trading platforms for derivatives, clearing houses and market data vendors. Creditex competes with other large inter-dealer brokers in the credit derivatives market, including GFI Group Inc., Tullet Prebon plc and ICAP plc.

ICE Futures Europe and ICE Futures U.S. energy markets compete with global exchanges such as CME and European natural gas and power exchanges, such as the European Energy Exchange. Other exchanges may, in the future, offer trading in contracts that compete with our exchange. In its agricultural and financial futures markets, ICE Futures U.S. and ICE Futures Canada compete with traditional exchanges as well as new entrants to the derivatives exchange sector.

In addition to competition from derivative exchanges that offer commodity products, we also face competition from other exchanges, electronic trading systems, third-party clearing houses, futures commission merchants and technology firms. Certain financial services or technology companies, in addition to the competitors named above, have entered the OTC trade execution services market. Additional joint ventures and consortia could form, or have been formed, to provide services that could potentially compete with certain services that we provide.

If we complete the acquisition of NYSE Euronext, we will also compete with other exchanges for the short-term LIBOR interest rate markets, equity options and for the listings and trading of cash equities, exchange-traded funds, closed-end funds, structured products, as well as equity futures and other equity derivatives. Competition in these markets is intense, and exchanges and market participants compete based on factors similar to those discussed above.

### **Intellectual Property**

We rely on a wide range of intellectual property, both owned and licensed, that is utilized in the operation of our electronic platforms, much of which has been internally developed by our technology team. We own the



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rights to a large number of trademarks, service marks, domain names and trade names in the United States, Europe and in other parts of the world. We have registered the majority of our trademarks in the United States and other countries. We hold the rights to a number of patents and have made a number of patent applications in the United States and other countries. We also own the copyright to a variety of material. Those copyrights, some of which are registered, include printed and online publications, websites, advertisements, educational material, graphic presentations, software code and other literature, both textual and electronic. We attempt to protect our intellectual property rights by relying on trademarks, patents, copyrights, database rights, trade secrets, restrictions on disclosure and other methods.

Throughout 2012, we obtained an additional 26 trademark registrations covering various aspects of our service and product offerings. These additional registrations were issued in multiple jurisdictions, including the United States, Europe, Canada and Singapore.

We obtained an additional five patents in 2012. Two patents cover our implied market trading technology; two patents cover our techniques for reducing delta values in connection with online trading of credit derivatives; and the last of the five patents covers our Stradrunner® technology, which provides for managing and displaying financial product quotes from multiple sources as a single, ordered display.

With respect to our licensed property, we hold a worldwide, fully paid, non-exclusive license from EBS Dealing Resources, Inc., or EBS, to use technology covered under the Toghher family of patents (presently issued or to be issued in the future claiming priority to U.S. patent application 07/830,408), which relate to the way in which bids and offers are displayed on an electronic trading system in a manner that permits parties to act only on those bids and offers from counterparties with whom the party has available credit. As a fully-paid license, we pay no royalties to EBS on an ongoing basis. The EBS license expires on the latest expiration of the underlying patents.

We also hold a license and maintenance agreement with SMARTS to use its real-time market surveillance software to assist in monitoring trading of commodities, futures and options markets.

ICE Futures U.S. holds exclusive licenses to use various trademarks of Russell for U.S. futures and options contracts. Our Russell license is exclusive through June 30, 2017, with some exceptions if certain trading volume is not achieved. Redacted copies of the Russell license, as amended, have been filed with the SEC as material contracts.

This Annual Report on Form 10-K also contains additional trade names, trademarks and service marks of our and of other companies. We do not intend the use or display of other parties' trademarks, trade names or service marks to imply, and this use or display should not be construed to imply, our endorsement or sponsorship of these other parties, their endorsement or sponsorship of it, or any other relationship between it and these other parties. In particular, (i) SPAN is a registered trademark of CME used herein under license, (ii) SMARTS is a registered trademark of Nasdaq OMX Company and (iii) Russell is a trademark and service mark of the Russell Investment Group used under license.

## **Sales**

As of December 31, 2012, we employed 182 full-time sales personnel, including voice brokers. Our global sales team is comprised primarily of former brokers and traders with extensive experience and established relationships within the derivatives markets and trading community. Since our businesses are regulated, we also employ sales and marketing staff that is knowledgeable with respect to the regulatory constraints upon marketing in this field.

Our sales and marketing strategy is designed to expand relationships with existing participants through the provision of value-added products and services, technology support and product information, as well as to attract

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new participants and support new product development. We also seek to build brand awareness and promote greater public understanding of our business, including how our products and technology can improve current approaches to price discovery and risk management in the commodity and financial markets.

We use a cross-promotional sales and marketing team. We believe this approach is consistent with, and will provide more effective support of, the underlying emphasis of our business model – an open architecture with flexibility that allows us to anticipate and respond rapidly to customers and evolving trends in the markets for trading and risk management, while maintaining separate markets on a regulatory basis. In our CDS business, we maintain a separate brokerage and sales team to support trade execution and the delivery of services to the market.

We typically pursue our marketing objectives through a combination of industry group participation, promotion through our website, third party websites, e-mail, advertising, one-on-one client relationship management and the hosting of customer forums and events. From time to time, we also provide commission rate discounts and broker clearing rebates. We participate in domestic and international trade shows, conferences and seminars regarding derivatives markets and other marketing events designed to inform market participants about our products and services. Our sales and marketing efforts typically involve the development of relationships with market participants who actively use our markets to ensure that our product and service offerings are based on their needs.

## **Employees**

As of December 31, 2012, we had a total of 1,077 employees, with 383 employees at our headquarters in Atlanta, 315 employees in New York, 195 employees in London and a total of 184 employees across our Calgary, Chicago, Houston, San Francisco, Singapore, Stamford, Washington, D.C. and Winnipeg offices.

## **Business Continuity Planning and Disaster Recovery**

We maintain comprehensive business continuity and disaster recovery plans and facilities to provide nearly continuous availability of our markets in the event of a business disruption or disaster. We maintain incident and crisis management plans that address responses to disruptive events at any of our locations worldwide. We continuously evaluate business risks and their impact on operations, provide training to employees and perform exercises to validate the effectiveness of our plans, including participation in industry-sponsored disaster recovery and business continuity exercises. Oversight of business continuity and disaster recovery planning is provided by a committee comprised of senior managers representing each business unit, Internal Audit and the Audit Committee of the Board of Directors.

We use a remote data center to provide a point of redundancy for our services in addition to redundant power, cooling and communications infrastructure within each data center. Our back-up facility fully replicates our primary data center and is able to provide the same capacity and functionality as the primary data center. In the event of a disruption at the primary data center, participants connecting to our electronic platforms are automatically routed to the back-up facility. Our primary data center continuously collects and saves all trade data and replicates it to our back-up facility. For that reason, we expect that our disaster recovery system would have current, and in most cases real-time, information in the event of a platform outage at the primary data center. In the event that we are required to complete a changeover to our back-up disaster facility, we anticipate that our platform would experience less than two hours of down time. Our primary data center is located in Illinois and the backup data center is a secure Tier-4 facility in Georgia.

Finally, our office facilities are protected against physical unavailability via our incident management plans. Dedicated business continuity facilities in Atlanta, New York, Chicago and London are maintained for employee relocation in the event that a main office is unavailable. Incident management plans place a priority on the protection of our employees.

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### **Regulation**

We are primarily subject to the jurisdiction of regulatory agencies in the United States, the United Kingdom and Canada. Due to the global financial crisis that began in 2008, various domestic and foreign governments have undertaken reviews of the existing legal framework governing financial markets and have either passed new laws and regulations, or are in the process of debating and/or enacting new laws and regulations that will apply to our business. While certain of these changes may have a positive impact on our business, some of these changes could adversely affect our business. Please also refer to the discussion below and in the **Risk Factors** section for a description of regulatory and legislative risks and uncertainties.

#### ***Regulation in the United States***

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act. Through extensive rulemaking authority granted under the Dodd-Frank Act, the CFTC and SEC are charged with creating a comprehensive new regulatory regime governing OTC derivative markets and market participants, including our OTC markets and customers. Our markets operated efficiently, securely and transparently during the financial crisis and many of the new requirements of the Dodd-Frank Act are consistent with the manner in which we already operate our business. For example, new requirements to centrally clear OTC swaps and trade them on regulated platforms is consistent with our existing business model. The mandate to clear standardized swaps complements our clearing business operating in three countries.

Over the past two years, the CFTC has issued new rules to implement the Dodd-Frank Act. Most of the rules implementing new regulations for Designated Contract Markets, or DCMs, and DCOs are in effect and our DCMs and DCOs are in compliance with these rules. In October 2012, we transitioned our cleared OTC energy swaps business to energy futures listed on ICE Futures U.S., for our North American natural gas, North American power and physical environmental contracts, and ICE Futures Europe, for our global oil and refined products, freight, iron ore and natural gas liquids products. Transitioning our cleared energy business to futures requires us to comply with the highest level of regulation in the United States and United Kingdom. The transition to futures relieves our energy market participants of many of the Dodd-Frank obligations for trading swaps products and provides a legally certain regulatory regime in which to operate.

Our U.S. futures contracts are listed on ICE Futures U.S., which is subject to extensive regulation by the CFTC under the Commodity Exchange Act. The Commodity Exchange Act generally requires that futures trading in the United States be conducted on a commodity exchange registered as a DCM by the CFTC. As a registered DCM, ICE Futures U.S. is a self-regulatory organization that has instituted detailed rules and procedures to comply with the core principles applicable to it under the Commodity Exchange Act. ICE Futures U.S. also has surveillance and compliance operations and procedures to monitor and enforce compliance with its rules, and ICE Futures U.S. is periodically audited by the CFTC with respect to the fulfillment of its self-regulatory programs in these areas. The cost of regulatory compliance is substantial. We still offer physically settled bilateral energy contracts for forward delivery on our OTC platform, which is an Exempt Commercial Market under the Commodity Exchange Act and the regulations of the CFTC. We anticipate registering our OTC energy market as a Swap Execution Facility to list energy swaps in the future.

In October 2011, the CFTC issued final rules implementing a new position limit regime for U.S. energy and agricultural products. The rules would have placed CFTC administered aggregate position limits across exchanges in the spot month and across all months. On September 28, 2012, the U.S. District Court for the District of Columbia vacated the CFTC's position limit rules finding that the CFTC made a mistake in interpreting the Dodd-Frank Act to require the CFTC to implement position limits. The CFTC has appealed the District Court's rulemaking, but in the interim, the current position limit regime will remain in place until any appeal is resolved or until the CFTC promulgates a new position limit rule.

In our U.S. CDS clearing business, ICE Clear Credit is subject to the regulation of the CFTC as a DCO and the SEC as a clearing agency. Also, as a designated systemically important financial market utility, ICE Clear

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Credit is subject to higher standards than other clearing houses that are not deemed to be systemically important. Such designation includes greater regulatory scrutiny and higher default resource and liquidity requirements, as well as more onerous operational standards. ICE Clear Credit is also now subject to Federal Reserve oversight as a result of being designated a designated systemically important financial market utility.

ICE Clear Europe, which is primarily regulated in the United Kingdom by the FSA as a Recognized Clearing House, is also subject to regulation by the CFTC as a DCO and the SEC as a clearing agency.

In our U.S. CDS execution business, we offer both electronic and voice brokered markets for trading CDS through Creditex, our U.S. based interdealer broker. We expect to register our CDS execution business as a Swap Execution Facility, subject to the final CFTC and SEC swap trading rules and customer demand.

The Dodd-Frank Act will also make changes to the regulatory requirements of our market participants, including large market participants, such as investment banks and hedge funds. For example, some of our participants are registering as swaps dealers or major swaps participants. Registration as a swaps dealer or major swaps participant will result in additional regulation for these entities, including greater record keeping requirements, higher capital and margin requirements for non-exempt commodity products, and higher business conduct standards than currently exist in the swaps market.

The Dodd-Frank Act also imposes changes on the parts of our business operated outside the United States. With respect to ICE Futures Europe and ICE Futures Canada, we presently have permission to allow screen-based access by market participants in the United States pursuant to no-action letters from the CFTC. Pursuant to the Dodd-Frank Act and final rules promulgated by the CFTC under the Dodd-Frank Act, the CFTC requires foreign exchanges such as ICE Futures Europe and ICE Futures Canada to register with the CFTC and be subject to direct regulation in the United States. While the registration process will impose obligations similar to the obligations currently imposed under the informal no-action process, direct regulation of our non-U.S. exchanges by U.S. regulators may prove to be unattractive to non-U.S. market participants due to the additional costs and greater oversight associated with this regulation.

The CFTC has issued final rules implementing the Dodd-Frank Act provisions for real time public reporting of swaps transaction data and swap data recordkeeping. Such rules will place added burdens on our market participants and could negatively impact the value of our market data business. In anticipation of these requirements, we registered ICE Trade Vault, LLC as a Swap Data Repository, or SDR. ICE Trade Vault, LLC will allow us to offer swap data recordkeeping and reporting services that fulfill the reporting requirement on market participants. ICE Trade Vault is an operational SDR for credit default swaps and will be operational for other asset classes such as commodities and currencies when reporting requirements for those asset classes become effective.

International regulators are working to implement the latest Basel Accord, commonly known as Basel III. The Federal Reserve Board has proposed Regulation YY to implement Basel III in the United States. Regulation YY is intended to limit bank holding companies' exposure to any single counterparty. In its current proposal form, however, the regulation could be interpreted to limit a bank's ability to hold cleared positions at a DCO. Market participants and clearing houses are submitting comments requesting that the Federal Reserve Board clarify that central counterparties would be exempted from this rule in light of the mandatory clearing requirements of the Dodd-Frank Act and regulations in Europe.

***Regulation in the United Kingdom***

In the United Kingdom, we operate a number of subsidiary entities that are subject to regulation by the FSA. ICE Futures Europe is recognized as a U.K. investment exchange and ICE Clear Europe is recognized as a U.K. clearing house by the FSA in accordance with the Financial Services and Markets Act 2000, or FSMA. As such,

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ICE Futures Europe maintains front-line regulatory responsibility for its markets. In order to retain their status as U.K. Recognised Bodies, ICE Futures Europe and ICE Clear Europe are required to meet various legislative and regulatory requirements. Failure to comply with these requirements could subject ICE Futures Europe or ICE Clear Europe to significant penalties, including de-recognition.

Further, we engage in sales and marketing activities in relation to our OTC and futures businesses in the United Kingdom and the United States through our subsidiary ICE Markets Limited, or ICE Markets, which is authorized and regulated by the FSA as an investment adviser and arranger. ICE Markets also supports the ICE Link platform and related services in the United Kingdom. Creditex Brokerage LLP is authorized and regulated by the FSA to operate the Creditex RealTime platform in the United Kingdom and facilitate the conclusion of transactions of credit derivative instruments and bonds. Creditex Brokerage has FSA regulatory approval to deal as riskless principal or agent. The RealTime platform is open to eligible counterparties and professional clients as defined by the Markets in Financial Instruments Directive and Creditex Brokerage's services are not available to retail consumers. In order to retain their status as FSA registered entities, these entities are required to meet various regulatory requirements in the United Kingdom.

The regulatory framework applicable to ICE Futures Europe is supplemented by a series of legislative provisions regulating the conduct of participants in the regulated market. Importantly, FSMA contains provisions making it an offense for participants to engage in certain market behavior and prohibits market abuse through the misuse of information, the giving of false or misleading impressions or the creation of market distortions. Breaches of those provisions give rise to the risk of sanctions, including financial penalties.

The United Kingdom has decided to reform the national structures for the supervision of financial institutions. More power is being given to its central bank, the Bank of England, by splitting the current unitary regulator, the FSA, into a consumer protection and markets agency, or FCA (Financial Conduct Authority), and a prudential agency, known as the Prudential Regulatory Authority, or PRA. The PRA will become a subsidiary of the Bank of England and the supervision of central counterparties will move from the FSA to the Bank of England. As a result of these changes, ICE Futures Europe will be supervised by the markets division of the FCA and ICE Clear Europe will be supervised by the Bank of England. The new structure is expected to be launched in 2013 and we have begun to plan for this transition.

The Markets in Financial Instruments Directive (Directive 2004/39/EC), or MiFID, came into force on November 1, 2007 and introduced a harmonized approach to the licensing of services relating to commodity derivatives across Europe. The legislation also imposed greater regulatory burdens on European Union based operators of regulated markets, alternative trading systems and authorized firms in the commodity derivatives area. Further, it introduced the concept of a pan-European passport that allowed ICE Futures Europe to offer services in all European Economic Area member states. This legislation is consistent with other initiatives introduced to provide a more harmonized approach to European regulation, for example, the Market Abuse Directives (Directives 2003/06/EC and 2004/72/EC) that became effective in October 2004 and July 2005 introduced a specific prohibition against insider dealing in commodity derivative products.

In the wake of the financial crisis, MiFID has been reviewed. The negotiation of upgraded legislation, known informally as MiFID II, is well advanced on the basis of a draft from the European Commission, containing provisions to enhance financial stability, increase consumer protection and to bring standardized OTC derivatives onto electronic trading platforms. In particular the new legislation will contain enhanced provisions on exchanges and trading systems, trade transparency, publication mechanisms, high frequency trading, a revamp of retail client-facing conduct of business rules, commodity trading, position limits and position reporting. There are also provisions relating to the extension of access provisions to both swaps and futures, and the introduction of principles that would allow a trading venue to request that a clearing house clear its contracts, applying to both swaps and futures. It is expected that given its complexity MiFID II will take some time to agree, nevertheless, although these are only draft proposals subject to change, MiFID II could have a significant effect on our markets and our clearing house in Europe depending on the details of its implementation.

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The European Union has also adopted new legislation on OTC derivatives, clearing houses and trade repositories commonly known as the European Market Infrastructure Regulation, or EMIR. In general, EMIR will require, among other things, OTC trades to be reported to trade repositories, clearing of standardized OTC derivative contracts, and more stringent prudential, operational and business requirements for clearing houses. The final form of the legislation was enacted in August 2012, although secondary legislation to enact the legislation will take until spring of 2013. Any delays to this timetable would also delay the secondary legislation foreseen in several areas of EMIR. Under EMIR, clearing houses that are currently providing clearing services in the European Union will need to apply for authorization or recognition by the European Securities and Markets Authority within six months after the entry into force of the relevant regulatory technical standards. EMIR may also require clearing houses to require margin to cover a futures position for two days. Currently, ICE Clear Europe requires margin to cover a futures position for one day. Moving to a two day margin regime for futures would increase margin requirements for market participants.

The negotiation of Basel III has concluded and the next phase is the process of implementation in the major jurisdictions. Of particular interest to us is the impact of Basel revisions on the capital banks must hold in relation to clearing house default fund exposures. Here, Basel has developed a choice of methods for calculating members' exposures to central counterparties, which gives appropriate results. These provisions will be implemented in the European Union through revisions to the Capital Requirements Directive and regulation, negotiation of which is ongoing.

### ***Regulation in Canada***

ICE Futures Canada's operations are subject to extensive regulation by the MSC under the CFA. The CFA requires that an organization must be recognized and registered before it can carry on the business of a futures exchange, and establishes financial and non-financial criteria for an exchange. In addition, ICE Futures Canada is also recognized by the MSC as a self-regulatory organization and is required to institute and maintain detailed rules and procedures to fulfill its obligations. ICE Futures Canada is responsible for surveillance and compliance operations and procedures to monitor and enforce compliance by market participants with its rules, and is under the audit jurisdiction of the MSC with respect to these self-regulatory functions. ICE Futures Canada's operations are also subject to oversight by other provincial securities commissions, including the Ontario Securities Commission and the Autorité des marchés financiers in Québec. ICE Futures Canada has a significant number of trading terminals in the United States for which it relies upon a no action letter. The no action letter requires it to comply with the requirements of the CFTC including making regular filings. On December 5, 2011 the CFTC approved new Part 48 of its regulations, which requires that a foreign board of trade apply to the CFTC under a formal registration process if it wishes to provide direct access to its electronic trading and order matching system to entities resident in the United States. ICE Futures Canada submitted an application to the CFTC on August 9, 2012. Until the CFTC responds to the application, ICE Futures Canada is entitled to continue to operate in the United States under the provisions of the no-action letter.

### **Available Information**

Our principal executive offices are located at 2100 RiverEdge Parkway, Suite 500, Atlanta, Georgia 30328. Our main telephone number is (770) 857-4700.

We are required to file reports and other information with the SEC. A copy of this Annual Report on Form 10-K, as well as any future Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to such reports are, or will be, available free of charge, on the Internet at the Company's website (<http://www.theice.com>) as soon as reasonably practicable after we file such reports with, or furnish such reports to, the SEC. A copy of these filings is also available at the SEC's website ([www.sec.gov](http://www.sec.gov)). The reference to our website address does not constitute incorporation by reference of the information contained on the website and should not be considered part of this report. Our reports, excluding exhibits, are also available free of charge by

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mail upon written request to our Secretary at the address listed above. 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.

In addition, we have posted on our website the charters for our (i) Audit Committee, (ii) Compensation Committee, (iii) Nominating and Corporate Governance Committee and (iv) Regulatory Oversight Committee, as well as our Code of Business Conduct and Ethics, which includes our Whistleblower Hotline information, Board of Directors Governance Principles and Board Communication Policy. We will provide a copy of these documents without charge to stockholders upon request.

**ITEM 1(A). RISK FACTORS**

You should carefully consider the following risk factors, as well as other information contained in or incorporated by reference in this Annual Report on Form 10-K. The risks and uncertainties described below are those that we currently believe may materially affect us. Other risks and uncertainties that we do not presently consider to be material or of which we are not presently aware may become important factors that affect our company in the future. If any of the risks discussed below actually occur, our business, financial condition, operating results, or cash flows could be materially adversely affected.

*Since our business is primarily transaction-based and dependent on trading volumes, the conditions in global financial markets and new laws and regulations as a result of such conditions may adversely affect our trading volumes and market liquidity.*

Our business is primarily transaction-based, and declines in trading volumes and market liquidity would adversely affect our business and profitability. We earn transaction fees for transactions executed and cleared in our markets and from the provision of electronic trade confirmation services. We derived 87%, 89% and 89% of our consolidated revenues from our transaction-based business for the years ended December 31, 2012, 2011 and 2010, respectively. The success of our business depends on our ability to maintain and increase our trading volumes and the resulting transaction and clearing fees. Over the last few years, global financial markets have experienced significant and adverse conditions as a result of the financial crisis, including a freezing of credit, substantially increased volatility, outflows of customer funds and investments, uncertain regulatory and legislative changes, losses resulting from lower asset values, defaults on loans and reduced liquidity. Many of the financial services firms that have been adversely impacted by the financial crisis are active participants in our markets. The trading volumes in our markets could decline substantially if our market participants reduce their level of trading activity for any reason, such as:

a reduction in the number of market participants that use our platform;

a reduction in trading demand by customers or a decision to curtail or cease hedging or speculative trading;

regulatory or legislative changes that result in reduced trading activity;

heightened capital maintenance requirements resulting from new regulation or mandated reductions in existing leverage;

defaults by clearing members that have deposits in our clearing houses;

changes to our contract specifications that are not viewed favorably by our market participants;

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reduced access to capital required to fund trading activities;

significant defaults by issuers of debt leading to market disruption or a lack of confidence in the market's ability to process such defaults; or

increased instances of counterparty failure or the inability of CDS protection sellers to pay out contractual obligations upon the occurrence of a credit event.

A reduction in our overall trading volume would reduce our revenue and could also render our markets less attractive to market participants as a source of liquidity, which could result in further loss of trading volume and associated transaction-based revenues. Further, a reduction in trading volumes would likely result in a corresponding decrease in the demand for our market data, which would reduce our overall revenue.

***Our business and operating results depend in large part on volatility in commodity prices generally and energy markets in particular and may be adversely impacted by domestic and international economic and market conditions.***

Participants in the markets for energy and agricultural commodities trading pursue a range of trading strategies. While some participants trade to satisfy physical consumption needs, others seek to hedge contractual price risk or take speculative or arbitrage positions, seeking returns from price movements in different markets. Trading volume is driven primarily by the degree of volatility—the magnitude and frequency of fluctuations—in prices of commodities. Volatility increases the need to hedge contractual price risk and creates opportunities for speculative or arbitrage trading. Were there to be a sustained period of stability in the prices of commodities, we could experience lower trading volumes, slower growth or declines in revenues. In addition, a number of factors beyond our control may contribute to substantial fluctuations in our operating results.

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

global and domestic economic, political and market conditions;

seasonality and weather conditions, including hurricanes, natural disasters and other significant weather events, and unnatural disasters like large oil spills that impact the production of commodities, and, in the case of energy commodities, production, refining and distribution facilities for oil and natural gas;

real and perceived supply and demand imbalances in the commodities underlying our products, particularly energy and agricultural products;

war and acts of terrorism;

legislative and regulatory changes;

credit quality of market participants and the availability of capital;

changes in the average rate per contract that we charge for trading or the amounts we charge for market data;

the number of trading days in a quarter;



broad trends in industry and finance, including consolidation in our industry, and the level and volatility of interest rates, fluctuating exchange rates, our hedging actions, and currency values; and

concerns over inflation and deflation.

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Any one or more of these factors may reduce trading activity, which could reduce liquidity – the ability to find ready buyers and sellers at current prices – which in turn could further discourage existing and potential market participants and thus accelerate a decline in the level of trading activity in these markets. A significant decline in our trading volumes due to reduced volatility, lower prices or any other factor, could have a material adverse effect on our revenues since our transaction fees would decline reducing profitability since our revenues would decline faster than our expenses, some of which are fixed. Moreover, if these unfavorable conditions were to persist over a lengthy period of time and trading volumes were to decline substantially and for a long enough period, the liquidity of our markets, and the critical mass of transaction volume necessary to support viable markets, could be jeopardized.

***Our revenues depend heavily upon trading volume in the markets for ICE Brent Crude and North American natural gas futures and options contracts. A decline in volume or in our market share in these contracts would jeopardize our growth and profitability.***

Our revenues currently depend heavily on trading volume in the markets for ICE Brent Crude contracts and North American natural gas futures and options contracts. Trading in these contracts in the aggregate has represented 32%, 31% and 30% of our consolidated revenues for the years ended December 31, 2012, 2011 and 2010, respectively. A decline in the combined trading volume in these contracts would have a corresponding negative impact on our operating results and revenues.

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

Our cost structure is largely fixed and we expect that it will continue to be largely fixed in the foreseeable future. We base our expectations of our cost structure on historical and expected levels of demand for our products and services as well as our fixed operating infrastructure, such as computer hardware and software, leases, hosting facilities and security and staffing levels. If demand for our current products and services decline, our revenues will decline. If demand for future products that we acquire or license is not to the level necessary to offset the cost of the acquisition or license, our net income would decline. For example, we have incurred significant costs to secure the exclusive license with Russell for listing Russell's Index futures, the costs of which is being amortized over the next several years. We have to achieve certain volume levels to maintain exclusivity with respect to our licensing agreement with Russell and the failure to do so could materially impact the value we receive from the Russell investment. We may not be able to adjust our cost structure, at all or on a timely basis, to counteract a decrease in revenues or net income, which would adversely impact our revenues.

***We intend to continue offering new products and to explore acquisition opportunities and strategic alliances relating to other businesses, products or technologies, which will involve risks. We may not be successful in identifying opportunities or integrating other businesses, products or technologies successfully with our business. Any such transaction also may not produce the results we anticipate.***

We intend to launch new products and continue to explore and pursue acquisition and other opportunities to strengthen our business and grow our company. We may enter into business combination transactions, make acquisitions or enter into strategic partnerships, joint ventures or alliances, any of which may be material and will involve risks. Further, we may enter into or increase our presence in markets that already possess established competitors who may enjoy the protection of high barriers to entry. Attracting customers in certain countries may also be subject to a number of risks, including currency exchange rate risk, difficulties in enforcing agreements or collecting receivables, longer payment cycles, compliance with the laws or regulations of these countries, and political and regulatory uncertainties. In addition, we may spend substantial time and money developing new product offerings or improving current product offerings. If these product offerings are not successful, we may miss a potential market opportunity and not be able to offset the costs of such initiatives. For example, we face many risks in connection with our announced agreement to acquire NYSE Euronext. See Risks to ICE in connection with the acquisition of NYSE Euronext below.

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In addition, in light of consolidation in the exchange and clearing sector and competition for opportunities, we may be unable to identify strategic opportunities or we may be unable to negotiate or finance any future acquisition successfully. Our competitors could merge, making it more difficult for us to find appropriate entities to acquire or merge with and making it more difficult to compete in our industry due to the increased resources of our merged competitors. If we are required to raise capital by incurring additional debt or issuing additional equity for any reason in connection with a strategic acquisition or investment, we cannot assure you that any such financing will be available or that the terms of such financing will be favorable to us.

Also, offering new products and pursuing acquisitions requires substantial time and attention of our management team, which could prevent the management team from successfully overseeing other initiatives. As a result of any future acquisition, we may issue additional shares of our common stock that dilute shareholders' ownership interest in us, expend cash, incur debt, assume contingent liabilities, inherit existing or pending litigation or create additional expenses related to amortizing intangible assets with estimable useful lives, any of which could harm our business, financial condition or results of operations and negatively impact our stock price.

***We may fail to realize the anticipated cost savings, growth opportunities and synergies and other benefits anticipated from our mergers and acquisitions, strategic joint ventures or investments, which could adversely affect the value of our common stock.***

The success of our mergers and acquisitions will depend, in part, on our ability to realize the anticipated expense synergies, integration success and growth opportunities, as well as revenue growth trends. In general, we expect to benefit from operational synergies resulting from the consolidation of capabilities and elimination of redundancies. However, the process of integration may produce unforeseen regulatory and operating difficulties and expenditures and may divert the attention of management from the ongoing operation of our business.

Integration of acquired companies is complex and time consuming, and requires substantial resources and effort. The integration process and other disruptions resulting from the mergers or acquisitions may disrupt each company's ongoing businesses or cause inconsistencies in standards, controls, procedures and policies that adversely affect our relationships with market participants, employees, regulators and others with whom we have business or other dealings or our ability to achieve the anticipated benefits of the merger or acquisition. We may not successfully achieve the integration objectives, and we may not realize the anticipated cost savings, revenue growth and synergies in full or at all, or it may take longer to realize them than expected.

We may not realize anticipated growth opportunities and other benefits from strategic investments or strategic joint ventures that we have entered into or may enter into in the future for a number of reasons, including regulatory or government approvals or changes, global market changes, contractual obligations, competing products and, in some instances, our lack of or limited control over the management of the business. Further, strategic initiatives that have historically been successful may not continue to be successful due to competitive threats, changing market conditions or the inability for the parties to extend the relationship into the future.

As discussed below under Risks to ICE in connection with the acquisition of NYSE Euronext, we will face many of these risks and may fail to realize the anticipated cost savings, growth opportunities and synergies and other benefits anticipated from the acquisition.

***We may be required to recognize impairments of our goodwill, other intangible assets or investments, which could adversely affect our results of operations or financial condition.***

Under accounting principles generally accepted in the United States, the determination of the value of goodwill and other intangible assets with respect to our acquisitions and other investments requires management to make estimates and assumptions that affect our consolidated financial statements. As of December 31, 2012, we had goodwill of \$1.9 billion and net other intangible assets of \$799.0 million relating to our acquisitions, our

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purchase of trademarks and Internet domain names from various third parties, and the Russell licensing agreement. We also have \$391.3 million in short-term investments relating to our equity security investment in Cetip S.A., or Cetip. We assess goodwill, other intangible assets and other investments and assets for impairment by applying a fair-value based test looking at historical performance, capital requirements and projected cash flows on an annual basis or more frequently if indicators of impairment arise.

We cannot assure you that we will not experience future events that may result in asset impairments. An impairment of the value of our existing goodwill, other intangible assets and other investments and assets could have a significant negative impact on our future operating results. For additional information on our goodwill, other intangible assets and short-term investments, refer to notes 5 and 7 to our consolidated financial statements and related notes and Critical Accounting Policies Goodwill and Other Identifiable Intangible Assets in Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations, which are included elsewhere in this Annual Report on Form 10-K.

***The derivatives and energy commodities trading industry has been and continues to be subject to increased legislation and regulatory scrutiny, and we face the risk of changes to our regulatory environment and business in the future, which may reduce our trading and clearing volumes or increase our cost of doing business.***

Providing facilities to trade financial derivatives and energy products is one of our core businesses and financial reform legislation like the Dodd-Frank Act, has and will continue to impact many aspects of our business. Over the past two years, the CFTC has issued final rules to implement the Dodd-Frank Act. Most of the rules implementing new regulations for DCMs and DCOs are in effect, which provides us certainty over regulation in the United States, and our DCMs and DCOs are in compliance with these rules. In October 2012, we transitioned our OTC energy swaps business to energy futures listed on ICE Futures U.S. (for our U.S. natural gas, power and emissions contracts) and ICE Futures Europe (for our global oil and natural gas liquids products). Transitioning our energy OTC business to futures subjects us to the highest level of regulation in the United States and United Kingdom.

In October 2011, the CFTC issued final rules implementing a new position limit regime for energy and agricultural products. The rules would have placed CFTC administered aggregate position limits across exchanges in the spot month and across all months. On September 28, 2012, the U.S. District Court for the District of Columbia vacated the CFTC's position limit rules finding that the CFTC made a mistake in interpreting the Dodd-Frank Act to require the CFTC to implement position limits. The CFTC is appealing the District Court's rulemaking, but in the interim, the current position limit regime will remain in place until any appeal is resolved or until the CFTC promulgates a new position limit rule. An overly-restrictive position limit rule could impact trading in certain of our markets.

The Dodd-Frank Act also calls for the real time public reporting of OTC derivatives transactions. Since we currently sell our OTC data, a similar requirement to publicly report derivatives transactions could impact the revenue we derive from selling this data. In addition, the Dodd-Frank Act mandates clearing of most OTC derivatives. We operate an electronic trade confirmation business, eConfirm, that derives revenues from electronically confirming bilateral OTC transactions. Given that the number of OTC transactions will decrease as a result of the Dodd-Frank Act and that the proposed rules provide that any swap executed on a swap execution facility platform would be deemed confirmed, eConfirm's business, and the revenue we receive from eConfirm, could be materially impacted. This could impact the revenue we would derive from eConfirm.

With respect to our clearing houses, the CFTC may attempt to increase competition in clearing by making various changes, including the manner in which we operate our clearing houses, such as determining who qualifies as a clearing member and implementing different risk management standards. These changes could impair the effectiveness and profitability of our clearing houses. For example, the Dodd-Frank Act and CFTC

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rules have an open access provision that would require a clearing house to accept swaps that originate from any swap execution facility or DCM if the clearing house already accepts the swap for clearing. In Europe, EMIR has a similar provision.

We have structured our entities to be able to provide a full service encompassing execution and clearing of futures, and clearing of swaps. In the European Union, proposals are under discussion to open access to clearing not just for swaps (which has already been achieved under EMIR) but for futures. These proposals are controversial and subject to change but have the potential to decrease the value of our clearing and trading businesses.

In the United States and Europe, regulators and lawmakers have discussed proposals to tax financial transactions or to assess user fees for market participants. For example, in the United States, there is discussion of assessing a user fee to fund the CFTC. In Europe, France enacted a tax on financial transactions, including a tax on high speed transactions and a tax on credit default swaps. Italy passed a similar financial transaction tax that will take effect in March 2013. In addition, there are discussions at the European Union level for a financial transaction tax framework to cover at least some European Union member states (given other European Union member states are firmly opposed to any such framework). In addition, the U.S. Congress may propose to eliminate the favorable 60/40 tax treatment for certain futures contracts. Taxes on financial transactions could reduce our trading volumes.

The negotiation of the latest Basel accord commonly known as Basel III has concluded and the next phase is the process of implementation in the major jurisdictions. In the implementation, regulators are deciding how much capital banks must hold in relation to clearing house default fund exposures. Increasing the amount of capital that banks must hold for cleared trades may make banks less willing to clear trades at our clearing houses. Further, EMIR proposes a proposal requiring clearing houses to use a two day holding period in the calculation of initial margin. Currently, for our energy markets, ICE Clear Europe uses a one day holding period in the calculation of initial margin. A change from a one day holding period to a two day holding period would increase the initial margin required to clear energy products at ICE Clear Europe.

Finally, the Financial Stability Oversight Committee, or FSOC, a regulatory body made up of the U.S. financial regulatory agencies, the Federal Reserve and the Department of Treasury, has designated ICE Clear Credit as a systemically important market utility under Title VIII of Dodd-Frank. While the CFTC and SEC have not finalized rules for systemically important institutions, this designation may result in higher regulation for ICE Clear Credit. Please see Item 1 Business Regulation above for additional information regarding new laws and regulations that impact our business.

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

Our ability to comply with applicable complex and changing laws and rules is largely dependent on our establishment and maintenance of compliance, audit and reporting systems, as well as our ability to attract and retain qualified compliance and other risk management personnel. While we have policies and procedures to identify, monitor and manage our risks, we cannot assure you that our policies and procedures will always be effective or that we will always be successful in monitoring or evaluating the risks to which we are or may be exposed. Regulators periodically review our exchanges' ability to self-regulate and our compliance with a variety of laws and self regulatory standards. If we fail to comply with these obligations, regulators could take a variety of actions that could impair our ability to conduct our business.

In addition, our regulators have broad enforcement powers to censure, fine, issue cease-and-desist orders or prohibit us from engaging in some of our businesses. We face the risk of significant intervention by regulatory authorities, including extensive examination and surveillance activity. In the case of non-compliance or alleged non-compliance with applicable laws or regulations, we could be subject to investigations and proceedings that

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

Financial reform initiatives are occurring globally and we operate in many jurisdictions. ICE Futures Europe, through which we conduct our energy futures business, operates as a Recognized Investment Exchange in the United Kingdom. As a Recognized Investment Exchange, ICE Futures Europe has regulatory responsibility in its own right and is subject to supervision by the FSA pursuant to the FSMA. ICE Futures Europe is required under the FSMA to maintain sufficient financial resources, adequate systems and controls and effective arrangements for monitoring and disciplining its members. Likewise, ICE Futures U.S. operates as a DCM and as a self-regulatory organization. ICE Futures U.S. is responsible for ensuring that the exchange operates in accordance with existing rules and regulations, and must comply with eighteen core principles under the Commodity Exchange Act. The ability of each of ICE Futures Europe and ICE Futures U.S. to comply with all applicable laws and rules is largely dependent on its maintenance of compliance, surveillance, audit and reporting systems. We cannot assure you that these systems and procedures are fully effective. Failure to comply with current or future regulatory requirements could subject us to significant penalties, including termination of our ability to conduct our regulated energy futures business through ICE Futures Europe and our regulated energy, agricultural commodities, equity index and currency businesses through ICE Futures U.S.

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

***Owning clearing houses exposes us to risks, including the risk of defaults by clearing members clearing trades through our clearing houses, risks regarding investing the funds in the guaranty fund and held as security for original margin, and risks related to the cost of operating the clearing houses.***

Operating clearing houses requires material ongoing expenditures and exposes us to various risks. There are risks inherent in operating a clearing house, including exposure to the market and counterparty risk of clearing members, defaults by clearing members and providing a return to the clearing members on the funds invested by the clearing houses, which could subject our business to substantial losses. For example, clearing members have placed an aggregate amount of cash in ICE Clear Europe relating to margin requirements and funding the guaranty funds of \$16.0 billion as of December 31, 2012 and a total of \$31.9 billion for all of our clearing houses. For ICE Clear Europe, these funds are swept and invested daily by JPMorgan Chase Bank N.A. and Citibank N.A. in accordance with our clearing house investment guidelines. Our clearing houses have an obligation to return margin payments and guaranty fund contributions to clearing members once the relevant clearing member's exposure to the clearing house no longer exists. If the investment principal amount decreases in value, ICE Clear Europe will be liable for the shortfall. Further, if the number of large, well capitalized banks that are clearing members decreases, the concentration of risks within our clearing houses will be spread among a smaller pool of clearing members.

Although our clearing houses have policies and procedures to help ensure that clearing members can satisfy their obligations, such policies and procedures may not succeed in preventing losses after a counterparty's default. In addition, the process for deriving margins and financial safeguards for our trading activity is complex, especially for CDS products, and although we believe that we have carefully analyzed the process for setting margins and our financial safeguards, there is no guarantee that our procedures will adequately protect us from the risks of clearing these products. We cannot assure you that these measures and safeguards will be sufficient to protect us from a default or that we will not be materially and adversely affected in the event of a significant default. We have contributed our own capital to the guaranty fund of the clearing houses that could be used in the event of a default where the defaulting clearing participant's margins, the defaulting clearing participant's

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guaranty fund contributions and non-defaulting clients net funds of the clearing participant are not sufficient to cover the default. Furthermore, the default of any one of the clearing members could subject our business to substantial losses and cause our customers to lose confidence in the guarantee of our clearing houses.

*Our clearing houses hold substantial amounts of sovereign and government guaranteed agency debt securities as collateral for original margin and guaranty fund deposits and as security for cash investments and loans. A decline in the value of these securities or default by a sovereign government could subject our clearing houses to additional risks of default by their clearing members, or if a loan counterparty were to default, the value of the sovereign treasury securities held by our clearing houses may be insufficient on liquidation to recover the full loan value.*

Our clearing houses hold a substantial amount of client assets as collateral, which comprise U.S. and other sovereign treasury securities. As of December 31, 2012, our clearing houses held \$19.5 billion of non-cash collateral: \$15.2 billion of this amount was comprised of U.S. Treasury securities, \$413.0 million was comprised of Italian Treasury securities, \$361.6 million was comprised of Spanish Treasury securities, \$348.0 million was comprised of U.K. Treasury securities and \$1.1 billion was comprised of other European and Canadian Treasury securities (none of which were issued by Greece or Portugal). Sovereign treasury securities have historically been viewed as one of the safest securities for clearing houses to hold due to the perceived credit worthiness of major governments, but the markets for such treasury securities have experienced significant volatility recently. Our clearing houses apply a haircut or discount on the value of the collateral to the market values for all sovereign securities held as collateral. The markets for such treasury securities have experienced significant volatility recently related to on-going financial challenges in some of the major European countries and leading up to the U.S. government's negotiations regarding tax increases, spending cuts and raising the debt ceiling, which is the maximum amount of debt that the U.S. government can incur. The U.S. government will revisit the debt ceiling level and consider spending cuts again in the near future. In addition, if there is a collapse of the euro, our clearing houses would face significant expenses in changing their systems and such an event could cause a credit contraction and major swings in asset prices and exchange rates.

Notwithstanding the current intraday margin and valuation checks conducted by our clearing houses, our clearing houses will need to continue to monitor the volatility and value of U.S. and other sovereign treasury securities because if the value of these treasury securities declines significantly, our clearing houses will need to collect additional collateral from their clearing members, which may be difficult for the clearing members to supply in the event of an actual or threatened default by a sovereign government. In addition, our clearing houses may be required to impose a more significant haircut on the value of sovereign treasury securities posted as collateral if there is uncertainty regarding the future value of these securities, which would trigger additional collateral contributions by the clearing members. If a clearing member cannot supply the additional collateral, which may include cash deposits in a currency acceptable to the clearing house, the clearing house would deem the clearing member in default. If any clearing members default as a result of the reduction in value of their collateral, our clearing houses and trading business could suffer substantial losses as a result of the loss of our own capital that has been contributed to the clearing house's guaranty fund, a reduction in the volume of cleared transactions and a loss of confidence by clearing members in the guaranty of the clearing houses.

Further, our clearing houses invest large sums of money in connection with their clearing operations and may hold sovereign securities as security for these deposits. Our clearing houses may find access to security in the loan market constrained and be unable to secure or maintain sufficient collateral to secure cash deposits made with authorized financial institutions if there is a threat that the U.S. government could default on its debt obligations. In that event, our clearing houses might make time deposits with banks, which are secured only to the value of FDIC insurance and therefore may in significant part be lost in the event of the insolvency of the loan counterparty. Our clearing houses that utilize time deposits currently manage such exposure by limiting the counterparties with which time deposits are made and the value of such loans. However, such limits may not be feasible in the event of a significant shortfall in available security for loans as a result of a potential default by the

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U.S. government. In such event our clearing houses may make time deposits with lesser credit worthy counterparties or increase the loan size limit for existing counterparties, which leads to more risks with respect to the funds held by the clearing houses and could lead to substantial losses.

*We face intense competition that could materially and adversely affect our business. If we are not able to compete successfully, our business will be adversely impacted.*

The global derivatives industry is highly competitive and we face intense competition in all aspects of our business. We believe competition in our industry is based on a number of important factors including, but not limited to, market liquidity, transparency, technology advancements, platform speed and reliability, regulatory differences, new and existing product offerings, pricing and risk management capabilities.

Our competitors, both domestic and international, are numerous. We currently compete with:

regulated, diversified futures exchanges globally that offer trading in a variety of asset classes similar to those offered by us such as energy, agriculture, equity index, credit derivatives markets and foreign exchange;

voice brokers active in the global commodities and credit markets;

existing and newly formed electronic trading platforms, service providers and other exchanges;

other clearing houses;

inter-dealer brokers; and

market data and information vendors.

In addition, in the future we may be forced to compete with consortiums of our customers that may pool their trading activity to establish new exchanges, trading platforms or clearing facilities. Recent trends towards the globalization of capital markets have resulted in greater mobility of capital, greater international participation in markets and increased competition among markets in different geographical areas. Competition in the market for derivatives trading and clearing has intensified as a result of consolidation, as we expand into new markets and as the market becomes more global in connection with the increase in electronic trading platforms and the desire by existing exchanges to diversify their product offerings. Further, a regional exchange in an emerging market country, such as Brazil, India or China, or a producer country, could attract enough trading activity to compete with our benchmark products. A decline in our fees due to competitive pressure, the inability to successfully launch new products or the loss of customers due to competition could lower our revenues, which would adversely affect our profitability. We cannot assure you that we will be able to continue to expand our product offerings, or that we will be able to retain our current customers or attract new customers. If we are not able to compete successfully our business could be materially impacted, including our ability to sustain as an operating entity.

If we complete the acquisition of NYSE Euronext, we will also compete with other exchanges for the short-term LIBOR interest rate markets, equity options and for the listing and trading of cash equities, exchange-traded funds, closed-end funds, structured products, as well as equity futures and other equity derivatives. Competition in these markets is intense, and exchanges and market participants compete based on factors similar to those discussed above.

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

To remain competitive, we must continue to enhance and improve the responsiveness, functionality, accessibility and reliability of our electronic platforms and our proprietary technology. The financial services





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industry is characterized by rapid technological change, change in use patterns, change in client preferences, frequent product and service introductions and the emergence of new industry standards and practices. These changes could render our existing proprietary technology uncompetitive or obsolete. Our ability to pursue our strategic objectives, including increasing trading volumes on our trading platforms, as well as our ability to continue to grow our business, will depend, in part, on our ability to:

enhance our existing services and maintain and improve the functionality, speed and reliability of our electronic platform, in particular, reducing network downtime or disruptions;

develop or license new technologies that address the increasingly sophisticated and varied needs of our participants;

increase trading and clearing system functionality to support future growth;

continue to build on technology provided to customers and maintain or grow the use of WebICE by our customers;

anticipate and respond to technological advances, customer demands and emerging industry practices on a cost-effective and timely basis; and

continue to attract and retain highly skilled technology staff to maintain and develop our existing technology and to adapt to and manage emerging technologies while attempting to keep our employee headcount low.

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

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

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

unanticipated disruption in service to our participants;

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

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

incomplete or inaccurate accounting, recording or processing of trades;

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failure to complete the clearing house margin settlement process resulting in significant financial risk;

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

financial loss.

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

Our regulated business operations generally require that our trade execution and communications systems be able to handle anticipated present and future peak trading volume. Heavy use of computer systems during peak trading times or at times of unusual market volatility could cause those systems to operate slowly or even to fail for periods of time. However, we cannot assure you that our estimates of future trading volume will be accurate or that our systems will always be able to accommodate actual trading volume without failure or degradation of performance.

Although many of our systems are designed to accommodate additional volume and products and services without redesign or replacement, we will need to continue to make significant investments in additional hardware and software and telecommunications infrastructure to accommodate the increases in volume of order and trading transaction traffic and to provide processing and clearing services to third parties. If we cannot increase the capacity and capabilities of our systems to accommodate an increasing volume of transactions and to execute our business strategy, our ability to maintain or expand our businesses would be adversely affected.

***Our systems and those of our third party service providers may be vulnerable to security risks, hacking and cyber attacks, especially in light of our role in the global financial marketplace, which could result in wrongful use of our information, or which could make our participants reluctant to use our electronic platform.***

We regard the secure transmission of confidential information and the ability to continuously transact and clear on our electronic platforms as critical elements of our operations. Our networks and those of our participants, our third party service providers and external market infrastructures, may, however, be vulnerable to unauthorized access, fraud, computer viruses, denial of service attacks, terrorism, firewall or encryption failures and other security problems. Recently, the financial services industry has been targeted for purposes of fraud, political protest, and activism. Further, former employees of certain companies in the financial sector have misappropriated trade secrets or stolen source code in the past and we could be a target for such illegal acts in the future. There also may be system or network disruptions if new or upgraded systems are defective or not tested and installed properly.

For example, phishing and hacking incidents in Europe as reported in the press have resulted in unauthorized transfers of certain affected European Union emissions allowances, or EUAs, from accounts in various European registries, none of which were operated by ICE. The affected EUAs have been transferred between registry accounts and eventually some affected EUAs were delivered by clearing members to the clearing house's registered accounts in the United Kingdom pursuant to delivery obligations under relevant ICE Futures Europe contracts. Further, some affected EUAs were delivered to ICE Clear Europe's registered accounts in the United Kingdom as collateral. We are also aware of litigation between some market participants in connection with these stolen certificates and it is possible that we could be joined to such litigation in the future.

Although we have not been the victim of cyber attacks or other cyber incidents that have had a material impact on our operations or financial condition, we have from time to time experienced cyber security breaches such as computer viruses and similar information technology violations that are typical for a company of our size that operates in the global financial marketplace. As part of our overall risk management program, we operate an internal Information Security Incident Management program that is designed to detect and mitigate cyber incidents and that has detected and mitigated such incidents in the past. Although we intend to implement

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additional industry standard security measures in the future to the extent necessary to maintain the effectiveness of our Information Security Incident Management program, we cannot assure you that these measures will be sufficient to protect our business against attacks, losses or reduced trading volume in our markets as a result of any security breach, hacking or cyber attack. We will continue to employ resources to monitor our electronic platforms and protect our infrastructure against security breaches and misappropriation of our intellectual property assets. While our security measures and Information Security Incident Management program have been successful in mitigating past cyber incidents, there is no guarantee that they will continue to be successful in blocking these threats in the future. The measures we take may prove insufficient in the future depending upon the attack or threat posed, which could result in reputational damage, could cause system failures or delays that could cause us to lose customers, experience lower current and future trading volumes or incur significant liabilities or could have a negative impact on our competitive position.

***Fluctuations in foreign currency exchange rates may adversely affect our financial results.***

Since we conduct operations in several different countries, including the United States, several European countries and Canada, substantial portions of our revenues, expenses, assets and liabilities are denominated in U.S. dollars, pounds sterling, euros and Canadian dollars. Because our consolidated financial statements are presented in U.S. dollars, we must translate revenues, income and expenses, as well as assets and liabilities, into U.S. dollars at exchange rates in effect during or at the end of each reporting period. Therefore, increases or decreases in the value of the U.S. dollar against the other currencies will affect our net operating revenues, operating income and the value of balance sheet items denominated in foreign currencies.

Although we have entered into hedging transactions and may enter into additional hedging transactions in the future to help mitigate our foreign exchange risk exposure, these hedging arrangements may not be effective, particularly in the event of imprecise forecasts of the levels of our non-U.S. denominated assets and liabilities. Accordingly, if there are adverse movements in exchange rates, we may suffer significant losses, which would adversely affect our operating results and financial condition.

***Our investment in businesses outside of the United States, in particular, our investments in Cetip and Brix Energia e Futuros S.A., or BRIX, a Brazilian marketplace for electric power, could subject us to investment and currency translation risk.***

We have investments outside of the United States that expose us to investment and currency translation risks. In particular, we acquired 31.6 million shares, or 12%, of the common stock of Cetip for an aggregate consideration of \$514.1 million in cash on July 15, 2011. We also have a partnership in BRIX, which is a Brazilian marketplace for trading electric power. We account for our investment in Cetip as an available-for-sale investment. As of December 31, 2012, the fair value of the Cetip equity security investment was \$391.3 million, which was classified as a long-term investment in our consolidated balance sheet, and the unrealized loss was \$122.8 million as of December 31, 2012. The unrealized loss primarily resulted from foreign currency translation losses relating to the decrease in value of the Brazilian real relative to the U.S. dollar from July 15, 2011 through December 31, 2012. Our investment in Cetip was recorded in and is held in Brazilian reais.

Cetip's ability to maintain or expand its business is subject to many of the same types of risks to which we are subject. Additionally, its stock is valued in Brazilian real, which subjects us to currency translation risk. There is no guarantee that our investment in Cetip or our partnership in BRIX will be successful or that we will be able to sell our shares at prices and terms favorable to us. Further, a decrease in value of the Brazilian real or other currencies where we have investments would decrease the value of our investments in these foreign jurisdictions and would have a negative impact on our financial statements.

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***Owning and operating voice broker businesses exposes us to additional risk and these businesses are largely dependent on their broker-dealer clients. These clients are not restricted from transacting or processing transactions directly, or through their own proprietary or third-party platforms, and the Dodd-Frank Act will change the way voice brokers can conduct their business.***

Our voice broker business is primarily transaction-based and it provides brokerage services to clients primarily in the form of agency transactions, although it also engages in a limited number of matched principal transactions. In agency transactions, customers pay transaction fees for trade execution services in which we connect buyers and sellers who settle their transactions directly. In matched principal transactions (also known as risk-less principal transactions), we agree to buy instruments from one customer and sell them to another customer. The amount of the fee generally depends on the spread between the buy and sell price of the security that is brokered. Such transactions leave Creditex, which is the subsidiary that engages in these transactions, with risk as principal on a transaction. The majority of the Creditex transactions are agency transactions and the matched principal transactions accounted for approximately 7% of the total transactions for Creditex for the year ended December 31, 2012. With respect to matched principal transactions, a counterparty to a matched principal transaction may fail to fulfill its obligations, or Creditex may face liability for an unmatched trade. Declines in trading volumes in credit derivatives would adversely affect the revenues we derive from Creditex. We also face the risk of not being able to collect transaction or processing fees charged to customers for brokerage services and processing services we provide.

None of Creditex's clients are contractually or otherwise obligated to continue to use our services and our agreements with these clients are generally not exclusive and these clients may terminate such agreements and enter into, and in some cases have entered into, similar agreements with our competitors. Additionally, many of our clients are involved in other ventures, including other electronic trading and processing platforms, as trading participants or as equity holders, and such ventures or newly created ventures may compete with us.

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

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

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

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

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

We have filed patent applications in the United States, Europe and in other jurisdictions on a number of aspects of our electronic trading system and trade confirmation systems. We cannot assure you that we will obtain any final patents covering these services, nor can we predict the scope of any patents issued. In addition, we cannot assure you that any patent issued will be effective to protect this intellectual property against misappropriation or infringement. Third parties in Europe or elsewhere could acquire patents covering this or other intellectual property for which we obtain patents in the United States, or equivalent intellectual property, as a result of differences in local laws affecting patentability and patent validity. Third parties in other jurisdictions might also misappropriate or infringe our intellectual property rights with impunity if intellectual property protection laws are not actively enforced in those jurisdictions. Patent infringement and/or the grant of parallel patents would erode the value of our intellectual property.

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

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

We depend on a number of suppliers, such as online service providers, hosting service and software providers, data processors, software and hardware vendors, banks, local and regional utility providers, and telecommunications companies, for elements of our trading, clearing and other systems. We rely on access to certain data used in our business through licenses with third parties and we rely on a large international telecommunications company for the provision of hosting services. The general trend toward industry consolidation may increase the risk that these services may not be available to us in the future. In addition, participants trading on our electronic platform may access it through 44 order routing and 34 trade capture conformed ISVs, which represent a substantial portion of the ISVs that serve the commodities markets. The loss of a significant number of ISVs providing access could make our platform less attractive to participants who prefer this form of access. If these companies were to discontinue providing services to us, we would likely experience significant disruption to our business.

### ***We are subject to significant litigation and liability risks.***

Many aspects of our business, and the businesses of our participants, involve substantial risks of liability. These risks include, among others, potential liability from disputes over terms of a trade and the claim that a system failure or delay caused monetary loss to a participant or that an unauthorized trade occurred. For example, dissatisfied market participants that have traded on our electronic platform or those on whose behalf such participants have traded, may make claims regarding the quality of trade execution, or allege improperly confirmed or settled trades, abusive trading practices, security and confidentiality breaches, mismanagement or even fraud against us or our participants. In addition, because of the ease and speed with which sizable trades can

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be executed on our electronic platform, participants can lose substantial amounts by inadvertently entering trade orders or by entering them inaccurately. A large number of significant error trades could result in participant dissatisfaction and a decline in participant willingness to trade in our electronic markets. In addition, we are subject to various legal disputes, some of which we are involved in due to acquisition activity. An adverse resolution of any lawsuit or claim against us may require us to pay substantial damages or impose restrictions on how we conduct business, either of which could adversely affect our business, financial condition and operating results.

### ***The market price of our common stock may be volatile.***

Securities and derivatives markets worldwide experience significant price and volume fluctuations. This market volatility, as well as the factors listed below, could affect the market price of our common stock:

quarterly variations in our results of operations or the results of operations of our competitors;

changes in earnings estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' earnings estimates or ratings downgrades;

the announcement of new products or service enhancements by us or our competitors;

announcements related to litigation;

potential acquisitions by us of, or of us by, other companies;

developments in our industry; and

general economic, market and political conditions and other factors unrelated to our operating performance or the operating performance of our competitors.

## **Risks to ICE in connection with the acquisition of NYSE Euronext**

### ***We may fail to realize the anticipated benefits of the acquisition.***

The success of the acquisition will depend on, among other things, our ability to combine our businesses and certain businesses of NYSE Euronext in a manner that facilitates growth opportunities and realizes anticipated synergies, and achieves the projected stand-alone cost savings and revenue growth trends identified by each company. On a combined basis, we expect to benefit from operational synergies resulting from the consolidation of capabilities and elimination of redundancies, including the use by certain of NYSE Euronext's businesses of our technology and clearing capabilities, as well as greater efficiencies from increased scale and market integration.

However, we must successfully combine the businesses of ICE and NYSE Euronext in a manner that permits these cost savings and synergies to be realized. In addition, we must achieve the anticipated savings and synergies without adversely affecting current revenues and our investments in future growth. If we are not able to successfully achieve these objectives, the anticipated benefits of the acquisition may not be realized fully or at all or may take longer to realize than expected. In addition, the acquisition may not close due to certain closing conditions, termination rights and required regulatory approvals that may not be received, may take longer than expected or may impose conditions that are not acceptable.

***Our failure to integrate successfully certain businesses and operations of NYSE Euronext in the expected time frame may adversely affect our future results.***



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Historically, ICE and NYSE Euronext have operated as independent companies, and they will continue to do so until the completion of the acquisition. Our management may face significant challenges in consolidating

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certain businesses, the functions (including regulatory functions) of each company, integrating the technologies, organizations, procedures, policies and operations, as well as addressing differences in the business cultures of the two companies and retaining key personnel. The integration may also be complex and time consuming, and require substantial resources and effort. The integration process and other disruptions resulting from the acquisition may also disrupt each company's ongoing businesses or cause inconsistencies in standards, controls, procedures and policies that adversely affect our relationships with market participants, employees, regulators and others with whom each company has business or other dealings or limit our ability to achieve the anticipated benefits of the acquisition. In addition, difficulties in integrating the businesses or regulatory functions of each company could harm our reputation.

***Combining our businesses and NYSE Euronext may be more difficult, costly or time-consuming than expected, which may adversely affect our results and negatively affect the value of our stock following the acquisition.***

The companies have entered into the acquisition agreement because each believes that the acquisition will be beneficial to its respective companies and stockholders and that combining the businesses will produce benefits and cost savings. If we are not able to successfully combine the businesses in an efficient and effective manner, the anticipated benefits and cost savings of the acquisition may not be realized fully, or at all, or may take longer to realize than expected, and the value of our common stock may be affected adversely.

An inability to realize the full extent of the anticipated benefits of the acquisition and the other transactions contemplated by the acquisition agreement, as well as any delays encountered in the integration process, could have an adverse effect upon our revenues, level of expenses and operating results, which may affect adversely the value of our common stock after the completion of the acquisition.

In addition, the actual integration may result in additional and unforeseen expenses, and the anticipated benefits of the integration plan may not be realized. Actual synergies, if achieved at all, may be lower than what we expect and may take longer to achieve than anticipated. If we are not able to adequately address these challenges, we may be unable to successfully integrate NYSE Euronext's operations into our own or to realize the anticipated benefits of the integration of the two companies.

***Termination of the acquisition agreement could negatively impact us.***

If the acquisition agreement is terminated under certain circumstances, we will be required to pay NYSE Euronext a termination fee of up to \$750 million, including if the acquisition agreement is terminated due to a failure to receive required regulatory approvals. We also may be required to pay a termination fee of \$100 million, \$300 million or \$450 million if the acquisition agreement is terminated under other specified circumstances. These termination fees may be substantial and, in some instances, such as failure to secure required regulatory approvals, the cause for termination is not within our control.

***We will incur significant transaction and acquisition-related costs in connection with the acquisition.***

We have incurred and expect to incur a number of non-recurring costs associated with the acquisition. These costs and expenses include financial advisory, legal, accounting, consulting and other advisory fees and expenses, reorganization and restructuring costs, severance/employee benefit-related expenses, filing fees, printing expenses and other related charges. Some of these costs are payable regardless of whether the acquisition is completed. There are also a large number of processes, policies, procedures, operations, technologies and systems that must be integrated in connection with the acquisition. While both ICE and NYSE Euronext have assumed that a certain level of expenses would be incurred in connection with the acquisition and the other transactions contemplated by the acquisition agreement, there are many factors beyond their control that could affect the total amount or the timing of the integration and implementation expenses. Moreover, there could also be significant amounts payable in cash with respect to dissenting shares, which could adversely affect our liquidity.

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There may also be additional unanticipated significant costs in connection with the acquisition that we may not recoup. These costs and expenses could reduce the benefits and additional income we expect to achieve from the acquisition. Although we expect that these benefits will offset the transaction expenses and implementation costs over time, this net benefit may not be achieved in the near term or at all.

***For a period of time following the acquisition, we expect to have significantly less cash on hand than the sum of cash on hand of ICE and NYSE Euronext prior to the acquisition. This reduced amount of cash could adversely affect our ability to grow and perform.***

Following completion of the acquisition, after payment of the acquisition consideration, the expenses of consummating the acquisition, and all other cash payments relating to the acquisition, we are expected to have less cash and cash equivalents than ICE and NYSE Euronext would have had on a combined basis prior to the acquisition. Although we believe that this amount will be sufficient to meet our business objectives and capital needs, this amount is significantly less than the combined cash and cash equivalents of the two companies prior to the acquisition and cash payments relating to the acquisition, and could constrain our ability to grow our business. Our financial position following the acquisition could also make us vulnerable to general economic downturns and industry conditions, and place us at a competitive disadvantage relative to our competitors that have more cash at their disposal. In the event that we do not have adequate capital to maintain or develop our business, additional capital may not be available to us on a timely basis, on favorable terms, or at all.

***If the acquisition is consummated, we will incur a substantial amount of debt to finance the cash portion of the acquisition consideration, which could restrict our ability to engage in additional transactions or incur additional indebtedness.***

In connection with the acquisition, we plan to borrow up to \$1.8 billion under our senior unsecured credit facility, which is the full unrestricted and available amount that may be borrowed for the acquisition consideration. Following the completion of the acquisition, the combined company will have a significant amount of indebtedness outstanding. This substantial level of indebtedness could have important consequences to our business, including making it more difficult to satisfy our debt obligations, increasing our vulnerability to general adverse economic and industry conditions, limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate and restricting us from pursuing certain business opportunities. We intend to refinance the \$1.8 billion we plan to borrow under our revolving credit facility subsequent to, or in connection with, the acquisition through the issuance of new debt to refinance and restore the majority of the \$1.8 billion borrowed and to extend the term of the debt. In addition, in connection with the acquisition, NYSE Euronext's existing revolving credit facility will terminate, and certain other indebtedness of NYSE Euronext may need to be, refinanced, as a result of change-of-control or other provisions. We may not be successful in refinancing our debt or existing NYSE Euronext debt and we cannot assure you that any such financing will be available or that the terms of such financing will be favorable. In addition, any such financing may include restrictions on our ability to engage in certain business transactions or incur additional indebtedness.

***The acquisition may not be accretive and may cause dilution to our earnings per share, which may negatively affect the market price of our common stock.***

Although we currently anticipate that the acquisition will be accretive to earnings per share (on an adjusted earnings basis) from and after the acquisition, this expectation is based on preliminary estimates, which may change materially. In connection with the completion of the acquisition, we currently expect to issue approximately 42.4 million shares of our common stock. The issuance of these new shares of our common stock could have the effect of depressing the market price of our common stock. In addition, we could also encounter additional transaction-related costs or other factors such as the failure to realize all of the benefits anticipated in the acquisition. All of these factors could cause dilution to our earnings per share or decrease or delay the expected accretive effect of the acquisition and cause a decrease in the market price of our common stock.

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**ITEM 1 (B). UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

Our most valuable property is our technology and the infrastructure underlying it. Our intellectual property is described under the heading Technology in Item 1 Business. In addition to our intellectual property, our other primary assets include computer equipment, software, internally developed software and a corporate aircraft. We own an array of computers and related equipment. The net book value of our property was \$143.4 million as of December 31, 2012.

Our principal executive offices are located in Atlanta, Georgia. We occupy 92,171 square feet of office space in Atlanta under a lease that expires on June 30, 2014. We also lease and currently occupy an aggregate of 198,842 square feet of office space in New York, London, Chicago, Stamford, San Francisco, Washington, D.C., Houston, Winnipeg, Calgary and Singapore. Our largest physical presence outside of Atlanta is in New York, New York, where we have leased and currently occupy 117,539 square feet of office space, including 60,941 square feet of space from our competitor NYMEX under a lease that expires on July 1, 2013. The remaining 56,598 square feet of office space currently occupied in New York have leases that generally expire in 2013 and 2014. In mid-2013, we expect that all of our New York offices will relocate to a single new location in New York with 93,365 square feet of office space under a new lease that expires in 2028 and will replace the currently occupied 117,539 square feet of office space. Our second largest physical presence outside of Atlanta is in London, England, where we have leased 40,909 square feet of office space. The various London leases covering these spaces generally expire in 2024.

We believe that our facilities are adequate for our current operations and that we will be able to obtain additional space as and when it is needed.

**ITEM 3. LEGAL PROCEEDINGS**

We are from time to time involved in a number of legal proceedings (including the matters specifically described below) concerning matters arising in connection with the conduct of our business. We believe, based on currently available information, that the results of such proceedings, in the aggregate, will not have a material adverse effect on our financial condition.

On August 5, 2011, we announced that we will be ceasing operations of the Chicago Climate Futures Exchange, LLC, or CCFE, an emissions futures exchange that we acquired as part of our acquisition of CLE in July 2010. On December 14, 2011, a group of 24 plaintiffs who hold trading privileges (a right to trade at a discount) at CCFE filed suit against CCFE and CLE, together with two current and one former employee of those entities, claiming that they were defrauded in connection with the purchase of their trading privileges at CCFE and that the sales of such privileges were made in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. The plaintiffs seek the return of amounts paid for their trading privileges, the lost value of their trading privileges, punitive damages and interest. During the first quarter of 2012, the plaintiffs filed an amended complaint to add 21 new plaintiffs to the lawsuit and dropped one of our subsidiaries as a corporate defendant. We are currently in the discovery phase of this litigation. A second complaint was filed by five additional CCFE trading privilege holders on January 25, 2013, alleging substantively similar claims that CCFE together with two current and one former employee defrauded plaintiffs in connection with the purchase of CCFE trading privileges. We do not believe the allegations in the complaints to be meritorious, and we intend to defend them vigorously.

Following the announcement of the execution of the acquisition agreement to acquire NYSE Euronext on December 20, 2012, the first of eight putative stockholder class action complaints was filed in the Court of Chancery of the State of Delaware (the Delaware Actions) by purported stockholders challenging the proposed acquisition. Additionally, on December 21, 2012, the first of four similar putative stockholder class action

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complaints was filed in the Supreme Court of the State of New York (the New York Actions ) by purported stockholders of NYSE Euronext. The Delaware Actions are captioned *Cohen v. NYSE Euronext, et al.*, C.A. No. 8136-CS, *Mayer v. NYSE Euronext, et al.*, C.A. No. 8167-CS, *Southeastern Pennsylvania Transportation Authority v. Hessels, et al.*, No. 8172-CS, *Louisiana Municipal Police Employees Retirement System v. NYSE Euronext, et al.*, No. 8183-CS, *Sheet Metal Workers Pension Fund of Local Union 19 v. Hessels, et al.*, No. 8202-CS, *Winkler v. NYSE Euronext, et al.*, No. 8209-CS, *Nardone v. Hessels, et al.*, C.A. No. 8211-CS, and *LBBW Asset Management Investmentgesellschaft MBH, C.A. No. 8224-CS*. The New York actions are captioned *Graff v. Hessels, et al.*, No. 654519, *Himmerl v. NYSE Euronext, et al.*, No. 654576/2012, *N.J. Carpenters Pension Fund v. NYSE Euronext, et al.*, No. 654496 and *KT Invs. II, LLC v. Niederauer, et al.*, No. 654515.

The Delaware and New York Actions are very similar. All twelve actions name us as a defendant and also name NYSE Euronext and the members of its board of directors as defendants. Certain of the actions also name Baseball Merger Sub, LLC, which is a wholly-owned subsidiary of ours that was created for purposes of this acquisition. All twelve complaints allege that the members of the NYSE Euronext board of directors breached their fiduciary duties by agreeing to an acquisition agreement that undervalues NYSE Euronext. Among other things, plaintiffs allege that the members of the NYSE Euronext board of directors failed to maximize the value of NYSE Euronext to its public stockholders, negotiated a transaction in their best interests to the detriment of the NYSE Euronext public stockholders, and agreed to supposedly preclusive deal protection measures that unfairly deter competitive offers. We (and, in some of the actions, NYSE Euronext and/or Baseball Merger Sub) are alleged to have aided and abetted the breaches of fiduciary duty by the members of the NYSE Euronext board of directors. The lawsuits seek, among other things, (i) an injunction enjoining the consummation of the acquisition; and/or (ii) rescission of the acquisition, to the extent already implemented, or alternatively rescissory damages. Certain of the actions seek an injunction prohibiting us and NYSE Euronext from initiating any defensive measures.

On January 16, 2013, three of the plaintiffs in the Delaware Actions, Southeastern Pennsylvania Transportation Authority, Louisiana Municipal Police Employees Retirement System and Sheet Metal Workers Pension Fund of Local Union 19, jointly moved for expedited proceedings. The motion to expedite requests an expedited schedule and the setting of a hearing on a motion for a preliminary injunction in advance of the stockholder vote on the merger. On January 17, 2013, Plaintiffs Southeastern Pennsylvania Transportation Authority, Louisiana Municipal Police Employees Retirement System, Sheet Metal Workers Pension Fund and Welfare Fund of Local Union 19, and LBBW Asset Management Investmentgesellschaft MBH moved for consolidation and appointment of lead plaintiffs and lead counsel in the Delaware Actions. On January 25, 2013, Plaintiff John and Patricia Mayer cross moved for appointment as lead or co-lead plaintiffs and approval of their selection of lead counsel. By Order dated January 29, 2013, the Court of Chancery consolidated the Delaware Actions and appointed lead plaintiffs and lead counsel. On January 31, 2013, lead plaintiffs filed a consolidated amended complaint which, among other things, adds allegations contending that the preliminary proxy statement filed by NYSE Euronext contains misstatements or omissions regarding the transaction and the firm's business prospects.

On January 3, 2013, the plaintiffs in the New York Actions moved for consolidation and appointment lead counsel in the New York Actions. On January 28, 2013, the court entered an Order consolidating the New York Actions and appointing lead counsel. On January 30, 2013, the defendants moved to dismiss or stay the New York Actions based upon, among other things, the substantially identical, earlier filed Delaware proceedings. That motion remains pending.

We believe the allegations in the complaints in the Delaware Actions and the New York Actions are without merit, and intend to defend them vigorously.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**Table of Contents****ITEM 4 (A). EXECUTIVE OFFICERS OF INTERCONTINENTALEXCHANGE, INC.**

Set forth below, in accordance with General Instruction G(3) of Form 10-K and Instruction 3 to Item 401(b) of Regulation S-K, is information regarding our executive officers:

| <b>Name</b>         | <b>Age</b> | <b>Title</b>   |
|---------------------|------------|--|
| Jeffrey C. Sprecher | 57         | Chairman of the Board and Chief Executive Officer              |
| Charles A. Vice     | 49         | President and Chief Operating Officer                          |
| Scott A. Hill       | 45         | Senior Vice President and Chief Financial Officer              |
| David S. Goone      | 52         | Senior Vice President and Chief Strategic Officer              |
| Edwin D. Marcial    | 45         | Senior Vice President and Chief Technology Officer             |
| Johnathan H. Short  | 47         | Senior Vice President, General Counsel and Corporate Secretary |
| Thomas W. Farley    | 37         | Senior Vice President of Financial Markets                     |

*Jeffrey C. Sprecher.* Mr. Sprecher has served as Chief Executive Officer and a director since our inception and has served as our Chairman of the Board since November 2002. As our Chief Executive Officer, he is responsible for our strategic direction, operation, and financial performance. Mr. Sprecher purchased Continental Power Exchange, Inc., our predecessor company, in 1997. Prior to joining Continental Power Exchange, Inc., Mr. Sprecher held a number of positions, including President, over a fourteen-year period with Western Power Group, Inc., a developer, owner and operator of large central-station power plants. While with Western Power, Mr. Sprecher was responsible for a number of significant financings. Mr. Sprecher serves on the U.S. Commodity Futures Trading Commission Global Market Advisory Committee and is a member of the Energy Security Leadership Council. Mr. Sprecher has been consistently recognized for his entrepreneurial achievements. Mr. Sprecher holds a B.S. degree in Chemical Engineering from the University of Wisconsin and an MBA from Pepperdine University.

*Charles A. Vice.* Mr. Vice has served as Chief Operating Officer since July 2001 and our President since October 2005. As our President and Chief Operating Officer, Mr. Vice is responsible for overseeing our technology operations, including market development, customer support and business development activities. He has over 16 years of experience in applying information technology in the energy industry. Mr. Vice joined Continental Power Exchange, Inc. as a Marketing Director during its startup in 1994, and prior thereto was a Principal with Energy Management Associates for five years, providing consulting services to energy firms. From 1985 to 1988, he was a Systems Analyst with Electronic Data Systems. Mr. Vice holds a B.S. degree in Mechanical Engineering from the University of Alabama and an MBA from Vanderbilt University.

*Scott A. Hill.* Mr. Hill has served as Senior Vice President and Chief Financial Officer since May 2007. As our Chief Financial Officer, he is responsible for overseeing all aspects of our finance and accounting functions, including treasury, tax, accounting controls, financial planning, mergers and acquisitions, business development, human resources and investor relations. Mr. Hill also oversees our global clearing operations, including our credit default swap clearing houses. Prior to joining us, Mr. Hill spent 16 years as an international finance executive for IBM. He oversaw IBM's worldwide financial forecasts and measurements from 2006 through 2007, working alongside the CFO of IBM and with all of the company's global business units. Prior to that, Mr. Hill was Vice President and Controller of IBM's Japan multi-billion dollar business operation from 2003 through 2005. Mr. Hill earned his BBA in Finance from the University of Texas at Austin and his MBA from New York University.

*David S. Goone.* Mr. Goone has served as Senior Vice President, Chief Strategic Officer since March 2001. He is responsible for the expansion of our product lines, including futures products and trading capabilities for our electronic platform. Mr. Goone also leads our global sales organization. Additionally, Mr. Goone joined the Board of Directors at CETIP following our 2011 investment in the Brazilian clearing house. Prior to joining us, Mr. Goone served as the Managing Director, Product Development and Sales at the Chicago Mercantile Exchange where he worked for nine years. From 1989 through 1992, Mr. Goone was Vice

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President at Indosuez Carr Futures, where he developed institutional and corporate business. Prior to joining Indosuez, Mr. Goone worked at Chase Manhattan Bank, where he developed and managed their exchange-traded foreign currency options operation at the Chicago Mercantile Exchange. Mr. Goone holds a B.S. degree in Accountancy from the University of Illinois at Urbana-Champaign.

*Edwin D. Marcial.* Mr. Marcial has served as Senior Vice President and Chief Technology Officer since May 2000. He is responsible for all systems development and our overall technology strategy. He also oversees the software design and development initiatives of our information technology professionals in the areas of project management, architecture, software development and quality assurance. Mr. Marcial joined the software development team at Continental Power Exchange, Inc. in 1996 and has nearly 20 years of IT experience building large-scale systems in the energy industry. Prior to joining Continental Power Exchange, Inc., he led design and development teams at Harris Corporation building software systems for the company's energy controls division. Mr. Marcial earned a B.S. degree in Computer Science from the College of Engineering at the University of Florida.

Johnathan H. Short. Mr. Short has served as Senior Vice President, General Counsel and Corporate Secretary since June 2004. In his role as General Counsel, he is responsible for managing our legal and regulatory affairs. As Corporate Secretary, he is also responsible for a variety of our corporate governance matters. Prior to joining us, Mr. Short was a partner at McKenna Long & Aldridge LLP, a national law firm. Mr. Short practiced in the corporate law group of McKenna, Long & Aldridge (and its predecessor firm, Long Aldridge & Norman LLP) from November 1994 until he joined us in June 2004. From April 1991 until October 1994, he practiced in the commercial litigation department of Long Aldridge & Norman LLP. Mr. Short holds a J.D. degree from the University of Florida, College of Law, and a B.S. in Accounting from the University of Florida, Fisher School of Accounting.

*Thomas W. Farley.* Mr. Farley became Senior Vice President of Financial Markets in June 2012. In this role, Mr. Farley oversees the development of initiatives within our OTC financial markets, such as Creditex, ICE Link and Foreign Exchange. Mr. Farley originally joined as President of ICE Futures U.S. in February 2007, a position that he held until June 2012. From July 2006 to January 2007, Mr. Farley was President of SunGard Kiodex, a risk management technology provider to the commodity derivatives markets. From October 2000 to July 2006, Mr. Farley served as Kiodex's Chief Financial Officer and he also served as Kiodex's Chief Operating Officer from January 2003 to July 2006. Prior to Kiodex, Mr. Farley held positions in investment banking and private equity. Mr. Farley is a Chartered Financial Analyst charterholder and holds a B.A. in Political Science from Georgetown University.

**Table of Contents****PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Approximate Number of Holders of Common Stock**

As of January 31, 2013, there were approximately 358 holders of record of our common stock.

**Dividends**

We have paid no dividends on our common stock and we have not determined that we will pay dividends on our common stock on a standalone basis in the near future. However, as disclosed in connection with the acquisition of NYSE Euronext, the combined company would commence an annual dividend program beginning with an approximately \$300 million dividend after the transaction closes. Any determination to pay dividends in the future will be made at the discretion of our board of directors and will depend upon our results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law or the SEC and other factors our board of directors deems relevant.

**Price Range of Common Stock**

Our common stock trades on the New York Stock Exchange under the ticker symbol **ICE**. Our common stock was initially offered and sold to the public at a price of \$26.00 per share and has been publicly traded since November 16, 2005. Prior to that date, there was no public market in our stock. On January 31, 2013, our common stock traded at a high of \$139.44 per share and a low of \$137.57 per share. The following table sets forth the quarterly high and low sale prices for the periods indicated for our common stock on the New York Stock Exchange.

|                                     | Common Stock Market Price |           |
|-------------------------------------|---------------------------|-----------|
|                                     | High                      | Low       |
| <b>Year Ended December 31, 2011</b> |                           |           |
| First Quarter                       | \$ 135.38                 | \$ 112.13 |
| Second Quarter                      | \$ 126.67                 | \$ 112.20 |
| Third Quarter                       | \$ 131.72                 | \$ 102.57 |
| Fourth Quarter                      | \$ 132.89                 | \$ 113.00 |
| <b>Year Ended December 31, 2012</b> |                           |           |
| First Quarter                       | \$ 142.75                 | \$ 110.67 |
| Second Quarter                      | \$ 139.56                 | \$ 117.82 |
| Third Quarter                       | \$ 141.77                 | \$ 126.22 |
| Fourth Quarter                      | \$ 135.40                 | \$ 122.72 |



**Table of Contents****Equity Compensation Plan Information**

The following table provides information about our common stock that has been or may be issued under our equity compensation plans as of December 31, 2012, which consist of the 2000 Stock Option Plan, 2003 Directors Plan, 2004 Restricted Stock Plan, 2005 Equity Incentive Plan, 2009 Omnibus Incentive Plan and the Creditex 1999 Stock Option/Stock Issuance Plan. The 2000 Stock Option Plan, 2004 Restricted Stock Plan, 2005 Equity Incentive Plan and the Creditex 1999 Stock Option/Stock Issuance Plan were all retired in May 14, 2009, when our shareholders approved the 2009 Omnibus Incentive Plan. No future issuances will be made from these retired plans.

| Plan Category   | Number of securities to be issued upon exercise of outstanding options and rights<br>(a) | Weighted average exercise price of outstanding options<br>(b) | Number of securities available for future issuance under equity compensation plans (excluding securities reflected in column (a))<br>(c) |
|---|--|---|--|
| Equity compensation plans approved by security holders(1)     | 1,674,585(1)   | \$ 94.84(1)   | 1,848,973  |
| Equity compensation plans not approved by security holders(2) | 181,380(2)   | \$ 32.07(2)   | 203,016  |
| <b>TOTAL</b>  | <b>1,855,965</b>   | <b>\$ 85.07</b>   | <b>2,051,989</b>   |

(1) The 2000 Stock Option Plan was approved by our stockholders in June 2000. The 2005 Equity Incentive Plan was approved by our stockholders in June 2005. The 2009 Omnibus Incentive Plan was approved by our stockholders on May 14, 2009, on which date the 2000 Stock Option Plan and the 2005 Equity Incentive Plan were retired. Of the 1,674,585 securities to be issued upon exercise of outstanding options and rights, 783,827 are options with a weighted average exercise price of \$94.84 and the remaining 890,758 securities are restricted stock shares that do not have an exercise price.

(2) This category includes the 2003 Directors Plan, 2004 Restricted Stock Plan and the Creditex 1999 Stock Options/Stock Issuance Plan. Of the 181,380 securities to be issued upon exercise of outstanding options and rights, 150,125 are options with a weighted average exercise price of \$32.07 and the remaining 31,255 securities are restricted stock shares that do not have an exercise price. For more information concerning these plans, see note 9 to our consolidated financial statements and related notes that are included elsewhere in this Annual Report on Form 10-K.

**Stock Repurchases**

The table below sets forth the information with respect to purchases made by or on behalf of IntercontinentalExchange, Inc. or any affiliated purchaser (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934) of our common stock during the three months ended December 31, 2012.

| Period                   | Total number of shares purchased | Average price paid per share | Total number of shares purchased as part of publicly announced plans or programs(1) | Approximate dollar value of shares that may yet be purchased under the plans or programs (in millions)(1) |
|--------------------------|----------------------------------|------------------------------|---|---|
| (2012)                   |                                  |                              |   |   |
| October 1 – October 31   | 103,900                          | \$ 129.28                    | 103,900   | \$ 486.6  |
| November 1 – November 30 | 127,493                          | \$ 128.63                    | 231,393   | \$ 470.2  |

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|            |             |         |           |         |          |
|------------|-------------|---------|-----------|---------|----------|
| December 1 | December 31 | 157,765 | \$ 127.84 | 389,158 | \$ 450.0 |
| Total      |             | 389,158 | \$ 128.48 | 389,158 | \$ 450.0 |

- (1) In September 2012, our board of directors approved a new authorization to our share repurchase program increasing the authorized aggregate amount of repurchases up to \$500.0 million. This stock repurchase authorization does not have an expiration date and, from time to time, our board of directors may increase or decrease the amount we are authorized to repurchase. During the quarter ended December 31, 2012, pursuant

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to a trading plan adopted in compliance with Rule 10b5-1 under the Securities Exchange Act, we repurchased \$50.0 million worth of our common stock through open market purchases. Under Rule 10b5-1 trading plans, we may purchase additional shares of our common stock in the future outside of open trading window periods subject to the terms of the plan. Our repurchase program may be suspended or discontinued at any time without prior notice. We expect to fund any share repurchases with a combination of cash on hand, future cash flows and by borrowing under our credit facilities. The timing and extent of any futures repurchases will depend upon market conditions, our stock price and our strategic plans at that time.

**ITEM 6. SELECTED FINANCIAL DATA**

The following tables present our selected consolidated financial data as of and for the dates and periods indicated. We derived the selected consolidated financial data set forth below for the years ended December 31, 2012, 2011 and 2010 and as of December 31, 2012 and 2011 from our audited consolidated financial statements, which are included elsewhere in this Annual Report on Form 10-K. We derived the selected consolidated financial data set forth below for the years ended December 31, 2009 and 2008 and as of December 31, 2010, 2009 and 2008 from our audited consolidated financial statements, which are not included in this Annual Report on Form 10-K. The selected consolidated financial data presented below is not indicative of our future results for any period. The selected consolidated financial data set forth below should be read in conjunction with our consolidated financial statements and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this Annual Report on Form 10-K.

|  | Year Ended December 31,                   |                   |                   |                   |                   |
|--|---|-------------------|-------------------|-------------------|-------------------|
|  | 2012(1)                                   | 2011(1)           | 2010(1)           | 2009(1)           | 2008(1)           |
|  | (In thousands, except for per share data) |                   |                   |                   |                   |
| <b>Consolidated Statement of Income Data</b>   |   |                   |                   |                   |                   |
| Revenues:  |   |                   |                   |                   |                   |
| Transaction and clearing fees, net(2)  | \$ 1,185,195                              | \$ 1,176,367      | \$ 1,023,454      | \$ 884,473        | \$ 693,229        |
| Market data fees   | 146,789                                   | 124,956           | 109,175           | 101,684           | 102,944           |
| Other  | 30,981                                    | 26,168            | 17,315            | 8,631             | 16,905            |
| <b>Total revenues</b>  | <b>1,362,965</b>                          | <b>1,327,491</b>  | <b>1,149,944</b>  | <b>994,788</b>    | <b>813,078</b>    |
| Operating expenses:  |   |                   |                   |                   |                   |
| Compensation and benefits  | 251,152                                   | 250,601           | 236,649           | 235,677           | 159,792           |
| Technology and communication   | 45,764                                    | 47,875            | 44,506            | 38,277            | 27,473            |
| Professional services  | 33,145                                    | 34,831            | 32,597            | 35,557            | 29,705            |
| Rent and occupancy   | 19,329                                    | 19,066            | 17,024            | 20,590            | 14,830            |
| Acquisition-related transaction costs(3)   | 19,359                                    | 15,624            | 9,996             | 6,139             |                   |
| Selling, general and administrative  | 36,699                                    | 34,180            | 35,644            | 34,067            | 25,476            |
| Depreciation and amortization  | 130,502                                   | 132,252           | 121,209           | 111,357           | 62,247            |
| <b>Total operating expenses</b>  | <b>535,950</b>                            | <b>534,429</b>    | <b>497,625</b>    | <b>481,664</b>    | <b>319,523</b>    |
| Operating income   | 827,015                                   | 793,062           | 652,319           | 513,124           | 493,555           |
| Other expense, net(4)  | (37,323)                                  | (33,053)          | (42,846)          | (19,635)          | (19,354)          |
| Income before income taxes   | 789,692                                   | 760,009           | 609,473           | 493,489           | 474,201           |
| Income tax expense   | 227,955                                   | 238,268           | 201,706           | 179,335           | 173,229           |
| <b>Net income</b>  | <b>\$ 561,737</b>                         | <b>\$ 521,741</b> | <b>\$ 407,767</b> | <b>\$ 314,154</b> | <b>\$ 300,972</b> |
| Net (income) loss attributable to noncontrolling interest(5)                           | (10,161)                                  | (12,068)          | (9,469)           | 1,834             |                   |
| <b>Net income attributable to IntercontinentalExchange, Inc.</b>                       | <b>\$ 551,576</b>                         | <b>\$ 509,673</b> | <b>\$ 398,298</b> | <b>\$ 315,988</b> | <b>\$ 300,972</b> |
| Earnings per share attributable to IntercontinentalExchange, Inc. common shareholders: |   |                   |                   |                   |                   |

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|   |    |        |    |        |    |        |    |        |    |        |
|---|----|--------|----|--------|----|--------|----|--------|----|--------|
| Basic                                       | \$ | 7.59   | \$ | 6.97   | \$ | 5.41   | \$ | 4.33   | \$ | 4.23   |
| Diluted                                     | \$ | 7.52   | \$ | 6.90   | \$ | 5.35   | \$ | 4.27   | \$ | 4.17   |
| Weighted average common shares outstanding: |    |        |    |        |    |        |    |        |    |        |
| Basic                                       |    | 72,712 |    | 73,145 |    | 73,624 |    | 72,985 |    | 71,184 |
| Diluted                                     |    | 73,366 |    | 73,895 |    | 74,476 |    | 74,090 |    | 72,164 |

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- (1) We acquired several companies during the periods presented and have included the financial results of these companies in our consolidated financial statements effective from the respective acquisition dates. Refer to note 3 to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on some of these acquisitions.
- (2) Our transaction and clearing fees are presented net of rebates. For a discussion of these rebates, see Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this Annual Report on Form 10-K.
- (3) During the years ended December 31, 2012, 2011, 2010 and 2009, we expensed \$19.4 million, \$15.6 million, \$10.0 million and \$6.1 million, respectively, in transaction costs directly relating to various successful and unsuccessful acquisitions. On January 1, 2009, we adopted what is now part of Accounting Standards Codification, or ASC, Topic 805 related to business combinations, which require us to expense all acquisition-related transaction costs as incurred. Prior to 2009, we could capitalize these costs as part of the purchase price and would only expense these costs if they were incurred but the acquisition did not close.
- (4) The financial results for the years ended December 31, 2012, 2011, 2010, 2009 and 2008 include \$33.5 million, \$28.4 million, \$25.1 million, \$16.8 million and \$13.2 million, respectively, in interest expense on our outstanding indebtedness and \$5.4 million, \$6.1 million, \$5.0 million, \$5.6 million and \$6.0 million, respectively, in interest expense relating to the Russell licensing agreement. The financial results for the year ended December 31, 2010 include a loss of \$15.1 million on our foreign currency hedge relating to the pounds sterling cash consideration paid to acquire the Climate Exchange plc. The financial results for the years ended December 31, 2009 and 2008 include impairment losses of \$9.3 million and \$15.7 million, respectively, relating to our cost method investment in the National Commodity and Derivatives Exchange, Ltd. The financial results for the year ended December 31, 2009 include a net gain of \$11.1 million relating to the sale of our LCH.Clearnet shares, partially offset by adjustments to various other cost method investments. Refer to notes 3, 8 and 12 to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on these items.
- (5) On January 1, 2009, we adopted what is now part of ASC Topic 810 related to noncontrolling interests. Increases in noncontrolling interest, including those resulting from the formation of ICE Clear Credit and the acquisition of TCC, have been recorded within equity, with income attributable to that noncontrolling interest recorded separately in our consolidated statements of income.

|  | 2012              | 2011              | As of December 31,<br>2010 | 2009              | 2008              |
|--|-------------------|-------------------|----------------------------|-------------------|-------------------|
|  | (In thousands)    |                   |                            |                   |                   |
| <b>Consolidated Balance Sheet Data</b>           |                   |                   |                            |                   |                   |
| Cash and cash equivalents                        | \$ 1,612,195      | \$ 822,949        | \$ 621,792                 | \$ 552,465        | \$ 283,522        |
| Short-term and long-term investments(1)          | 391,345           | 451,136           | 1,999                      | 25,497            | 6,484             |
| Margin deposits and guaranty fund assets(2)      | 31,882,493        | 31,555,831        | 22,712,281                 | 18,690,238        | 12,117,820        |
| <b>Total current assets</b>                      | <b>33,750,087</b> | <b>32,605,391</b> | <b>23,575,778</b>          | <b>19,459,851</b> | <b>12,552,588</b> |
| Property and equipment, net                      | 143,392           | 130,962           | 94,503                     | 91,735            | 88,952            |
| Goodwill and other intangible assets, net(3)     | 2,736,937         | 2,757,358         | 2,806,873                  | 2,168,291         | 2,163,671         |
| <b>Total assets</b>                              | <b>37,214,842</b> | <b>36,147,864</b> | <b>26,642,259</b>          | <b>21,884,875</b> | <b>14,959,581</b> |
| Margin deposits and guaranty fund liabilities(2) | 31,822,493        | 31,555,831        | 22,712,281                 | 18,690,238        | 12,117,820        |
| <b>Total current liabilities</b>                 | <b>32,245,697</b> | <b>31,800,314</b> | <b>23,127,384</b>          | <b>18,967,832</b> | <b>12,311,642</b> |
| Current and long-term debt(4)                    | 1,132,500         | 887,500           | 578,500                    | 307,500           | 379,375           |
| <b>Equity</b>                                    | <b>3,676,558</b>  | <b>3,162,341</b>  | <b>2,816,765</b>           | <b>2,433,647</b>  | <b>2,012,180</b>  |

- (1) In recent periods, we have allocated more of our funds to cash equivalent investments, which have a maturity of less than three months, and less to short-term and long-term investments. Our investment in Cetip, S.A., as of December 31, 2012 and 2011, is classified as a long-term investment. Refer to note 5 to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on this investment.



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- (2) Clearing members of ICE Clear Europe, ICE Clear U.S., ICE Clear Credit, ICE Clear Canada and TCC are required to deposit original margin and variation margin and to make deposits to a guaranty fund. The cash deposits made to these margin accounts and to the guaranty fund are recorded in the consolidated balance sheet as current assets with corresponding current liabilities to the clearing members that deposited them. ICE Clear Europe began clearing contracts in November 2008 upon the transition of clearing from LCH.Clearnet Ltd. and ICE Clear Credit began to clear CDS contracts in March 2009. Refer to note 11 to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on these items.
- (3) The increase in the goodwill and intangible assets in 2010 primarily relates to the acquisition of Climate Exchange plc in July 2010. Refer to notes 3 and 7 to our consolidation financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on these items.
- (4) We entered into aggregate \$2.6 billion senior unsecured credit facilities during 2011, which include a \$2.1 billion five-year senior unsecured multicurrency revolving credit facility and an aggregate \$500.0 million five-year senior unsecured term loan facility. We also borrowed \$400.0 million under a note purchase agreement and \$487.5 million under the term loan facility during 2011, which were used to fund a portion of our investment in Cetip, S.A. and for general corporate purposes, including stock repurchases. We borrowed \$400.0 million under a senior unsecured term loan facility during 2010, part of which was used in connection with the purchase of CLE and for our stock repurchases. Refer to note 8 to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K, for more information on our outstanding debt.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including those set forth in Item 1(A) under the heading "Risk Factors" and elsewhere in this Annual Report on Form 10-K. The following discussion is qualified in its entirety by, and should be read in conjunction with, the more detailed information contained in Item 6 "Selected Financial Data" and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.*

**Overview and Our Business Environment**

We are a leading operator of regulated global markets and clearing houses, including futures exchanges, over-the-counter, or OTC, markets, derivatives clearing houses and post-trade services. We operate these global marketplaces for trading and clearing a broad array of energy, environmental and agricultural commodities, credit default swaps, or CDS, equity indexes and currency contracts. We offer electronic platforms for the trading of products in both the futures and OTC markets together with clearing services, post-trade processing and market data. Through our widely-distributed electronic markets, we bring together buyers and sellers of derivative and physical commodities and financial contracts by offering a range of services to support our participants' risk management and trading activities.

We conduct our regulated U.K.-based energy futures markets through our wholly-owned subsidiary, ICE Futures Europe. We conduct our regulated U.S.-based 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. We currently operate our OTC bilateral physical energy markets through ICE U.S. OTC Commodity Markets LLC and our CDS markets through Creditex, our wholly-owned brokerage business.

ICE Clear Canada performs the clearing and settlement for all futures and options contracts traded through ICE Futures Canada. ICE Clear Credit performs the clearing and settlement for North American CDS contracts

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submitted for clearing. ICE Clear Europe performs the clearing and settlement for all futures and options contracts traded through ICE Futures Europe and for European CDS contracts submitted for clearing. Prior to October 15, 2012, ICE Clear Europe cleared our OTC energy contracts. On October 15, 2012, these cleared OTC energy contracts transitioned to energy futures contracts that trade through ICE Futures Europe and ICE Futures U.S., but continue to clear and settle on ICE Clear Europe. ICE Clear U.S. performs the clearing and settlement of all futures and options contracts traded through ICE Futures U.S. except for the energy futures contracts. See **Recent Developments and Trends** below.

Our business is primarily transaction-based, and the revenues and profitability relate directly to the amount, or volume, of trading and clearing activity in our markets and the respective execution and clearing fees generated. Trading volume is driven by a number of factors, including the degree of price volatility of commodities and financial contracts such as equity indexes and foreign exchange, as well as economic conditions, changes in supply/demand dynamics or perceptions, weather, new product introductions, fees, currency moves and interest rates, margin requirements, regulation of our markets and market participants, geopolitical events, market liquidity and competition. Price volatility increases the need to hedge price risk and creates the need for the exchange of risk between market participants. Market liquidity is one of the primary market attributes for attracting and maintaining customers and is an important indicator of a market's strength.

We operate our markets primarily on our electronic platforms. We also operate brokerage desks for CDS and certain of our energy options businesses. We previously offered certain of ICE Futures U.S.'s options markets on both our electronic platform and our New York-based trading floor, but we discontinued open outcry trading in option products in October 2012 and no longer operate open outcry markets. Options on futures contracts for agricultural commodities were the only remaining products listed on our trading floor at the time of transition to exclusive electronic trading, and by September 2012, over 90% of ICE Futures U.S.'s agricultural options execution was electronic. ICE Futures U.S. introduced electronic trading of options in March 2008 and has steadily implemented additional options trading capabilities since that time.

As a result of completed and pending regulatory changes in the United States that offer greater regulatory and operational certainty to futures market participants relative to the swaps market, on October 15, 2012, we transitioned all of our cleared OTC energy swaps contracts to futures contracts. Our cleared OTC energy swaps, including North American natural gas, North American power and physical environmental products, transitioned to futures contracts and are now listed at ICE Futures U.S., and continue to be cleared at ICE Clear Europe, which is a U.S. Derivatives Clearing Organization. ICE Futures U.S.'s current suite of non-energy products continue to be cleared at ICE Clear U.S. Our cleared OTC global oil and refined products, freight, iron ore and natural gas liquid swaps transitioned to futures contracts listed at ICE Futures Europe with our other energy futures contracts and continue to be cleared at ICE Clear Europe, in its capacity as a U.K. Recognized Clearing House.

## **Recent Developments and Trends**

### ***Potential Acquisitions and Completed Acquisitions***

On December 20, 2012, we announced an agreement to acquire NYSE Euronext in a stock and cash transaction. The transaction, which was unanimously approved by the boards of directors of both companies, is currently valued at approximately \$8.6 billion, based on the closing price of our stock on January 31, 2013. The final purchase price will be based on the actual market price per share of ICE common stock on the closing date of the acquisition. NYSE Euronext is a holding company that, through its subsidiaries, operates the following securities exchanges: the New York Stock Exchange, NYSE Arca, Inc. and NYSE MKT LLC in the United States and the European-based exchanges that comprise Euronext N.V. — the Paris, Amsterdam, Brussels and Lisbon stock exchanges, as well as the NYSE Liffe derivatives markets in London, Paris, Amsterdam, Brussels and Lisbon. Upon the closing of the acquisition, NYSE Euronext will merge with and into a wholly owned subsidiary of ICE.



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Under the terms of the agreement, each share of NYSE Euronext common stock owned by a NYSE Euronext stockholder will be converted into the right to receive 0.1703 of a share of our common stock and \$11.27 in cash (this is referred to as the standard election amount). In lieu of the standard election, NYSE Euronext stockholders will have the right to make either a cash election to receive \$33.12 in cash, or a stock election to receive 0.2581 of a share of our common stock, for each of their NYSE Euronext shares. Both the cash election and the stock election are subject to the adjustment and proration procedures set forth in the agreement to ensure that the total amount of cash paid, and the total number of shares of our common stock issued, are equal to the total amount of cash and number of shares that would have been paid and issued if all of the NYSE Euronext stockholders received the standard election amount. It is anticipated that our stockholders and NYSE Euronext stockholders will hold approximately 64% and 36%, respectively, of the issued and outstanding shares of our common stock immediately after completion of the acquisition. If the acquisition is completed, it is currently estimated that payment of the stock portion of the acquisition consideration will require us to issue or reserve for issuance approximately 42.4 million shares of our common stock in connection with the acquisition and that the maximum cash consideration required to be paid for the cash portion of the acquisition consideration will be approximately \$2.7 billion. We will pay the cash portion of the acquisition consideration from cash on hand and borrowing under our revolving credit facility. The acquisition is expected to close during the second half of 2013, subject to regulatory approvals in Europe and the United States, approval by stockholders of both companies and customary closing conditions.

On December 20, 2012, we entered into a Clearing Services Agreement with Liffe Administration and Management, or NYSE Liffe, pursuant to which ICE Clear Europe will provide clearing services to NYSE Liffe as a result of the exchange's requirement for a clearing provider following its planned exit from its current provider in June 2013 and the risks associated with the continued development of its own new clearing house. The arrangement will enable us to deliver clearing services to NYSE Liffe customers through our European clearing house.

In September 2012, we acquired 100% of WhenTech LLC, or WhenTech, a technology, software and information provider for option market participants. WhenTech solutions include options valuation, analytics and risk management platforms. During September 2012, we also announced an agreement to acquire a majority stake in the derivatives and spot gas business of APX-ENDEX. Under the terms of the agreement, we will acquire 79.12% of the derivatives and spot gas business of APX-ENDEX. Gasunie, a natural gas infrastructure company and an existing stockholder of APX-ENDEX, will retain the remaining 20.88% stake of APX-ENDEX. The APX-ENDEX gas business includes derivatives and spot trading around the Title Transfer Facility (TTF) Virtual Trading Point in the Netherlands, one of continental Europe's leading natural gas trading hubs, as well as the U.K. On-the-Day Commodity Market (OCM) and the Belgian Zeebrugge Trading Point (ZTP). The transaction consideration will be funded by cash on hand and is expected to close by the end of the first quarter of 2013, subject to regulatory approvals and customary closing conditions.

***Restricted Cash***

We classify all cash and cash equivalents that are not available for general use by us, either due to regulatory requirements or through restrictions in specific agreements, as restricted cash in our consolidated balance sheets. As of December 31, 2012, we have \$249.7 million in total restricted cash on our consolidated balance sheet, which primarily relates to regulatory requirements in which we must maintain these cash balances in our regulated exchanges and clearing houses and includes \$160.0 million that has been contributed to certain of our clearing houses and is to be used in the event of a default. Total restricted cash was \$217.5 million as of December 31, 2011 and the \$32.2 million increase during the year ended December 31, 2012 was primarily due to Financial Services Authority, or FSA, mandated changes in the regulatory requirement calculations during 2012 as well as additional costs incurred at both ICE Clear Europe and ICE Futures Europe due to the growth of these businesses. Both ICE Clear Europe and ICE Futures Europe are required to restrict the use of the equivalent of six months of operating expenditures in cash or cash equivalents at all times, subject to certain deductions. Beginning in February 2013, the FSA regulatory capital calculations for ICE Clear Europe and ICE Futures

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Europe will be adjusted to no longer allow for certain deductions in the calculations of the six months of operating expenditures, which will result in an estimated increase in our restricted cash and a decrease in cash, ranging from \$55 million to \$65 million.

In August 2012, the European Banking Authority, or EBA, issued final draft technical standards on capital requirements for central counterparties as part of EMIR. The EBA standards impose capital and liquid resource requirements in excess of the new February 2013 FSA requirements for clearing houses. Once these regulations become effective in 2013, the FSA restricted cash requirements for ICE Clear Europe will be superseded by the EBA capital requirements, which require an estimated increase in the liquid regulatory capital requirements from the February 2013 FSA requirements ranging from \$110 million to \$120 million. However, unlike the FSA, the EBA currently does allow for committed lines of credit as permitted forms of liquid resources. Therefore, the \$150 million of our revolving credit facility which is reserved for use by ICE Clear Europe for liquidity purposes could be used to satisfy some portion of this estimated \$185 million to \$195 million liquid regulatory capital requirement at ICE Clear Europe, which could cause a reduction in the restricted cash balance ranging from \$70 million to \$80 million. The Bank of England, which will assume regulatory supervision of ICE Clear Europe from the FSA in April 2013, may impose stricter liquidity requirements than the EBA and not allow the use of a committed line of credit as a permitted form of liquid resources. During 2013, we will evaluate the most appropriate means by which to satisfy these new regulatory capital requirements either by way of restricted cash or committed credit facilities.

**Consolidated Financial Highlights**

The following summarizes our results and significant changes in our consolidated financial performance for the periods presented (dollars in thousands, except per share amounts):

|  | Year Ended<br>December 31, |              |         | Year Ended<br>December 31, |              |         |
|--|----------------------------|--------------|---------|----------------------------|--------------|---------|
|  | 2012                       | 2011         | Change  | 2011                       | 2010         | Change  |
| Total revenues   | \$ 1,362,965               | \$ 1,327,491 | 3%      | \$ 1,327,491               | \$ 1,149,944 | 15%     |
| Total operating expenses   | \$ 535,950                 | \$ 534,429   | %       | \$ 534,429                 | \$ 497,625   | 7%      |
| Operating income   | \$ 827,015                 | \$ 793,062   | 4%      | \$ 793,062                 | \$ 652,319   | 22%     |
| Operating margin   | 61%                        | 60%          | 1 pt    | 60%                        | 57%          | 3 pts   |
| Total other expense, net   | \$ 37,323                  | \$ 33,053    | 13%     | \$ 33,053                  | \$ 42,846    | (23)%   |
| Income tax expense   | \$ 227,955                 | \$ 238,268   | (4)%    | \$ 238,268                 | \$ 201,706   | 18%     |
| Effective tax rate   | 29%                        | 31%          | (2 pts) | 31%                        | 33%          | (2 pts) |
| Net income attributable to ICE                                     | \$ 551,576                 | \$ 509,673   | 8%      | \$ 509,673                 | \$ 398,298   | 28%     |
| Diluted earnings per share attributable to ICE common shareholders | \$ 7.52                    | \$ 6.90      | 9%      | \$ 6.90                    | \$ 5.35      | 29%     |
| Cash flows from operating activities                               | \$ 732,954                 | \$ 712,770   | 3%      | \$ 712,770                 | \$ 533,758   | 34%     |

Consolidated revenue growth of 3% for the year ended December 31, 2012 was primarily due to higher trading volume in the ICE Brent Crude futures and options contract, fee increases relating to our agricultural commodity futures and options contracts, and fee increases for various market data services. Consolidated revenue growth of 15% for the year ended December 31, 2011 was primarily due to higher trading volume in the ICE Brent Crude and ICE Gasoil futures and options contracts, the OTC North American natural gas and OTC global oil contracts and due to increases in the ICE emission futures and options volumes and revenues.

Consolidated operating expenses remained constant for the year ended December 31, 2012, from the comparable period in 2011. Consolidated operating expenses increased \$36.8 million for the year ended December 31, 2011, from the comparable period in 2010, primarily due to the following:

Compensation and benefits expenses increased \$14.0 million for the year ended December 31, 2011, from the comparable period in 2010. The increase primarily related to an increase in our employee headcount.

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Depreciation and amortization expenses increased \$11.0 million for the year ended December 31, 2011, from the comparable period in 2010. The increase primarily related to amortization expenses recorded on the intangible assets associated with our acquisition of Climate Exchange plc, or CLE, in July 2010, and due to additional depreciation expenses recorded on fixed asset additions.

Acquisition-related transaction costs increased \$5.6 million for the year ended December 31, 2011, from the comparable period in 2010. We incurred acquisition-related transaction costs during the year ended December 31, 2011 primarily relating to our potential acquisition of NYSE Euronext and our Cetip investment and during the year ended December 31, 2010 primarily relating to our acquisition of CLE.

Consolidated other expenses, net, increased for the year ended December 31, 2012, from the comparable period in 2011, primarily due to an increase in consolidated interest expense resulting from an increase in total debt outstanding during 2012. See [Loan Agreements](#) below. Consolidated total other expense, net includes a pre-tax loss on our foreign currency hedge relating to the pounds sterling cash consideration paid to acquire CLE of \$15.1 million during the year ended December 31, 2010.

Excluding various items that are not reflective of our core business performance, net of taxes, consolidated net income attributable to ICE for the years ended December 31, 2012, 2011 and 2010 would have been \$557.3 million, \$515.6 million and \$417.3 million, respectively. See [Non-GAAP Financial Measures](#) below.

**Variability in Quarterly Comparisons**

In addition to general economic conditions and conditions in the financial markets, particularly the commodities markets, trading volume is subject to variability due to a number of key factors, including:

*Geopolitical Events and Economic Conditions:* Geopolitical events tend to impact global commodity prices and may impact commodity supply. Because commodity prices often move in conjunction with changes in the perception of geopolitical risk, these events in the past have impacted trading activities in our markets due to the increased volatility and need for risk management in times of uncertainty.

*Weather and Disasters:* Weather events have been an important factor in price volatility and the supply and demand of energy and agricultural commodities and, therefore, the trading activities of market participants. Unexpected or extreme weather conditions, such as low temperatures or hurricanes, and other events that cause demand increases, supply disruptions or unexpected volatility tend to result in business disruptions and expanded hedging and trading activity in our markets. In addition, disasters, both natural (like earthquakes and tsunamis) and unnatural (like large oil spills or terrorist activities), can result in disruptions that impact trading activity.

*Real and Perceived Supply and Demand Imbalances:* Various agencies and groups, such as the International Energy Agency and the U.S. Energy Information Administration, regularly track commodity supply data. Reporting on supply or production may impact trading volume and price volatility due to real or perceived supply and demand imbalances.

*Regulatory Considerations:* The implementation of new regulations may impact participation in our markets. Generally, legislative and regulatory bodies have expressed increased concern regarding derivatives markets when underlying commodity prices rise. As a result, legislative and regulatory actions may change the way we conduct our business and may create uncertainty for market participants, which could affect trading volumes.

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*Availability of Capital:* Margin is required to be deposited for each cleared trade executed in our markets. Cost of capital, balance sheet capacity available to support trading, capital markets conditions or any combination of these factors may impact trading volumes due to higher costs or lower availability of capital available to support trading.

*Number of Trading Days:* The variability in the number of business days in each quarter affects our revenues, and will affect quarter-to-quarter revenue comparisons, since trading generally only takes place on business days.

*Seasonality:* Participants engaged in energy and agricultural businesses tend to experience moderate seasonal fluctuations in demand and price volatility, although such seasonal impacts have been somewhat negated in periods of high volume trading. We also periodically make adjustments to our contract specifications and are currently introducing new ICE Brent Crude and ICE Gasoil futures contracts alongside our existing contracts for those products. Changes to contracts are generally aimed at making the contracts more relevant to more customers and their evolving hedging needs or are required based on changes to the underlying commodity and may result in fluctuations in trading volume. These and other factors could cause our revenues to fluctuate from period to period and these fluctuations may affect the reliability of period to period comparisons of our revenues and operating results.

## **Segment Reporting**

As of December 31, 2012, we operate as a single reportable segment. We previously reported three reportable segments: our futures segment, our global OTC segment, and our market data segment. In the first quarter of 2012, our chief operating decision maker changed the manner in which he reviews and assesses performance of the business and, accordingly, we changed the manner in which we presented operating results to our chief operating decision maker. This new reporting presentation allocated fees earned and expenses incurred from market data activities in our futures and OTC business to the respective segments in which it was generated, rather than reporting separately, and the intercompany fees and expenses were eliminated. Further, in the fourth quarter of 2012, in connection with the transition of the cleared OTC energy swaps contracts to futures contracts, we no longer have a separate global OTC segment. These changes were made as this is reflective of how our chief operating decision maker reviews and operates our business.

**Table of Contents****Consolidated Revenues**

The following table presents our consolidated revenues (dollars in thousands):

|   | Year Ended<br>December 31, |                     | Change    | Year Ended<br>December 31, |                     | Change     |
|---|----------------------------|---------------------|-----------|----------------------------|---------------------|------------|
|   | 2012                       | 2011                |           | 2011                       | 2010                |            |
| <b>Revenues:</b>  |                            |                     |           |                            |                     |            |
| Transaction and clearing fees, net:   |                            |                     |           |                            |                     |            |
| North American natural gas futures and options and cleared OTC contracts(1) | \$ 221,200                 | \$ 226,952          | (3)%      | \$ 226,952                 | \$ 196,634          | 15%        |
| ICE Brent Crude futures and options contracts                               | 213,508                    | 190,171             | 12        | 190,171                    | 145,278             | 31         |
| ICE Gasoil futures and options contracts                                    | 97,157                     | 99,529              | (2)       | 99,529                     | 79,113              | 26         |
| North American power futures and options and cleared OTC contracts(1)       | 80,507                     | 85,265              | (6)       | 85,265                     | 88,306              | (3)        |
| ICE emission futures and options contracts                                  | 66,681                     | 63,480              | 5         | 63,480                     | 41,123              | 54         |
| Sugar futures and options contracts   | 80,500                     | 69,160              | 16        | 69,160                     | 74,538              | (7)        |
| Russell Index futures and options contracts                                 | 30,796                     | 40,034              | (23)      | 40,034                     | 32,337              | 24         |
| Other futures and options and cleared OTC contracts(1)                      | 197,633                    | 185,345             | 7         | 185,345                    | 154,296             | 20         |
| Credit default swaps contracts  | 144,483                    | 167,003             | (13)      | 167,003                    | 165,689             | 1          |
| Other   | 52,730                     | 49,428              | 7         | 49,428                     | 46,140              | 7          |
| <b>Total transaction and clearing fees, net</b>                             | <b>1,185,195</b>           | <b>1,176,367</b>    | <b>1</b>  | <b>1,176,367</b>           | <b>1,023,454</b>    | <b>15</b>  |
| Market data fees  | 146,789                    | 124,956             | 17        | 124,956                    | 109,175             | 14         |
| Other   | 30,981                     | 26,168              | 18        | 26,168                     | 17,315              | 51         |
| <b>Total revenues</b>   | <b>\$ 1,362,965</b>        | <b>\$ 1,327,491</b> | <b>3%</b> | <b>\$ 1,327,491</b>        | <b>\$ 1,149,944</b> | <b>15%</b> |

- (1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas, cleared OTC North American power and cleared OTC Global oil and other contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

**Transaction and Clearing Fees, net**

We earn transaction and clearing fees from both counterparties to each contract that is traded and/or cleared, based on the volume of the commodity underlying the contract that is traded and/or cleared. The amount of our transaction and clearing fees will depend upon many factors, including but not limited to transaction and clearing volume, pricing and new product introductions.

North American natural gas futures and options and cleared OTC volumes increased 12% for the year ended December 31, 2012, from the comparable period in 2011, and increased 33% for the year ended December 31, 2011, from the comparable period in 2010. Volume in our North American natural gas markets increased due to the introduction of new products, increased natural gas options volume and increased demand for hedging and risk management as market participants became less risk averse as the global financial markets stabilized. North American natural gas futures and options and cleared OTC revenues decreased 3% for the year ended December 31, 2012, from the comparable period in 2011, primarily due to increases in rebates relating to certain of these contracts during the past several years as discussed below, which were partially offset by increases in the trading volumes between years.

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Our benchmark ICE Brent Crude futures contract is relied upon by a broad range of market participants, including large oil producing nations and multinational companies, to price and hedge their crude oil production. Market participants are increasingly relying on the Brent North Sea contract for their risk management activities, as evidenced by steady increases in traded volumes and open interest over the past several years. During the year ended December 31, 2012, the longer term shift toward the ICE Brent Crude contract as the global light sweet crude benchmark continued and customers increasingly traded the ICE Brent Crude contract relative to the ICE WTI Crude contract, which serves as the U.S. oil benchmark. Volume in the Brent crude market also increased the last two years due to physical supplies, political unrest in the Middle East, higher economic growth outside of the United States that benefited trading in our global oil markets, and due to growth in ICE Brent Crude options volume. Based on traded volume in both our ICE Brent Crude futures contract and our ICE WTI Crude futures contract, we achieved a 56%, 51% and 47% market share of the global oil futures contracts trading for the years ended December 31, 2012, 2011 and 2010, respectively. Volume in our Gasoil contract during the year ended December 31, 2011 also increased due to its role as a key refined products benchmark in Europe and Asia, as well as increased liquidity in the related Brent market due to the size of the North Sea physical market.

North American power futures and options and cleared OTC revenues decreased 6% for the year ended December 31, 2012, from the comparable period in 2011. North American power futures and options and cleared OTC volumes increased 53% during this same period of time primarily due to growth in smaller sized power contracts, which have a lower rate per contract than the full sized North American power contracts. Of the 95.5 million North American power futures and options and cleared OTC contracts traded during the year ended December 31, 2012, 89.9 million contracts, or 94%, represented smaller sized power contracts, which have a lower rate per contract than full sized North American power contracts, compared to 88% of the volume representing smaller sized contracts during both the year ended December 31, 2011 and 2010. Volume in the larger North American power contracts decreased the last two years primarily due to lower volatility on absolute price levels that remained low, along with muted economic activity levels, which resulted in lower power production and consumption during the years ended December 31, 2012 and 2011. In addition, uncertainty related to financial reform, specifically rules relating to swaps markets, impacted both North American natural gas and power contract volumes during the years ended December 31, 2012 and 2011.

Our ICE emissions futures and options revenues increased 5% for the year ended December 31, 2012, compared to the same period in 2011, while at the same time the related volumes increased 23% for the year ended December 31, 2012, compared to the same period in 2011. The revenues increase during 2012 was lower than the volume increase primarily related to a decrease in average exchange rate of the euro to the U.S. dollar for the current year period, compared to the prior year period, and to a lesser extent, an increase in the rebates during the year ended December 31, 2012. The ICE emissions futures and options contracts are billed in euros and the average exchange rate of the euro to the U.S. dollar, and the related U.S. dollar revenues, decreased 8% for the year ended December 31, 2012, compared to the same period in 2011, and this reduced our revenues. Revenues in our ICE emission futures and options contracts increased during the year ended December 31, 2011, from the comparable period in 2010, primarily due to increases in our trading volumes and due to our recognition of 100% of the revenues from the ICE emission contracts following our acquisition of CLE in July 2010. Prior to our acquisition of CLE, we only recognized a portion of the total ICE emission futures and option revenues under our prior licensing agreement with CLE.

Effective January 1, 2012, we implemented a trading and clearing fee increase on our agricultural commodity futures and options contracts at ICE Futures U.S. as a result of increased regulatory staffing and regulatory burdens, the expansion of products developed and listed by the exchange, and significant enhancements in trading and clearing technology completed over the past five years. The rate per contract for ICE Futures U.S. agricultural commodity futures and options increased 11% to \$2.59 per contract for the year ended December 31, 2012 from \$2.33 per contract for the year ended December 31, 2011. The increase in the sugar futures and options contract revenues for the year ended December 31, 2012 is primarily due to this fee increase.

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Our Russell Index futures and options revenues for the year ended December 31, 2012 decreased from the comparable period in 2011 primarily due to lower equity market inflows and lower volatility in the equity markets during 2012, especially in comparison to the higher volatility in the equity markets during 2011 due to the fiscal cliff and credit downgrade that occurred in the United States and due to debt problems in Europe. Our Russell Index futures and options contracts set various monthly volume records in the second half of 2011 and the increase in U.S. equity market volatility was a key factor as the Russell Index and other major indexes experienced their highest volatility levels in the past three years. Along with the heightened volatility, there was a significant amount of institutional hedging activity in 2011 utilizing the Russell Index to adjust risk exposure in small cap issues.

The increase in other futures and options and cleared OTC contract revenues for the last two years is primarily due to increased trading volumes in our cleared OTC global oil and refined products, U.S. heating oil, RBOB gasoline, coffee, and cocoa contracts. Our cleared OTC global oil and refined products contract revenues were \$46.7 million, \$39.3 million and \$21.1 million for the years ended December 31, 2012, 2011 and 2010, respectively, with the increases the last two years primarily due to the successful launch of new global oil and refined product contracts as demand for oil contracts rose.

CDS trade execution revenues at Creditex were \$78.1 million, \$99.9 million and \$105.6 million for the years ended December 31, 2012, 2011 and 2010, respectively. CDS clearing revenues at ICE Clear Credit and ICE Clear Europe were \$66.3 million, \$67.1 million and \$60.1 million for the years ended December 31, 2012, 2011 and 2010, respectively. During the years ended December 31, 2012, 2011 and 2010, ICE Clear Credit and ICE Clear Europe cleared \$10.2 trillion, \$11.6 trillion and \$10.0 trillion, respectively, of CDS notional value. Trading volumes in the broader CDS market have declined during the last several years impacting Creditex revenue performance. Diminished CDS trading by dealer clients, reduced perceptions of credit risk and significant regulatory uncertainty and financial reform all contributed to lower revenues the last two years. Over half of Creditex's revenues are billed in euros. Therefore, the 8% decrease in the average exchange rate of the euro to the U.S. dollar during the year ended December 31, 2012, compared to the same period in 2011, further contributed to the Creditex revenue decline during the year ended December 31, 2012.

Other transaction and clearing fees primarily relates to OTC bilateral commissions, brokered energy commissions, licensed revenues and electronic trade confirmation fees, and the increase the last two years primarily relates to increased trading volume in our OTC oil bilateral markets.

Our transaction and clearing fees are presented net of rebates. We recorded rebates of \$371.8 million, \$296.2 million and \$215.7 million for the years ended December 31, 2012, 2011 and 2010, respectively. The increase in rebates is due primarily to an increase in the number of participants in the rebate programs offered on various contracts, an increase in the number of rebate programs offered and from higher contract volume traded under these programs during the periods. We offer rebates in certain of our markets primarily to support market liquidity and trading volume by providing qualified participants in those markets a discount to the applicable rate.

**Table of Contents****Average Daily Trading and Clearing Revenues and Futures Rate per Contract Data**

The following table presents average daily trading and clearing revenues, as well as futures rate per contract (dollars in thousands, except rate per contract amounts):

|  | Year Ended<br>December 31, |          | Change | Year Ended<br>December 31, |          | Change |
|--|----------------------------|----------|--------|----------------------------|----------|--------|
|  | 2012                       | 2011     |        | 2011                       | 2010     |        |
| <b>Average daily trading and clearing revenues:</b>                                |                            |          |        |                            |          |        |
| Energy futures average daily exchange and clearing revenues(1)                     | \$ 3,149                   | \$ 3,092 | 2%     | \$ 3,092                   | \$ 2,541 | 22%    |
| Agricultural and financial futures average daily exchange and clearing revenues(1) | 772                        | 716      | 8      | 716                        | 677      | 6      |
| Global CDS OTC average daily commission and clearing revenues                      | 573                        | 663      | (13)   | 663                        | 657      | 1      |
| Bilateral OTC average daily commission revenues                                    | 181                        | 167      | 8      | 167                        | 155      | 8      |
| Total average daily trading and clearing revenues                                  | \$ 4,675                   | \$ 4,638 | 1%     | \$ 4,638                   | \$ 4,030 | 15%    |
| <b>Futures rate per contract:</b>  |                            |          |        |                            |          |        |
| Energy futures and options and cleared OTC energy rate per contract(1)             | \$ 1.07                    | \$ 1.18  | (10)%  | \$ 1.18                    | \$ 1.21  | (2)%   |
| Agricultural commodity futures and options rate per contract                       | \$ 2.50                    | \$ 2.25  | 11%    | \$ 2.25                    | \$ 2.06  | 9%     |
| Financial futures and options rate per contract                                    | \$ 0.95                    | \$ 0.92  | 4%     | \$ 0.92                    | \$ 0.81  | 13%    |

(1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas, cleared OTC North American power and cleared OTC Global oil and other contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

**Market Data Fees**

Market data fees primarily relate to subscription fee revenues charged for user and license access from data vendors, view only market data access, direct access services, terminal access, daily indexes and end of day reports. In addition, we provide a service to independently establish market price validation curves whereby participant companies subscribe to receive consensus market valuations.

We earn user and license revenues that we receive from data vendors through the distribution of real-time and historical futures prices and other futures market data derived from trading in our futures markets. During the years ended December 31, 2012, 2011 and 2010, we recognized \$63.7 million, \$55.5 million and \$47.4 million, respectively, in user and license revenues from data vendors. The increases in the user and license revenues for the last two years relate to increases in the number of users, the introduction of new user fees and increases in the fees charged per user.

During the years ended December 31, 2012, 2011 and 2010, we recognized \$69.3 million, \$56.5 million and \$50.8 million, respectively, in market data access fees. We charge a market data access fee for access to our electronic platform and the increase for the year ended December 31, 2012 primarily relates to an increase in the market data fees, which became effective on January 1, 2012.

**Other Revenues**

Other revenues relates to various fees and services provided to customers, including connectivity fees, ICE Chat subscription fees, WhenTech subscription fees, agricultural grading fees, agricultural certification fees,



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regulatory penalties and fines, and interest income on certain clearing margin deposits. The increase in other revenues for the year ended December 31, 2011, from the comparable period in 2010, is primarily due to a reduction in the net interest paid to clearing members for their cash margin deposits at ICE Clear Europe and an increase in cotton certification fees associated with our increased cotton volume. The interest paid to clearing members is recorded as a reduction to other revenues. Effective January 1, 2011, ICE Clear Europe no longer pays clearing members basis points on certain cash margin deposits.

**Trading Volumes and Open Interest Data**

The following table presents trading activity in our futures and cleared OTC markets by commodity type based on the total number of contracts traded (in thousands, except for percentages):

|   | Year Ended<br>December 31, |         |        | Year Ended<br>December 31, |         |        |
|---|----------------------------|---------|--------|----------------------------|---------|--------|
|   | 2012                       | 2011    | Change | 2011                       | 2010    | Change |
| <b>Number of contracts traded:</b>                                |                            |         |        |                            |         |        |
| North American natural gas futures and options and cleared OTC(1) | 356,294                    | 319,350 | 12%    | 319,350                    | 240,777 | 33%    |
| ICE Brent Crude futures and options                               | 156,334                    | 134,248 | 16     | 134,248                    | 100,217 | 34     |
| ICE Gasoil futures and options                                    | 64,182                     | 66,202  | (3)    | 66,202                     | 52,583  | 26     |
| North American power futures and options and cleared OTC(1)       | 95,490                     | 62,510  | 53     | 62,510                     | 62,959  | (1)    |
| ICE emission futures and options                                  | 9,312                      | 7,570   | 23     | 7,570                      | 6,166   | 23     |
| Sugar futures and options   | 32,316                     | 31,455  | 3      | 31,455                     | 37,910  | (17)   |
| Russell Index futures and options                                 | 33,657                     | 44,416  | (24)   | 44,416                     | 40,352  | 10     |
| Other futures and options and cleared OTC(1)                      | 99,192                     | 106,342 | (7)    | 106,342                    | 97,384  | 9      |
| Total   | 846,777                    | 772,093 | 10%    | 772,093                    | 638,348 | 21%    |
| Futures and cleared OTC average daily volume                      | 3,360                      | 3,064   | 10%    | 3,064                      | 2,533   | 21%    |

(1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas, cleared OTC North American power and cleared OTC Global oil and other contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

Open interest is the aggregate number of contracts (long or short) that clearing members hold either for their own account or on behalf of their clients. Open interest refers to the total number of contracts that are currently open in other words, contracts that have been traded but not yet liquidated by either an offsetting trade, exercise, expiration or assignment. Open interest is also a measure of the future activity remaining to be closed out in terms of the number of contracts that members and their clients continue to hold in the particular contract and by the number of contracts held for each contract month listed by the exchange. As of December 31, 2012, open interest of \$1.6 trillion in notional value of CDS were held at ICE Clear Credit and ICE Clear Europe,

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compared to \$1.5 trillion as of December 31, 2011 and \$1.2 trillion as of December 31, 2010. The following table presents our year-end open interest for our futures and options and cleared OTC contracts (in thousands, except for percentages).

|   | As of<br>December 31, |        |        | As of<br>December 31, |        |        |
|---|-----------------------|--------|--------|-----------------------|--------|--------|
|   | 2012                  | 2011   | Change | 2011                  | 2010   | Change |
| <b>Open interest in contracts:</b>                                |                       |        |        |                       |        |        |
| North American natural gas futures and options and cleared OTC(1) | 27,746                | 27,186 | 2%     | 27,186                | 14,202 | 91%    |
| ICE Brent Crude futures and options                               | 2,302                 | 1,301  | 77     | 1,301                 | 904    | 44     |
| ICE Gasoil futures and options                                    | 603                   | 482    | 25     | 482                   | 643    | (25)   |
| North American power futures and options and cleared OTC(1)       | 33,996                | 20,817 | 63     | 20,817                | 23,545 | (11)   |
| ICE emission futures and options                                  | 1,214                 | 984    | 23     | 984                   | 781    | 26     |
| Sugar futures and options   | 1,262                 | 1,263  |        | 1,263                 | 1,735  | (27)   |
| Russell Index futures and options                                 | 370                   | 427    | (13)   | 427                   | 341    | 25     |
| Other futures and options and cleared OTC(1)                      | 5,581                 | 3,882  | 44     | 3,882                 | 3,646  | 6      |
| Total   | 73,074                | 56,342 | 30%    | 56,342                | 45,797 | 23%    |

(1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas, cleared OTC North American power and cleared OTC Global oil and other contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

**Consolidated Operating Expenses**

The following table presents our consolidated operating expenses (dollars in thousands):

|                                       | Year Ended<br>December 31, |            |        | Year Ended<br>December 31, |            |        |
|---------------------------------------|----------------------------|------------|--------|----------------------------|------------|--------|
|                                       | 2012                       | 2011       | Change | 2011                       | 2010       | Change |
| Compensation and benefits             | \$ 251,152                 | \$ 250,601 | %      | \$ 250,601                 | \$ 236,649 | 6%     |
| Technology and communication          | 45,764                     | 47,875     | (4)    | 47,875                     | 44,506     | 8      |
| Professional services                 | 33,145                     | 34,831     | (5)    | 34,831                     | 32,597     | 7      |
| Rent and occupancy                    | 19,329                     | 19,066     | 1      | 19,066                     | 17,024     | 12     |
| Acquisition-related transaction costs | 19,359                     | 15,624     | 24     | 15,624                     | 9,996      | 56     |
| Selling, general and administrative   | 36,699                     | 34,180     | 7      | 34,180                     | 35,644     | (4)    |
| Depreciation and amortization         | 130,502                    | 132,252    | (1)    | 132,252                    | 121,209    | 9      |
| Total operating expenses              | \$ 535,950                 | \$ 534,429 | %      | \$ 534,429                 | \$ 497,625 | 7%     |

Consolidated compensation and benefits expenses increased for the last two years primarily due to increases in our employee headcount. Headcount increased from 933 employees as of December 31, 2010 to 1,013 employees as of December 31, 2011, an increase of 9%, and increased to 1,077 employees as of December 31, 2012, an increase of 6% compared to the prior year. The employee headcount increases were primarily due to hiring for clearing, technology and compliance operations, and resulting from our acquisitions over the last several years. We incurred employee termination costs of \$6.9 million and \$6.0 million for the years ended December 31, 2012 and 2010, respectively, with the terminations during 2012 primarily relating to our closure of the ICE Futures U.S. open outcry trading floor and other employee terminations that occurred at Creditex, and with the terminations during 2010 primarily relating to and following our CLE acquisition in July 2010. The increase in compensation and benefits expenses due to employee headcount increases and termination expenses



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during the year ended December 31, 2012 was partially offset by a decrease in our broker bonus accruals for the year ended December 31, 2012, from the comparable period in 2011, primarily relating to the reduced Creditex financial performance for the year ended December 31, 2012 from the comparable period in 2011.

Non-cash compensation expenses recognized in our consolidated financial statements for employee stock options and restricted stock were \$52.1 million, \$52.9 million and \$49.3 million for the years ended December 31, 2012, 2011 and 2010, respectively. The decrease in non-cash compensation expenses for the year ended December 31, 2012, from the comparable period in 2011, was primarily related to fewer performance-based restricted stock shares being issued and expensed during the year ended December 31, 2012. Our actual financial performance for the year ended December 31, 2012 was less than the financial performance target level as set by our board of directors. Therefore, we issued and expensed less restricted stock during the year ended December 31, 2012 as compared to the prior years when our actual financial performance was above the financial performance target levels for the years ended December 31, 2011 and 2010. The increase in non-cash compensation expenses for the year ended December 31, 2011, from the comparable period in 2010, is primarily related to a greater number of employees receiving non-cash awards due to the headcount increases discussed above.

We incurred consolidated acquisition-related transaction costs during the year ended December 31, 2012 primarily relating to our potential acquisitions of NYSE Euronext and APX-ENDEX, our acquisition of WhenTech, and a potential acquisition that did not occur and is no longer active. During the year ended December 31, 2011, these costs primarily related to our potential acquisition of NYSE Euronext and our Cetip investment and during the year ended December 31, 2010, these costs primarily related to our acquisition of CLE. These costs primarily consist of fees for investment banking advisors, lawyers, accountants, tax advisors and public relations firms, as well as costs associated with obtaining committed funding and other external costs directly related to the proposed or closed transactions.

Consolidated selling, general and administrative expenses increased for the year ended December 31, 2012, from the comparable period in 2011, primarily due to increases in certain expenses related to taxes other than income taxes, travel and entertaining and insurance for the year ended December 31, 2012.

We recorded amortization expenses on the intangible assets acquired as part of our acquisitions, as well as on the Russell licensing agreement intangible assets, of \$69.1 million, \$75.8 million and \$71.0 million for the years ended December 31, 2012, 2011 and 2010, respectively. Amortization expenses decreased for the year ended December 31, 2012, from the comparable period in 2011, primarily due to certain intangible assets acquired in prior acquisitions becoming fully amortized during the year ended December 31, 2012. Amortization expenses increased for the year ended December 31, 2011, from the comparable period in 2010, primarily due to additional amortization expenses recorded on the intangible assets associated with our acquisition of CLE in July 2010. We recorded depreciation expenses on our fixed assets of \$61.4 million, \$56.5 million and \$50.2 million for the years ended December 31, 2012, 2011 and 2010, respectively. Depreciation expenses increased for each of the past two years primarily due to additional depreciation expenses recorded on increased fixed asset additions and capitalized internally developed software. See Cash Flow Investing Activities below.

We expect our operating expenses to increase in absolute terms in future periods in connection with the growth of our business and to vary from year to year in the future periods based on the type and level of our acquisitions and other investments.

**Table of Contents****Consolidated Non-Operating Income (Expenses)**

The following tables present our consolidated non-operating income (expenses) (dollars in thousands):

|   | Year Ended<br>December 31, |                    |            | Year Ended<br>December 31, |                    |              |
|---|----------------------------|--------------------|------------|----------------------------|--------------------|--------------|
|   | 2012                       | 2011               | Change     | 2011                       | 2010               | Change       |
| <b>Other income (expense):</b>                            |                            |                    |            |                            |                    |              |
| Interest and investment income                            | \$ 1,626                   | \$ 2,489           | (35%)      | \$ 2,489                   | \$ 2,161           | 15%          |
| Interest expense  | (38,902)                   | (34,533)           | 13         | (34,533)                   | (30,541)           | 13           |
| Other expense, net  | (47)                       | (1,009)            | (95)       | (1,009)                    | (14,466)           | (93)         |
| <b>Total other expense, net</b>                           | <b>(\$ 37,323)</b>         | <b>(\$ 33,053)</b> | <b>13%</b> | <b>(\$ 33,053)</b>         | <b>(\$ 42,846)</b> | <b>(23%)</b> |
| <b>Net income attributable to noncontrolling interest</b> | <b>(\$ 10,161)</b>         | <b>(\$ 12,068)</b> | <b>16%</b> | <b>(\$ 12,068)</b>         | <b>(\$ 9,469)</b>  | <b>27%</b>   |

The increases in consolidated interest expense the last two years are primarily due to an increase in the overall amount of debt outstanding during each of the past two years. See [Loan Agreements](#) below.

We incurred foreign currency transaction losses of \$3.5 million, \$406,000 and \$1.4 million for the years ended December 31, 2012, 2011 and 2010, respectively. Foreign currency gains and losses are recorded in other income (expense) and relate to the settlement of foreign currency assets, liabilities and payables that occur through our foreign operations that are received in non-functional currencies due to the increase or decrease in the period-end foreign currency exchange rates between periods. Also included in other income (expense) is dividend income relating to our Cetip investment, which was \$4.7 million and \$2.1 million for the years ended December 31, 2012 and 2011, respectively.

During the year ended December 31, 2011, we settled two outstanding legal matters by paying the separate plaintiffs a cash payment, and we sold our minority stake in an exchange located in China that was acquired as part of the assets of CLE. The two legal settlements and the divestiture, none of which were individually significant, resulted in a net loss of \$1.3 million for the year ended December 31, 2011. During the year ended December 31, 2010, we incurred a \$15.1 million loss on our foreign currency hedge relating to the pounds sterling cash consideration paid to acquire CLE, offset by a net gain of \$1.8 million that we recognized on the CLE acquisition based upon the difference between the £7.50 (pounds sterling) per share acquisition price versus the £6.45 per share price at which we purchased our initial 4.8% stake in CLE. These gains and losses discussed above were recorded in other expense, net.

For consolidated subsidiaries in which our ownership is less than 100%, and for which we have control over the assets, liabilities and management of the entity, the outside stockholders' interests are shown as noncontrolling interests. As of December 31, 2012, noncontrolling interest relates to the operating results of our CDS clearing subsidiaries in which non-ICE limited partners hold a 45.5% net profit sharing interest. The decrease in the net income attributable to noncontrolling interest for the year ended December 31, 2012, from the comparable period in 2011, is primarily related to the decrease in the CDS revenues during this same period. The increase in the net income attributable to noncontrolling interest for the year ended December 31, 2011, from the comparable period in 2010, is primarily related to the increase in the CDS revenues during this same period of time. See [Consolidated Revenues](#) above.

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**Income Tax Provision**

Consolidated income tax expense was \$228.0 million, \$238.3 million and \$201.7 million for the years ended December 31, 2012, 2011 and 2010, respectively. The change in consolidated income tax expense between years is primarily due to the change in our pre-tax income and the change in our effective tax rate each year. Our effective tax rate was 29%, 31% and 33% for the years ended December 31, 2012, 2011 and 2010, respectively. The effective tax rates for the years ended December 31, 2012, 2011 and 2010 are lower than the federal statutory rate primarily due to favorable foreign income tax rate differentials, which are partially offset by state income taxes. Favorable foreign income tax rate differentials result primarily from lower tax rates in the United Kingdom. During the third quarter of 2011, the United Kingdom reduced the corporate income tax rate from 28% to 26% effective April 1, 2011 and to 25% effective April 1, 2012. During the third quarter of 2012, the United Kingdom further reduced the corporate income tax rate from 25% to 24% effective April 1, 2012 and to 23% effective April 1, 2013. The decrease in the effective tax rate during the last two years is primarily due to these foreign income tax rate reductions and the increase in income from foreign jurisdictions relative to the United States.

**Table of Contents****Quarterly Results of Operations**

We believe the following quarterly unaudited consolidated statements of income data has been prepared on substantially the same basis as our audited consolidated financial statements and includes all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of our consolidated results of operations for the quarters presented. The historical results for any quarter do not necessarily indicate the results expected for any future period. This unaudited condensed consolidated quarterly data should be read together with our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. The following table sets forth quarterly consolidated statements of income data (in thousands):

|   | December 31, September 30, |                   | June 30,          | Three Months Ended, |                   | September 30,     | June 30,          | March 31,         |
|---|----------------------------|-------------------|-------------------|---------------------|-------------------|-------------------|-------------------|-------------------|
|   | 2012                       | 2012              | 2012              | March 31,           | December 31,      | 2011              | 2011              | 2011              |
| <b>Revenues:</b>  |                            |                   |                   |                     |                   |                   |                   |                   |
| Transaction and clearing fees, net:   |                            |                   |                   |                     |                   |                   |                   |                   |
| North American natural gas futures and options and cleared OTC contracts(1) | \$ 47,007                  | \$ 47,771         | \$ 55,628         | \$ 70,794           | \$ 59,612         | \$ 55,866         | \$ 54,323         | \$ 57,151         |
| ICE Brent Crude futures and options contracts                               | 49,042                     | 55,393            | 58,875            | 50,198              | 46,858            | 48,158            | 46,593            | 48,562            |
| ICE Gasoil futures and options contracts                                    | 23,295                     | 24,789            | 24,022            | 25,051              | 25,085            | 25,435            | 22,235            | 26,774            |
| North American power futures and options and cleared OTC contracts(1)       | 20,307                     | 17,698            | 20,241            | 22,261              | 18,874            | 21,567            | 21,519            | 23,305            |
| ICE emission futures and options contracts                                  | 20,424                     | 16,476            | 14,059            | 15,722              | 17,252            | 16,928            | 15,049            | 14,251            |
| Sugar futures and options contracts   | 14,085                     | 20,448            | 24,472            | 21,495              | 11,793            | 19,255            | 20,423            | 17,689            |
| Russell Index futures and options contracts                                 | 7,243                      | 7,199             | 8,275             | 8,079               | 9,223             | 11,680            | 9,478             | 9,653             |
| Other futures and options and cleared OTC contracts(1)                      | 48,406                     | 44,229            | 52,266            | 52,732              | 44,785            | 44,952            | 45,352            | 50,256            |
| Credit default swaps contracts  | 35,625                     | 32,934            | 36,099            | 39,825              | 41,311            | 45,543            | 41,072            | 39,077            |
| Other   | 11,704                     | 12,240            | 12,871            | 15,915              | 12,514            | 12,126            | 12,496            | 12,292            |
| <b>Total transaction and clearing fees, net</b>                             | <b>277,138</b>             | <b>279,177</b>    | <b>306,808</b>    | <b>322,072</b>      | <b>287,307</b>    | <b>301,510</b>    | <b>288,540</b>    | <b>299,010</b>    |
| Market data fees  | 37,285                     | 35,947            | 37,171            | 36,386              | 32,625            | 32,212            | 30,699            | 29,420            |
| Other   | 8,948                      | 8,063             | 7,234             | 6,736               | 7,283             | 7,056             | 5,979             | 5,850             |
| <b>Total revenues</b>   | <b>323,371</b>             | <b>323,187</b>    | <b>351,213</b>    | <b>365,194</b>      | <b>327,215</b>    | <b>340,778</b>    | <b>325,218</b>    | <b>334,280</b>    |
| <b>Operating expenses:</b>  |                            |                   |                   |                     |                   |                   |                   |                   |
| Compensation and benefits   | 56,556                     | 61,820            | 64,700            | 68,076              | 62,650            | 64,137            | 62,176            | 61,638            |
| Technology and communication  | 11,229                     | 11,073            | 11,760            | 11,702              | 11,989            | 12,316            | 12,045            | 11,525            |
| Professional services   | 7,404                      | 7,813             | 8,526             | 9,402               | 9,861             | 8,743             | 8,422             | 7,805             |
| Rent and occupancy  | 4,785                      | 5,167             | 4,915             | 4,462               | 5,138             | 5,107             | 4,462             | 4,359             |
| Acquisition-related transaction costs                                       | 9,365                      | 2,285             | 4,246             | 3,463               | 864               | 5,446             | 5,877             | 3,437             |
| Selling, general and administrative   | 8,119                      | 8,114             | 9,542             | 10,924              | 8,716             | 7,885             | 8,517             | 9,062             |
| Depreciation and amortization   | 33,547                     | 32,864            | 32,108            | 31,983              | 33,189            | 33,095            | 32,837            | 33,131            |
| <b>Total operating expenses</b>   | <b>131,005</b>             | <b>129,136</b>    | <b>135,797</b>    | <b>140,012</b>      | <b>132,407</b>    | <b>136,729</b>    | <b>134,336</b>    | <b>130,957</b>    |
| Operating income  | 192,366                    | 194,051           | 215,416           | 225,182             | 194,808           | 204,049           | 190,882           | 203,323           |
| Other expense, net  | 8,972                      | 9,392             | 8,852             | 10,107              | 10,830            | 7,998             | 7,194             | 7,031             |
| Income tax expense  | 50,841                     | 50,552            | 61,266            | 65,296              | 53,711            | 59,103            | 59,316            | 66,138            |
| <b>Net income</b>   | <b>\$ 132,553</b>          | <b>\$ 134,107</b> | <b>\$ 145,298</b> | <b>\$ 149,779</b>   | <b>\$ 130,267</b> | <b>\$ 136,948</b> | <b>\$ 124,372</b> | <b>\$ 130,154</b> |
| Net income attributable to noncontrolling interest                          | (3,081)                    | (3,025)           | (2,141)           | (1,914)             | (3,494)           | (4,317)           | (3,007)           | (1,250)           |
| <b>Net income attributable to ICE.</b>                                      | <b>\$ 129,472</b>          | <b>\$ 131,082</b> | <b>\$ 143,157</b> | <b>\$ 147,865</b>   | <b>\$ 126,773</b> | <b>\$ 132,631</b> | <b>\$ 121,365</b> | <b>\$ 128,904</b> |





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- (1) In connection with the transition of the cleared OTC energy swaps contracts to futures contracts on October 15, 2012, the cleared OTC North American natural gas, cleared OTC North American power and cleared OTC Global oil and other contracts have been transitioned to futures and options contracts and the prior periods have been reclassified to conform to this presentation.

**Liquidity and Capital Resources**

Since our inception, we have financed our operations, growth and cash needs primarily through income from operations and borrowings under our credit facilities. Our principal capital requirements have been to fund capital expenditures, working capital, strategic acquisitions and investments, stock repurchases and the continued development of our electronic trading and clearing platforms. We believe that our cash on hand and cash flows from operations will be sufficient to repay our outstanding indebtedness as it matures. In the future, in addition to the financing for the NYSE Euronext acquisition discussed below, we may need to incur additional debt or issue additional equity securities. See Future Capital Requirements below.

Under the terms of our December 2012 announcement to acquire 100% of NYSE Euronext in a stock and cash transaction, we expect to pay a maximum cash consideration of approximately \$2.7 billion and issue a maximum aggregate number of shares of ICE common shares of approximately 42.4 million shares. The overall mix of the approximately \$8.6 billion acquisition consideration is approximately 68% shares and 32% cash. The cash transaction consideration will be funded by cash on hand and up to \$1.8 billion of borrowing under our revolving credit facility. The acquisition is expected to close during the second half of 2013, subject to regulatory approvals in Europe and the United States and approval by stockholders of both companies. Subsequent to or in connection with the closing of the acquisition of NYSE Euronext, we plan to issue new debt to refinance and restore the majority of the \$1.8 billion borrowed under our revolving credit facility and to extend the term of the debt.

Consolidated cash and cash equivalents were \$1.6 billion and \$822.9 million as of December 31, 2012 and 2011, respectively. We had \$391.3 million and \$451.1 million in long-term investments as of December 31, 2012 and 2011, respectively, and \$249.7 million and \$217.5 million in short-term and long-term restricted cash as of December 31, 2012 and 2011, respectively. We consider all short-term, highly liquid investments with remaining maturity dates of three months or less at the time of purchase to be cash equivalents. We classify all investments with original maturity dates in excess of three months but less than one year as short-term investments and all investments that we intend to hold for more than one year as long-term investments. Cash that is not available for general use, either due to regulatory requirements or through restrictions in specific agreements, is classified as restricted cash.

As of December 31, 2012, the amount of unrestricted cash held by our non-U.S. subsidiaries was \$463.5 million. While we consider our non-U.S. earnings to be indefinitely reinvested overseas, if these cash balances are needed for our operations in the United States, any repatriation by way of dividend may be subject to both U.S. federal and state income taxes, as adjusted for any non-U.S. tax credits. However, we do not have any current needs or foreseeable plans to repatriate earnings from our non-U.S. subsidiaries.

We may invest a portion of our cash in excess of short-term operating needs in investment-grade marketable debt securities, including government or government sponsored agencies and corporate debt securities. Certain of these investments, with an original maturity of greater than three months, will be classified as available-for-sale in accordance with relevant accounting standards. Available-for-sale investments are carried at their fair values with unrealized gains and losses, net of deferred income taxes, reported as a component of accumulated other comprehensive income. Realized gains and losses, and declines in value deemed to be other-than-temporary on available-for-sale investments, are recognized currently in earnings. We do not have any investments classified as held-to-maturity or trading.

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During the year ended December 31, 2012, we repurchased 416,858 shares of our common stock on the open market at a cost of \$53.3 million. Since 2008, we have repurchased 6.1 million shares of our common stock on the open market at a cost of \$618.9 million. As of December 31, 2012, \$450.0 million remains available for further repurchases under our stock repurchase program. We expect to fund any remaining share repurchases with a combination of cash on hand, future cash flows and by borrowing under our credit facilities. The timing and extent of any future repurchases is at the discretion of our management and will depend upon market conditions, our stock price and our strategic plans at that time. We may discontinue our stock repurchases at any time.

**Cash Flow**

The following tables present the major components of net increases in cash and cash equivalents (in thousands):

|   | Year Ended December 31, |            |            |
|---|-------------------------|------------|------------|
|   | 2012                    | 2011       | 2010       |
| Net cash provided by (used in):           |                         |            |            |
| Operating activities                      | \$ 732,954              | \$ 712,770 | \$ 533,758 |
| Investing activities                      | (117,867)               | (614,856)  | (633,082)  |
| Financing activities                      | 172,363                 | 105,111    | 169,520    |
| Effect of exchange rate changes           | 1,796                   | (1,868)    | (869)      |
| Net increase in cash and cash equivalents | \$ 789,246              | \$ 201,157 | \$ 69,327  |

**Operating Activities**

Net cash provided by operating activities primarily consists of net income adjusted for certain non-cash items, including depreciation and amortization and the effects of changes in working capital. Fluctuations in net cash provided by operating activities are primarily attributable to increases and decreases in our net income between periods and, to a lesser extent, due to fluctuations in working capital. The \$20.2 million increase in net cash provided by operating activities for the year ended December 31, 2012, from the comparable period in 2011, is primarily due to the \$40.0 million increase in our net income for the year ended December 31, 2012, from the comparable period in 2011, the timing of various tax payments for 2012 and 2011, and to fluctuations in working capital. The \$179.0 million increase in net cash provided by operating activities for the year ended December 31, 2011, from the comparable period in 2010, is primarily due to the \$114.0 million increase in our net income for the year ended December 31, 2011, from the comparable period in 2010, the timing of various tax payments for 2011 and 2010, and to fluctuations in working capital.

**Investing Activities**

Consolidated net cash used in investing activities for the years ended December 31, 2012, 2011 and 2010 primarily relates to purchases of available-for-sale investments, cash paid for acquisitions, changes in restricted cash balances, capitalized software development costs and capital expenditures. We had a net increase in investments classified as available-for-sale of \$512.1 million for the year ended December 31, 2011 primarily due to the Cetip investment in July 2011. We paid cash for acquisitions, net of cash acquired, of \$18.2 million, \$9.8 million and \$553.0 million, respectively, for the years ended December 31, 2012, 2011 and 2010, primarily relating to the WhenTech acquisition in September 2012 and the CLE acquisition in July 2010. We had net increases in restricted cash of \$31.9 million, \$1.5 million and \$18.6 million, respectively, for the years ended December 31, 2012, 2011 and 2010 due to increases in the restricted cash balances between periods primarily related to changes in the regulatory capital at our clearing houses, including the 2012 increases related to FSA mandated changes in the calculations of regulatory capital at ICE Futures Europe and ICE Clear Europe as well as additional costs incurred at both of these companies due to growth of these businesses. We had capitalized

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software development expenditures of \$35.4 million, \$30.4 million and \$26.0 million for the years ended December 31, 2012, 2011 and 2010, respectively. Capital expenditures totaled \$32.4 million, \$57.3 million and \$21.8 million for the years ended December 31, 2012, 2011 and 2010, respectively. The capital expenditures primarily relate to hardware purchases to continue the development and expansion of our electronic platforms and clearing houses and the purchase of a corporate aircraft during the year ended December 31, 2011. We also purchased a foreign currency hedge relating to our acquisition of CLE of \$15.1 million during the year ended December 31, 2010.

***Financing Activities***

Consolidated net cash provided by financing activities for the year ended December 31, 2012 primarily relates to \$295.0 million in borrowings under the credit facilities, partially offset by \$53.3 million in repurchases of common stock, \$50.0 million in repayments under the credit facilities and \$19.2 million in cash payments related to treasury shares received for restricted stock tax payments and stock options exercises. Consolidated net cash provided by financing activities for the year ended December 31, 2011 primarily relates to \$1.3 billion in borrowings under the credit facilities, partially offset by \$991.5 million in repayments under the credit facilities, \$175.2 million in repurchases of common stock and \$16.4 million in debt issuance costs relating to the new credit facilities. Consolidated net cash provided by financing activities for the year ended December 31, 2010 primarily relates to \$620.0 million in borrowings under the credit facilities, partially offset by \$349.0 million in repayments under the credit facilities and \$90.4 million in repurchases of our common stock. See [Loan Agreements](#) below.

***Loan Agreements***

On November 9, 2011, we entered into aggregate \$2.6 billion senior unsecured credit facilities, or the Credit Facilities. The Credit Facilities include an option for us to propose an increase in the aggregate amount available by \$400.0 million during the term of the Credit Facilities. The Credit Facilities consist of (i) an aggregate \$500.0 million five-year senior unsecured term loan facility, or the Term Loan Facility, and (ii) an aggregate \$2.1 billion five-year senior unsecured multicurrency revolving credit facility, or the Revolving Facility. On November 9, 2011, \$487.5 million of the Term Loan Facility was borrowed. As of December 31, 2012, we have a LIBOR-rate loan with a stated interest rate of 1.46% per annum related to the \$437.5 million that remains outstanding under the Term Loan Facility. The Credit Facilities mature on November 9, 2016.

Simultaneously with entering into the Credit Facilities on November 9, 2011, we also entered into a note purchase agreement, or the Note Purchase Agreement, with various institutional investors. The Note Purchase Agreement provided for the sale of \$400.0 million aggregate principal amount of our senior notes, consisting of \$200.0 million of our 4.13% Senior Notes, Tranche A, due November 9, 2018, or the Series A Notes, and \$200.0 million of our 4.69% Senior Notes, Tranche B, due November 9, 2021, or the Series B notes, and collectively with the Series A notes, the Senior Notes.

During December 2012, we borrowed \$295.0 million under the Revolving Facility for temporary borrowing capacity to facilitate intercompany transactions, leaving \$1.8 billion available for borrowing as of December 31, 2012. Of the \$295.0 million that was borrowed, \$113.0 million was repaid by January 31, 2013, with the remaining amount scheduled to be repaid during the first half of 2013. As the \$295.0 million is repaid, the full amount of \$2.1 billion will be available for borrowing under the Revolving Facility. Of the amounts available under the Revolving Facility: (i) \$150.0 million of such amounts has been reserved to provide liquidity or required financial resources for the clearing operations of ICE Clear Europe, (ii) \$100.0 million of such amounts has been reserved to provide liquidity or required financial resources for the clearing operations of ICE Clear Credit, (iii) \$50.0 million of such amounts has been reserved to provide liquidity or required financial resources for the clearing operations of ICE Clear U.S., (iv) \$3.0 million of such amounts has been reserved to provide liquidity or required financial resources for the clearing operations of ICE Clear Canada, and (v) the remainder, plus any portion of the proceeds no longer necessary to be reserved for the foregoing purposes, are available to us

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to use for working capital and general corporate purposes. From time to time, we may agree to provide additional liquidity to our subsidiaries to meet regulatory capital requirements, general corporate purposes or short term liquidity needs.

Each loan under the Credit Facilities, including the outstanding Term Loan Facility, will bear interest on the principal amount outstanding at either (a) LIBOR plus an applicable margin rate or (b) a base rate plus an applicable margin rate; provided, however, that all loans denominated in a foreign currency will bear interest at LIBOR plus an applicable margin rate. The base rate equals the higher of (i) Wells Fargo's prime rate, (ii) the federal funds rate plus 0.50%, or (iii) the one month LIBOR rate plus 1.00%. The applicable margin rate ranges from 1.25% to 2.25% on the LIBOR loans and from 0.25% to 1.25% for the base rate loans based on our total leverage ratio calculated on a trailing twelve-month period. As of December 31, 2012, we have a LIBOR-rate loan with a stated interest rate of 1.46% per annum, including the applicable margin rate, related to the \$437.5 million that is outstanding under the Term Loan Facility. With limited exceptions, we may prepay the outstanding loans under the Credit Facilities, in whole or in part, without premium or penalty.

The entire unpaid principal amount of the Series A Notes is due on November 9, 2018. Interest on the Series A Notes is payable semi-annually at a fixed rate of 4.13%. The entire unpaid principal amount of the Series B Notes is due on November 9, 2021. Interest on the Series B Notes is payable semi-annually at a fixed rate of 4.69%. We may optionally prepay principal upon the Senior Notes, subject to paying holders certain additional amounts as set forth in the Note Purchase Agreement. In addition, the holders may require us to prepay the Senior Notes upon the occurrence of certain change in control events.

The Credit Facilities and Note Purchase Agreement contain affirmative and negative covenants, including, but not limited to, leverage and interest coverage ratios, as well as limitations or required notices or approvals for acquisitions, dispositions of assets and certain investments in subsidiaries, the incurrence of additional debt or the creation of liens and other fundamental changes to our business. The Credit Facilities and the Note Purchase Agreement also contains other customary representations, warranties and covenants. As of December 31, 2012, we were in compliance with all applicable covenants.

We have previously entered into interest rate swap contracts to reduce our exposure to interest rate volatility on certain of our previously outstanding term loans. These swaps were designated as cash flow hedges. The effective portion of unrealized gains or losses on derivatives designated as cash flow hedges were recorded in accumulated other comprehensive income. The unrealized gain or loss was recognized in earnings when the designated interest expense under the term loans was recognized in earnings. The amounts received under the variable component of the swaps fully offset the variable interest payments under the term loan facilities. With the two variable components offsetting, the net interest expense was equal to the fixed interest component. We realized \$2.9 million and \$4.2 million in additional interest expense as a result of the interest rate swap contracts during the years ended December 31, 2011 and 2010, respectively. We currently do not have any interest rate swap contracts outstanding on any of the outstanding debt.

**Future Capital Requirements**

Our future capital requirements will depend on many factors, including the rate of our trading and clearing volume growth, strategic plans and acquisitions, required technology initiatives, regulatory requirements, the timing and introduction of new products and enhancements to existing products, the geographic mix of our business, and the continuing market acceptance of our electronic platform. We currently expect to make aggregate operational capital expenditures and to incur capitalized software development costs ranging between \$60.0 million and \$70.0 million for the year ended December 31, 2013, which we believe will support the enhancement of our technology and the continued expansion of our businesses. In addition, we currently expect \$20.0 million to \$30.0 million in capital expenditures during 2013 on real estate expenditures associated with consolidating multiple existing locations in New York into a combined location.

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We are obligated to contribute an aggregate of \$100.0 million to the ICE Clear Credit guaranty fund and the ICE Clear Europe CDS guaranty fund and have already contributed \$50.0 million to the ICE Clear Credit guaranty fund and \$10.0 million to the ICE Clear Europe CDS guaranty fund as of December 31, 2012. We are obligated to contribute an additional \$40.0 million to the ICE Clear Europe CDS guaranty fund and the date for this remaining contribution has not yet been determined.

After factoring in the \$303.0 million reserved for ICE Clear Europe, ICE Clear Credit, ICE Clear U.S. and ICE Clear Canada, and the \$295.0 million borrowed in December 2012, as of December 31, 2012, we have \$1.5 billion unrestricted and available under our Credit Facilities for general corporate purposes. Of the \$295.0 million that was borrowed in December 2012, \$113.0 million was repaid by January 31, 2013, with the remaining amount scheduled to be repaid during the first half of 2013. As the \$295.0 million is repaid, the full amount of \$2.1 billion will be available for borrowing under the Revolving Facility. The Credit Facilities and the Senior Notes are currently the only significant agreements or arrangements that we have with third parties for liquidity and capital resources. In the event of any strategic acquisitions, mergers or investments, such as the NYSE Euronext acquisition, or if we are required to raise capital for any reason or desire to return capital to our stockholders, we may incur additional debt, issue additional equity to raise the necessary funds, repurchase additional shares of our common stock or pay a dividend. However, we cannot provide assurance that such financing or transactions will be available or successful, or that the terms of such financing or transactions will be favorable to us. We believe that our cash flows from operations will be sufficient to fund our debt, working capital needs and capital expenditure requirements for the foreseeable future.

Under the terms of our December 2012 announcement to acquire 100% of NYSE Euronext in a stock and cash transaction, we may issue a maximum cash consideration of approximately \$2.7 billion and a maximum aggregate number of shares of ICE common shares of approximately 42.4 million shares. The mix of the approximately \$8.6 billion acquisition consideration is approximately 68% shares and 32% cash. The cash transaction consideration will be funded by cash on hand and borrowing under our Revolving Facility and is expected to close during the second half of 2013, subject to regulatory approvals in Europe and the United States and approval by stockholders of both companies. Subsequent to or in connection with the closing of the acquisition of NYSE Euronext, we plan to issue new debt to restore the majority of the \$1.8 billion unrestricted amount available under our Revolving Facility and to extend the term of the debt.

## **Non-GAAP Financial Measures**

We use non-GAAP measures internally to evaluate our performance and in making financial and operational decisions. When viewed in conjunction with our U.S. generally accepted accounting principles, or GAAP, results and the accompanying reconciliation, we believe that our presentation of these measures provides investors with greater transparency and supplemental data relating to our financial condition and results of operations. In addition, we believe the presentation of these measures is useful to investors for period-to-period comparison of results because the items described below are not reflective of our core business performance. These financial measures are not in accordance with, or an alternative to, GAAP financial measures and may be different from non-GAAP measures used by other companies. When viewed in conjunction with our GAAP results and the accompanying reconciliation, we believe these adjusted measures provide greater transparency and a more complete understanding of factors affecting our business than GAAP measures alone. We use adjusted net income attributable to ICE and adjusted earnings per share attributable to ICE common shareholders because they more clearly highlight trends in our business that may not otherwise be apparent when relying solely on GAAP financial measures, since these measures eliminate from our results specific financial items that have less bearing on our operating performance. We strongly recommend that investors review the GAAP financial measures included in this Annual Report on Form 10-K, including our consolidated financial statements and the notes thereto.

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Adjusted net income attributable to ICE for the periods presented below is calculated by adding net income attributable to ICE, the adjustments described below, which are not reflective of our core business performance, and their related income tax effect. The tax effects of these items are calculated by applying specific legal entity and jurisdictional marginal tax rates. For the years ended December 31, 2011 and 2010, we previously included all acquisition-related transaction costs as non-GAAP adjustments. We now include acquisition-related transaction costs as part of our core business expenses, except for those that are directly related to the announcement, closing, financing or termination of a transaction. However, we are including all of the acquisition-related transaction costs relating to our current acquisition of NYSE Euronext as non-GAAP adjustments given the size of the deal. The following table reconciles net income attributable to ICE to adjusted net income attributable to ICE and calculates adjusted earnings per share attributable to ICE common shareholders for the periods presented below (in thousands, except per share amounts):

|  | Year Ended December 31, |            |            | Three Months Ended December 31, |            |           |
|--|-------------------------|------------|------------|---------------------------------|------------|-----------|
|  | 2012                    | 2011       | 2010       | 2012                            | 2011       | 2010      |
| Net income attributable to ICE   | \$ 551,576              | \$ 509,673 | \$ 398,298 | \$ 129,472                      | \$ 126,773 | \$ 99,132 |
| Add: Costs expensed related to the Credit Facilities                               |                         | 2,634      |            |                                 | 2,634      |           |
| Add: NYSE Euronext transaction costs and banker fees related to other transactions | 9,174                   | 4,250      | 6,000      | 9,174                           |            |           |
| Add: Loss on hedge related to CLE acquisition                                      |                         |            | 15,080     |                                 |            |           |
| Add: Severance costs relating to acquisitions                                      |                         |            | 5,965      |                                 |            | 249       |
| Less: Net gain on initial 4.8% ownership of CLE                                    |                         |            | (1,825)    |                                 |            |           |
| Less: Income tax benefit effect related to the items above                         | (3,497)                 | (919)      | (6,224)    | (3,497)                         | (919)      | (75)      |
| Adjusted net income attributable to ICE  | \$ 557,253              | \$ 515,638 | \$ 417,294 | \$ 135,149                      | \$ 128,488 | \$ 99,306 |
| <b>Earnings per share attributable to ICE common shareholders:</b>                 |                         |            |            |                                 |            |           |
| Basic  | \$ 7.59                 | \$ 6.97    | \$ 5.41    | \$ 1.78                         | \$ 1.75    | \$ 1.35   |
| Diluted  | \$ 7.52                 | \$ 6.90    | \$ 5.35    | \$ 1.76                         | \$ 1.73    | \$ 1.34   |
| <b>Adjusted earnings per share attributable to ICE common shareholders:</b>        |                         |            |            |                                 |            |           |
| Adjusted basic   | \$ 7.66                 | \$ 7.05    | \$ 5.67    | \$ 1.86                         | \$ 1.77    | \$ 1.36   |
| Adjusted diluted   | \$ 7.60                 | \$ 6.98    | \$ 5.60    | \$ 1.84                         | \$ 1.75    | \$ 1.34   |
| <b>Weighted average common shares outstanding:</b>                                 |                         |            |            |                                 |            |           |
| Basic  | 72,712                  | 73,145     | 73,624     | 72,662                          | 72,582     | 73,205    |
| Diluted  | 73,366                  | 73,895     | 74,476     | 73,449                          | 73,414     | 74,177    |

During the year and three months ended December 31, 2012, we recognized transaction costs relating to our potential acquisition of NYSE Euronext. During the year and/or three months ended December 31, 2011, we recognized a banker fee related to our investment in Cetip and certain interest expenses related to our Credit Facilities. During the year and/or three months ended December 31, 2010, we recognized costs associated with our acquisition of CLE, including the currency hedge purchased at the time of the transaction announcement, a net gain on the sale of our CLE investment, a banker fee on the closing of the transaction and acquisition-related

employee severance costs. For additional information on these items, refer to our consolidated financial statements and related notes, which are included elsewhere in this Annual Report on Form 10-K.

**Table of Contents****Off-Balance Sheet Arrangements**

We do not have any relationships with unconsolidated entities or financial partnerships, often referred to as structured finance or special purpose entities, which have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

**Contractual Obligations and Commercial Commitments**

The following table presents, for the periods indicated, our contractual obligations (which we intend to fund from operations) and commercial commitments as of December 31, 2012 (in thousands):

|  | Total               | Payments Due by Period |                   |                   |                   |
|--|---------------------|------------------------|-------------------|-------------------|-------------------|
|  |                     | Less Than<br>1 Year    | 1-3 Years         | 4-5 Years         | After<br>5 Years  |
| <b>Contractual Obligations:</b>                        |                     |                        |                   |                   |                   |
| Short-term and long-term debt and interest             | \$ 1,300,360        | \$ 78,359              | \$ 185,434        | \$ 593,300        | \$ 443,267        |
| Russell licensing agreement (minimum annual payments)  | 95,000              | 20,000                 | 40,000            | 35,000            |                   |
| Commitment to fund ICE Clear Europe CDS guaranty funds | 40,000              |                        | 40,000            |                   |                   |
| Operating leases                                       | 241,535             | 21,620                 | 42,669            | 34,062            | 143,184           |
| Other liabilities                                      | 9,023               | 4,273                  | 3,750             | 1,000             |                   |
| <b>Total contractual cash obligations</b>              | <b>\$ 1,685,918</b> | <b>\$ 124,252</b>      | <b>\$ 311,853</b> | <b>\$ 663,362</b> | <b>\$ 586,451</b> |

We have excluded from the contractual obligations and commercial commitments table above \$31.9 billion in cash margin deposits and guaranty fund liabilities. Clearing members of ICE Clear Europe, ICE Clear U.S., ICE Clear Credit, ICE Clear Canada and TCC are required to deposit original margin and variation margin and to make deposits to a guaranty fund. The cash deposits made to these margin accounts and to the guaranty fund are recorded in the consolidated balance sheet as current assets with corresponding current liabilities to the clearing members that deposited them. See note 11 to our consolidated financial statements and related notes that are included elsewhere in this Annual Report on Form 10-K for additional information on our clearing houses and the margin deposits and guaranty funds liabilities.

We have also excluded unrecognized tax benefits, or UTBs, from the contractual obligations and commercial commitments table above. As of December 31, 2012, our cumulative UTBs were \$34.5 million. Interest and penalties related to UTBs were \$6.2 million as of December 31, 2012. We are under continuous examination by various tax authorities. We are unable to make a reasonable estimate of the periods of cash settlement because it is not possible to reasonably predict, the amount of tax and interest, if any, that might be assessed by a tax authority or the timing of an assessment or payment. It is also not possible to reasonably predict whether or not the applicable statutes of limitations might expire without us being examined by any particular tax authority.

**New and Recently Adopted Accounting Pronouncements**

Refer to note 2 to our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K for information on the new and recently adopted accounting pronouncements that are applicable to us.

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### **Critical Accounting Policies**

We have identified the policies below as critical to our business operations and the understanding of our results of operations. The impact of, and any associated risks related to, these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations. For a detailed discussion on the application of these and other accounting policies, see note 2 to our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of financial statements in conformity with these accounting principles requires us to make estimates and assumptions that affect the reported amount of assets and liabilities, and the disclosure of contingent assets and liabilities, at the date of our financial statements and the reported amounts of revenues and expenses during the reporting period.

We evaluate our estimates and judgments on an ongoing basis, including those related to the accounting matters described below. We base our estimates and judgments on our historical experience and other factors that we believe to be reasonable under the circumstances when we make these estimates and judgments. Based on these factors, we make estimates and judgments about, among other things, the carrying values of assets and liabilities that are not readily apparent from market prices or other independent sources and about the recognition and characterization of our revenues and expenses. The values and results based on these estimates and judgments could differ significantly under different assumptions or conditions and could change materially in the future.

We believe that the following critical accounting policies, among others, affect our more significant judgments and estimates used in the preparation of our consolidated financial statements and could materially increase or decrease our reported results, assets and liabilities.

### ***Goodwill and Other Identifiable Intangible Assets***

We have significant intangible assets related to goodwill and other acquired intangible assets. In connection with our acquisitions, assets acquired and liabilities assumed are recorded at their estimated fair values. Goodwill represents the excess of the purchase price of our acquisitions over the fair value of identifiable net assets acquired, including other identified intangible assets. We recognize specifically identifiable intangibles when a specific right or contract is acquired. Our determination of the fair value of the intangible assets and whether or not these assets are impaired requires us to make significant judgments and requires us to use significant estimates and assumptions regarding estimated future cash flows. If we change our strategy or if market conditions shift, our judgments may change, which may result in adjustments to recorded asset balances. As of December 31, 2012, we had goodwill of \$1.9 billion and net other intangible assets of \$799.0 million relating to our acquisitions, our purchase of trademarks and Internet domain names from various third parties, and the Russell licensing agreement. We do not amortize goodwill or other intangible assets with indefinite useful lives. Intangible assets with finite useful lives are amortized over the lesser of their contractual or estimated useful lives.

In performing the purchase price allocation, we consider, among other factors, the intended future use of acquired assets, analyses of historical financial performance and estimates of future performance of the acquired business. At the acquisition date, a preliminary allocation of the purchase price is recorded based upon a preliminary valuation. We continue to review and validate estimates, assumptions and valuation methodologies underlying the preliminary valuation during the measurement period. Accordingly, these estimates and assumptions are subject to change, which could have a material impact on our consolidated financial statements. The measurement period ends as soon as we receive the information about facts and circumstances that existed as of the acquisition date or we learn that more information is not obtainable, which usually does not exceed one year from the date of acquisition.



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Our goodwill and other indefinite-lived intangible assets are evaluated for impairment annually in our fiscal fourth quarter or more frequently if conditions exist that indicate that the value may be impaired. We test our goodwill for impairment at the reporting unit level. These impairment evaluations are performed by comparing the carrying value of the goodwill reporting unit or other indefinite-lived intangibles to its estimated fair value. We allocate goodwill to reporting units based on the reporting unit expected to benefit from the business combination. We currently have three reporting units: our futures reporting unit, our CDS reporting unit (previously known as the OTC CDS reporting unit) and our market data reporting unit. We previously had a fourth reporting unit, our OTC energy reporting unit. In the fourth quarter of 2012, in connection with the transition of the OTC clearing energy swaps contracts to futures contracts, we no longer have any meaningful OTC revenues and we therefore no longer have an OTC energy reporting unit.

Goodwill impairment testing consists of a two-step methodology. The initial step requires us to determine the fair value of each reporting unit and compare it to the carrying value, including goodwill and other intangible assets, of such reporting unit. If the fair value exceeds the carrying value, no impairment loss is recognized and the second step, which is a calculation of the impairment, is not performed. However, if the carrying value of the reporting unit exceeds its fair value, an impairment charge is recorded equal to the extent that the carrying amount of goodwill exceeds its implied fair value. For annual goodwill impairment testing, beginning with our fourth quarter 2011 impairment testing, we have the option to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill and other intangible assets. If we conclude that this is the case, we must perform the two-step methodology described above. Otherwise, we can skip the two-step methodology and do not need to perform any further testing. For annual indefinite-lived intangible asset impairment testing, beginning with our fourth quarter 2012 impairment testing, we also have the option to first perform a qualitative assessment to determine whether it is more likely than not that the fair value of the indefinite-lived intangible assets is less than its carrying amount.

Application of the impairment test requires judgment, including the identification of reporting units, assignment of assets and liabilities to reporting units, assignment of goodwill to reporting units, and determination of the fair value of each reporting unit. We have historically determined the fair value of our reporting units based on various valuation techniques, including discounted cash flow analyses and a multiple of earnings approach. In assessing whether goodwill and other intangible assets are impaired, we must make estimates and assumptions regarding future cash flows, long-term growth rates of our business, operating margins, discount rates, weighted average cost of capital and other factors to determine the fair value of our assets. These estimates and assumptions require management's judgment, and changes to these estimates and assumptions, as a result of changing economic and competitive conditions, could materially affect the determination of fair value and/or impairment. The cash flows employed in the discounted cash flow analyses are based on our most recent budgets and business plans and, when applicable, various growth rates have been assumed for years beyond the current business plan period. Future events could cause us to conclude that indicators of impairment exist for goodwill or other intangible assets. Impairment may result from, among other things, deterioration in the performance of our business, adverse market conditions, adverse changes in applicable laws and regulations, competition, or the sale or disposition of a reporting unit. Any resulting impairment loss could have a material adverse impact on our financial condition and results of operations.

Our impairment analyses have not resulted in any impairment of goodwill and other identifiable intangible assets through December 31, 2012. Historically, the fair value of our futures, OTC energy and market data reporting units have significantly exceeded their carrying values. Therefore, during our fourth quarter 2012 goodwill analysis of our market data reporting unit, we exercised our option to perform a qualitative assessment to determine whether it is more likely than not that the fair value of this reporting unit was less than its carrying amount, including goodwill and other intangible assets. We concluded that it was not more likely than not that the fair value of the market data reporting unit was less than its carrying amount. As we combined our futures and OTC energy reporting units into one combined futures reporting unit during the year ended December 31, 2012 in connection with the OTC swaps to futures transaction, we decided to forgo the qualitative assessment of this reporting unit during the fourth quarter 2012 impairment testing and proceeded directly to the preparation of

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a discounted cash flow valuation to estimate the fair value of our futures reporting unit. The discounted cash flow valuation indicated a fair value of our futures reporting unit significantly exceeding its carrying value. We do not believe there is a reasonable likelihood that there will be a material change in the estimates or assumptions that we use to test for impairment losses on goodwill in our futures or market data reporting units in the foreseeable future.

Among our reporting units, the fair value of our CDS reporting unit has been the closest to its carrying value in prior goodwill impairment analyses. Our CDS reporting unit includes the financial results and net assets of Creditex, ICE Clear Credit and the CDS clearing business at ICE Clear Europe. CDS trade execution revenues at Creditex have decreased the last several years. Trading volumes in the global CDS market have declined, impacting Creditex revenue performance. Diminished CDS trading by dealers and clients, along with reduced perceptions of credit risk and significant regulatory uncertainty have all contributed to lower revenues the last several years. However, the decline in CDS trading revenues was partially offset by an increase in ICE CDS clearing, the listing of additional cleared CDS products, and signing on new clearing members, along with a decrease in expenses at Creditex.

During the first step of the CDS impairment review in the fourth quarter of 2012, we performed a discounted cash flow valuation to estimate the fair value of our CDS reporting unit. The valuation of our CDS reporting unit concluded that the fair value exceeded carrying value by \$128.0 million, or 18% of the carrying value in the fourth quarter of 2012. As of December 31, 2012, the CDS goodwill and other intangible assets balances were \$519.7 million.

The discount rate used in the CDS discounted cash flow valuation is intended to reflect the risks inherent in the future cash flows of the CDS reporting unit and was 12% in the fourth quarter 2012 review. A 10 basis point increase in the discount rate used would not have a material impact on our fair value of the CDS reporting unit. A 10% decrease in the estimated discounted cash flows for the CDS reporting unit would result in the fair value of the reporting unit exceeding the carrying value by \$45.1 million.

Given the current market conditions and continued economic and regulatory uncertainty, the fair value of our CDS reporting unit may deteriorate and could result in the need to record an impairment charge in future periods. We continue to monitor potential triggering events in our CDS reporting unit, including changes in the business and regulatory climate in which it operates, the current volatility in the capital markets, our recent operating performance and our financial projections. Any changes in these factors could result in an impairment charge.

We are also required to evaluate other finite-lived intangible assets and property and equipment for impairment by determining whether events or changes in circumstances indicate that the carrying value of these assets to be held and used may not be recoverable. If impairment indicators are present, then an estimate of undiscounted future cash flows produced by these long-lived assets is compared to the carrying value of those assets to determine if the asset is recoverable. If an asset is not recoverable, the loss is measured as the difference between fair value and carrying value of the impaired asset. Fair value of these assets is based on various valuation techniques, including discounted cash flow analyses. Our evaluation has not resulted in any impairment of other finite-lived intangible assets and property and equipment through December 31, 2012.

## ***Income Taxes***

We are subject to income taxes in the United States and other foreign jurisdictions where we operate. The determination of our provision for income taxes and related accruals, deferred tax assets and liabilities requires significant judgment, the use of estimates, and the interpretation and application of complex tax laws. We recognize a current tax liability or tax asset for the estimated taxes payable or refundable on tax returns for the current year. We recognize deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the financial statement carrying amounts and the tax bases of our assets and liabilities. We establish valuation allowances if we believe that it is more likely than not that some or all of our

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deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using current enacted tax rates in effect for the years in which those temporary differences and carryforwards are expected to reverse.

We do not recognize a tax benefit unless we conclude that it is more likely than not that the benefit will be sustained on audit by the taxing authority based solely on the technical merits of the associated tax position. If the recognition threshold is met, we recognize a tax benefit measured at the largest amount of the tax benefit that, in our judgment, is greater than 50 percent likely to be realized. As discussed in note 2 to our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K, in 2012 we changed the classification to recognize accrued interest and penalties related to uncertain income tax positions as income tax expense in the consolidated statements of income.

The undistributed earnings from our non-U.S. subsidiaries are considered to be indefinitely reinvested and, accordingly, no provision for U.S. federal and state income taxes has been made in our consolidated financial statements. A distribution of these non-U.S. earnings in the form of dividends, or otherwise, could subject us to both U.S. federal and state income taxes, as adjusted for non-U.S. tax credits, and withholding taxes payable to the various non-U.S. countries. Determination of the amount of any unrecognized deferred income tax liability on these undistributed earnings is not practicable.

We operate within multiple taxing jurisdictions and are subject to audit in these jurisdictions by domestic and foreign tax authorities. These audits include questions regarding our tax filing positions, including the timing and amount of deductions taken and the allocation of income among various tax jurisdictions. We record accruals for the estimated outcomes of these audits, and the accruals may change in the future due to new developments in each matter. At any point in time, many tax years are subject to or in the process of being audited by various taxing authorities. To the extent our estimates of settlements change or the final tax outcome of these matters is different from the amounts recorded, such differences will impact the income tax provision in the period in which such determinations are made. Our income tax expense includes changes in our estimated liability for exposures associated with our various tax filing positions. Determining the income tax expense for these potential assessments requires management to make assumptions that are subject to factors such as proposed assessments by tax authorities, changes in facts and circumstances, issuance of new regulations, and resolution of tax audits.

We believe the judgments and estimates discussed above are reasonable. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to losses or gains that could be material.

### ***Software Development Costs***

We capitalize costs related to software developed or obtained for internal use in accordance with U.S. generally accepted accounting standards. Costs incurred during the preliminary project work stage or conceptual stage, such as determining the performance requirements, system requirements and data conversion, are expensed as incurred. Costs incurred in the application development phase, such as coding, testing for new software and upgrades that result in additional functionality, are capitalized and are amortized using the straight-line method over the useful life of the software, not to exceed three years. Costs incurred during the post-implementation/operation stage, including training costs and maintenance costs, are expensed as incurred. We capitalized internally developed software costs of \$35.4 million, \$30.4 million and \$26.0 million during the years ended December 31, 2012, 2011 and 2010, respectively. Determining whether particular costs incurred are more properly attributable to the preliminary or conceptual stage, and thus expensed, or to the application development phase, and thus capitalized and amortized, depends on subjective judgments about the nature of the development work, and our judgments in this regard may differ from those made by other companies. General and administrative costs related to developing or obtaining such software are expensed as incurred.

We review our capitalized software development costs for impairment at each quarterly balance sheet date and whenever events or changes in circumstances indicate that the carrying amount should be assessed. Our

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judgments about impairment are based in part on subjective assessments of the usefulness of the relevant software and may differ from comparable assessments made by others. We have not recorded any software impairment charges since our formation. If an impairment indicator is identified, we analyze recoverability by estimating undiscounted net future cash flows over the remaining life of such assets. If these projected cash flows are less than the carrying amount, impairment may be recognized, resulting in a write-down of assets to their estimated fair value with a corresponding charge to earnings. We believe that our capitalized software development costs are appropriately valued in our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

**ITEM 7 (A). *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK***

We are exposed to market risk in the ordinary course of business. This market risk consists primarily of interest rate risk associated with our cash and cash equivalents, short-term and long-term investments, short-term and long-term restricted cash, current and long-term indebtedness and foreign currency exchange rate risk.

**Interest Rate Risk**

We have exposure to market risk for changes in interest rates relating to our cash and cash equivalents, long-term investments, short-term and long-term restricted cash and indebtedness. As of December 31, 2012 and 2011, our cash and cash equivalents, long-term investments and short-term and long-term restricted cash were \$2.3 billion and \$1.5 billion, respectively, of which \$518.8 million and \$607.3 million, respectively, were denominated in Brazilian reais, pounds sterling, euros or Canadian dollars. As discussed below, changes in the Cetip investment, which is held in Brazilian reais and is valued at \$391.3 million as of December 31, 2012, does not impact earnings. The remaining investments are denominated in U.S. dollars. We do not use our investment portfolio for trading or other speculative purposes. A hypothetical decrease in long-term interest rates to zero basis points would decrease annual pre-tax earnings by \$2.1 million, assuming no change in the amount or composition of our cash and cash equivalents, long-term investments and short-term and long-term restricted cash.

As of December 31, 2012, we had \$1.1 billion in outstanding indebtedness, of which \$400.0 million relates to the Senior Notes, which bear interest at fixed interest rates. Of the remaining balance outstanding as of December 31, 2012, \$437.5 million relates to the Term Loan Facility and \$295.0 million relates to the Revolving Facility, both of which bear interest at fluctuating rates based on LIBOR and, therefore, subjects us to interest rate risk. A hypothetical 100 basis point increase in long-term interest rates as of December 31, 2012 would decrease annual pre-tax earnings by \$7.3 million, assuming no change in the volume or composition of our outstanding indebtedness and no hedging activity. As of January 31, 2013, we had repaid \$113.0 million of the \$295.0 million borrowed under the Revolving Facility. The interest rates on our Term Loan Facility and Revolving Facility are currently reset on a monthly basis.

**Foreign Currency Exchange Rate Risk**

Revenues in our businesses are primarily denominated in U.S. dollars, except with respect to a portion of the sales through ICE Futures Europe, ICE Clear Europe and Creditex and all sales through ICE Futures Canada. We may experience gains or losses from foreign currency transactions in the future given that there are net assets or net liabilities and revenues and expenses of our U.S., U.K., European and Canadian subsidiaries that are denominated in pounds sterling, euros or Canadian dollars.

Of our consolidated revenues, 11%, 12% and 10% were denominated in pounds sterling, euros or Canadian dollars for the years ended December 31, 2012, 2011 and 2010, respectively. Of our consolidated operating expenses, 21%, 20% and 16% were denominated in pounds sterling or Canadian dollars for the years ended December 31, 2012, 2011 and 2010, respectively. As the pound sterling, euro or Canadian dollar exchange rate

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changes, the U.S. equivalent of revenues and expenses denominated in foreign currencies changes accordingly. The pound sterling and euro exchange rates decreased relative to the U.S. dollar by 1% and 8%, respectively, for the year ended December 31, 2012 as compared to the year ended December 31, 2011. These decreases in the exchange rates resulted in a \$10.7 million decrease in our consolidated revenues and a \$1.3 million decrease in our consolidated expenses for the year ended December 31, 2012. The pound sterling and euro exchange rates increased relative to the U.S. dollar by 4% and 5%, respectively, for the year ended December 31, 2011 as compared to the year ended December 31, 2010. These increases in the exchange rates resulted in a \$7.6 million increase in our consolidated revenues and a \$4.1 million increase in our consolidated expenses for the year ended December 31, 2011.

We have foreign currency transaction risk related to the settlement of foreign currency denominated assets, liabilities and payables that occur through our operations, which are received in or paid in pounds sterling or euros, due to the increase or decrease in the foreign currency exchange rates between periods. Our U.K. operations in some instances function as a natural hedge because we generally hold an equal amount of monetary assets and liabilities that are denominated in pounds sterling. We had foreign currency transaction losses of \$3.5 million, \$406,000 and \$1.4 million for the years ended December 31, 2012, 2011 and 2010, respectively, primarily attributable to the fluctuations of the pound sterling and euro relative to the U.S. dollar. A 10% adverse change in the underlying foreign currency exchange rates as of December 31, 2012 would result in a foreign currency transaction loss of \$6.8 million, assuming no change in the composition of the foreign currency denominated assets, liabilities and payables and assuming no hedging activity.

We entered into foreign currency hedging transactions during the years ended December 31, 2012, 2011 and 2010 as economic hedges to hedge a portion of our foreign currency transaction exposure and may enter into additional hedging transactions in the future to help mitigate our foreign exchange risk exposure. For the portion of our foreign currency exposure hedged, we had hedge effectiveness of 76%, 77% and 80% for the years ended December 31, 2012, 2011 and 2010, respectively. In addition, we entered into a foreign currency hedge in May 2010 related to the cash consideration to be paid to acquire CLE, in order to mitigate the risk of currency fluctuations between the announcement and closing of the acquisition as the cash consideration was being held in U.S. dollars and was required to be paid in pounds sterling. The foreign currency hedge contract included an upfront \$15.1 million option premium and the hedge contract expired out of the money in July 2010, resulting in a loss of \$15.1 million recorded through other expense in the consolidated statement of income for the year ended December 31, 2010.

We have foreign currency translation risk equal to our net investment in certain U.K., European and Canadian subsidiaries. The revenues, expenses and financial results of these U.K, European and Canadian subsidiaries are denominated in pounds sterling, euros or Canadian dollars, which are the functional currencies of these subsidiaries. The financial statements of these subsidiaries are translated into U.S. dollars using a current rate of exchange, with gains or losses included in the cumulative translation adjustment account, a component of equity. As of December 31, 2012 and 2011, the portion of our equity attributable to accumulated other comprehensive income from foreign currency translation was \$72.6 million and \$44.2 million, respectively. The \$28.4 million increase was primarily due to foreign currency translation adjustments relating to a portion of our goodwill and other intangible assets that are allocated to our U.K. subsidiaries, due to an increase in the pound sterling to the U.S. dollar exchange rate from December 31, 2011 to December 31, 2012.

The average exchange rate of the pound sterling to the U.S. dollar increased from 1.5416 for the year ended December 31, 2010 to 1.6036 for the year ended December 31, 2011 and then decreased to 1.5841 for the year ended December 31, 2012. The average exchange rate of the euro to the U.S. dollar increased from 1.3216 for the year ended December 31, 2010 to 1.3912 for the year ended December 31, 2011 and then decreased to 1.2853 for the year ended December 31, 2012. The period-end foreign currency exchange rate for the pound sterling to the U.S. dollar increased from 1.5248 as of December 31, 2010 to 1.5533 as of December 31, 2011 and then increased to 1.6176 as of December 31, 2012. The period-end foreign currency exchange rate for the euro to the U.S. dollar decreased from 1.3291 as of December 31, 2010 to 1.2948 as of December 31, 2011 and then

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increased to 1.3223 as of December 31, 2012. The period-end foreign currency exchange rate for the Canadian dollar to the U.S. dollar decreased from 0.9999 as of December 31, 2010 to 0.9798 as of December 31, 2011 and then increased to 1.0036 as of December 31, 2012.

Our investment in Cetip was recorded as an available-for-sale investment and was recorded in and is held in Brazilian reais. As of December 31, 2012, the fair value of the equity security investment was \$391.3 million, which was classified as a long-term investment in our consolidated balance sheet. Changes in the fair value of available-for-sale securities are reflected in accumulated other comprehensive income, and include the effects of both stock price and foreign currency translation fluctuations.

**Impact of Inflation**

We have not been adversely affected by inflation as technological advances and competition have generally caused prices for the hardware and software that we use for our electronic platforms to remain constant or to decline. In the event of inflation, we believe that we will be able to pass on any price increases to our participants, as the prices that we charge are not governed by long-term contracts.

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**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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**REPORT OF MANAGEMENT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Our management is responsible for the preparation and integrity of the consolidated financial statements appearing in our Annual Report on Form 10-K. The financial statements were prepared in conformity with generally accepted accounting principles appropriate in the circumstances and, accordingly, include certain amounts based on our best judgments and estimates. Financial information in this Annual Report on Form 10-K is consistent with that in the financial statements.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Rule 13a-15(f) under the Securities Exchange Act of 1934 ( Exchange Act ). Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the consolidated financial statements. Our internal control over financial reporting is supported by a program of internal audits and appropriate reviews by management, written policies and guidelines, careful selection and training of qualified personnel and a written Code of Business Conduct adopted by our Board of Directors, applicable to all Company Directors and all officers and employees of our Company and subsidiaries.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and even when determined to be effective, can only provide reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Audit Committee of our Board of Directors, comprised solely of directors who are independent in accordance with the requirements of the New York Stock Exchange listing standards, the Exchange Act and our Board of Director Governance Principles, meets with the independent auditors, management and internal auditors periodically to discuss internal control over financial reporting and auditing and financial reporting matters. The Audit Committee reviews with the independent auditors the scope and results of the audit effort. The Audit Committee also meets periodically with the independent auditors and the internal auditors without management present to ensure that the independent auditors and the internal auditors have free access to the Audit Committee. Our Audit Committee s Report will be included in our 2013 Proxy Statement.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2012. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ( COSO ) in Internal Control Integrated Framework. Based on our assessment, management believes that we maintained effective internal control over financial reporting as of December 31, 2012.

Our independent auditors, Ernst & Young LLP, a registered public accounting firm, are appointed by the Audit Committee, subject to ratification by our shareholders. Ernst & Young LLP has audited and reported on our consolidated financial statements and the effectiveness of our internal control over financial reporting. The reports of our registered public accounting firm are contained in this Annual Report.

/s/ Jeffrey C. Sprecher  
Jeffrey C. Sprecher  
Chairman of the Board and  
Chief Executive Officer

February 6, 2013

/s/ Scott A. Hill  
Scott A. Hill  
Senior Vice President,  
Chief Financial Officer

February 6, 2013



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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Board of Directors and Shareholders

IntercontinentalExchange, Inc.

We have audited IntercontinentalExchange, Inc. and Subsidiaries' internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). IntercontinentalExchange, Inc. and Subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, IntercontinentalExchange, Inc. and Subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of IntercontinentalExchange, Inc. and Subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended December 31, 2012 of IntercontinentalExchange, Inc. and Subsidiaries, and our report dated February 6, 2013 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Atlanta, Georgia

February 6, 2013

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON  
FINANCIAL STATEMENTS**

Board of Directors and Shareholders

IntercontinentalExchange, Inc.

We have audited the accompanying consolidated balance sheets of IntercontinentalExchange, Inc. and Subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended December 31, 2012. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of IntercontinentalExchange, Inc. and Subsidiaries at December 31, 2012 and 2011, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2012, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), IntercontinentalExchange, Inc.'s internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 6, 2013 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Atlanta, Georgia

February 6, 2013

**Table of Contents****IntercontinentalExchange, Inc. and Subsidiaries****Consolidated Balance Sheets****(In thousands, except per share amounts)**

|   | <b>December 31,</b>  |                      |
|---|----------------------|----------------------|
|   | <b>2012</b>          | <b>2011</b>          |
| <b>ASSETS</b>   |                      |                      |
| Current assets:   |                      |                      |
| Cash and cash equivalents   | \$ 1,612,195         | \$ 822,949           |
| Short-term restricted cash  | 86,823               | 52,982               |
| Customer accounts receivable, net of allowance for doubtful accounts of \$1,104 and \$2,557 at December 31, 2012 and 2011, respectively | 127,260              | 136,331              |
| Margin deposits and guaranty funds  | 31,882,493           | 31,555,831           |
| Prepaid expenses and other current assets   | 41,316               | 37,298               |
| <b>Total current assets</b>   | <b>33,750,087</b>    | <b>32,605,391</b>    |
| Property and equipment, net   | 143,392              | 130,962              |
| Other noncurrent assets:  |                      |                      |
| Goodwill  | 1,937,977            | 1,902,984            |
| Other intangible assets, net  | 798,960              | 854,374              |
| Long-term restricted cash   | 162,867              | 164,496              |
| Long-term investments   | 391,345              | 451,136              |
| Other noncurrent assets   | 30,214               | 38,521               |
| <b>Total other noncurrent assets</b>  | <b>3,321,363</b>     | <b>3,411,511</b>     |
| <b>Total assets</b>   | <b>\$ 37,214,842</b> | <b>\$ 36,147,864</b> |
| <b>LIABILITIES AND EQUITY</b>   |                      |                      |
| Current liabilities:  |                      |                      |
| Accounts payable and accrued liabilities  | \$ 70,206            | \$ 65,964            |
| Accrued salaries and benefits   | 55,008               | 58,248               |
| Current portion of licensing agreement  | 19,249               | 19,249               |
| Current portion of long-term debt   | 163,000              | 50,000               |
| Income taxes payable  | 29,284               | 22,614               |
| Margin deposits and guaranty funds  | 31,882,493           | 31,555,831           |
| Other current liabilities   | 26,457               | 28,408               |
| <b>Total current liabilities</b>  | <b>32,245,697</b>    | <b>31,800,314</b>    |
| Noncurrent liabilities:   |                      |                      |
| Noncurrent deferred tax liability, net  | 216,141              | 235,889              |
| Long-term debt  | 969,500              | 837,500              |
| Noncurrent portion of licensing agreement   | 63,739               | 80,084               |
| Other noncurrent liabilities  | 43,207               | 31,736               |
| <b>Total noncurrent liabilities</b>   | <b>1,292,587</b>     | <b>1,185,209</b>     |
| <b>Total liabilities</b>  | <b>33,538,284</b>    | <b>32,985,523</b>    |
| Commitments and contingencies   |                      |                      |
| <b>EQUITY:</b>  |                      |                      |
| IntercontinentalExchange, Inc. shareholders' equity:  |                      |                      |

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Preferred stock, \$0.01 par value; 25,000 shares authorized; no shares issued or outstanding at December 31, 2012 and 2011

Common stock, \$0.01 par value; 194,275 shares authorized; 79,867 and 79,247 shares issued at December 31, 2012 and 2011, respectively; 72,474 and 72,425 shares outstanding at December 31, 2012 and 2011, respectively

|   |               |               |
|---|---------------|---------------|
|   | 799           | 792           |
| Treasury stock, at cost; 7,393 and 6,822 shares at December 31, 2012 and 2011, respectively | (716,815)     | (644,291)     |
| Additional paid-in capital  | 1,903,312     | 1,829,181     |
| Retained earnings   | 2,508,672     | 1,957,096     |
| Accumulated other comprehensive loss  | (52,591)      | (21,253)      |
| <br>  |               |               |
| Total IntercontinentalExchange, Inc. shareholders' equity                                   | 3,643,377     | 3,121,525     |
| Noncontrolling interest in consolidated subsidiaries  | 33,181        | 40,816        |
| <br>  |               |               |
| Total equity  | 3,676,558     | 3,162,341     |
| <br>  |               |               |
| Total liabilities and equity  | \$ 37,214,842 | \$ 36,147,864 |

See accompanying notes.

**Table of Contents****IntercontinentalExchange, Inc. and Subsidiaries****Consolidated Statements of Income****(In thousands, except per share amounts)**

|  | Year Ended December 31, |                   |                   |
|--|-------------------------|-------------------|-------------------|
|  | 2012                    | 2011              | 2010              |
| <b>Revenues:</b>   |                         |                   |                   |
| Transaction and clearing fees, net                               | \$ 1,185,195            | \$ 1,176,367      | \$ 1,023,454      |
| Market data fees   | 146,789                 | 124,956           | 109,175           |
| Other  | 30,981                  | 26,168            | 17,315            |
| <b>Total revenues</b>  | <b>1,362,965</b>        | <b>1,327,491</b>  | <b>1,149,944</b>  |
| <b>Operating expenses:</b>                                       |                         |                   |                   |
| Compensation and benefits  | 251,152                 | 250,601           | 236,649           |
| Technology and communication                                     | 45,764                  | 47,875            | 44,506            |
| Professional services  | 33,145                  | 34,831            | 32,597            |
| Rent and occupancy   | 19,329                  | 19,066            | 17,024            |
| Acquisition-related transaction costs                            | 19,359                  | 15,624            | 9,996             |
| Selling, general and administrative                              | 36,699                  | 34,180            | 35,644            |
| Depreciation and amortization                                    | 130,502                 | 132,252           | 121,209           |
| <b>Total operating expenses</b>                                  | <b>535,950</b>          | <b>534,429</b>    | <b>497,625</b>    |
| <b>Operating income</b>  | <b>827,015</b>          | <b>793,062</b>    | <b>652,319</b>    |
| <b>Other income (expense):</b>                                   |                         |                   |                   |
| Interest and investment income                                   | 1,626                   | 2,489             | 2,161             |
| Interest expense   | (38,902)                | (34,533)          | (30,541)          |
| Other expense, net   | (47)                    | (1,009)           | (14,466)          |
| <b>Total other expense, net</b>                                  | <b>(37,323)</b>         | <b>(33,053)</b>   | <b>(42,846)</b>   |
| <b>Income before income taxes</b>                                | <b>789,692</b>          | <b>760,009</b>    | <b>609,473</b>    |
| Income tax expense   | 227,955                 | 238,268           | 201,706           |
| <b>Net income</b>  | <b>\$ 561,737</b>       | <b>\$ 521,741</b> | <b>\$ 407,767</b> |
| Net income attributable to noncontrolling interest               | (10,161)                | (12,068)          | (9,469)           |
| <b>Net income attributable to IntercontinentalExchange, Inc.</b> | <b>\$ 551,576</b>       | <b>\$ 509,673</b> | <b>\$ 398,298</b> |

Earnings per share attributable to IntercontinentalExchange, Inc. common