

INTERCONTINENTALEXCHANGE INC

Form 425

March 19, 2013

# **SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

## **FORM 8-K**

### **CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 19, 2013**

## **INTERCONTINENTALEXCHANGE, INC.**

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

**Delaware**  
**(State or other jurisdiction**

**of incorporation)**

**001-32671**  
**(Commission**

**File Number)**  
**2100 RiverEdge Parkway**

**Suite 500**

**58-2555670**  
**(I.R.S. Employer**

**Identification No.)**

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Atlanta, GA 30328

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code (770) 857-4700

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**ITEM 1.01. Entry into a Material Definitive Agreement**  
**The Amended and Restated Merger Agreement**

On March 19, 2013, IntercontinentalExchange, Inc., a Delaware corporation ( ICE ), NYSE Euronext, a Delaware corporation ( NYSE Euronext ), IntercontinentalExchange Group, Inc., a Delaware corporation and wholly-owned subsidiary of ICE ( ICE Group ), Braves Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of ICE Group ( Braves Merger Sub ) and Baseball Merger Sub, LLC, a Delaware limited liability company and wholly-owned subsidiary of ICE Group ( Baseball Merger Sub ), entered into an Amended and Restated Agreement and Plan of Merger, dated as of March 19, 2013 (the Amended and Restated Merger Agreement ). The Amended and Restated Merger Agreement amends and restates the Agreement and Plan of Merger, dated as of December 20, 2012, by and among NYSE Euronext, ICE and Baseball Merger Sub (the Original Merger Agreement ).

Pursuant to the Amended and Restated Merger Agreement, ICE and NYSE Euronext have agreed to revise the structure of their previously announced merger transaction to provide that ICE will acquire NYSE Euronext under a newly formed holding company, ICE Group, to facilitate the implementation of the governance provisions that will be required to be put into effect. Under the revised structure, following successive merger transactions, each of ICE and NYSE Euronext will become wholly-owned subsidiaries of ICE Group. The terms, economics and conditions of the Amended and Restated Merger Agreement otherwise are substantially the same as the terms of the Original Merger Agreement, including the merger consideration to be paid to NYSE Euronext stockholders. The Amended and Restated Merger Agreement provides that each share of ICE common stock will be converted into the right to receive one share of ICE Group common stock. Upon the completion of the mergers, ICE Group s common stock is expected to be listed for trading on the New York Stock Exchange under ICE s current ticker symbol, ICE.

The Amended and Restated Merger Agreement is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The foregoing description is qualified in its entirety by reference to such documents.

The Amended and Restated Merger Agreement and the above description have been included to provide investors and securityholders with information regarding the terms of the Amended and Restated Merger Agreement. They are not intended to provide any other factual information about NYSE Euronext, ICE or their respective subsidiaries or affiliates or stockholders. The representations, warranties and covenants contained in the Amended and Restated Merger Agreement were made only for purposes of this agreement and as of specific dates; were solely for the benefit of the parties to the Amended and Restated Merger Agreement; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each contracting party to the other for the purposes of allocating contractual risk between them that differ from those applicable to investors. Investors should be aware that the representations, warranties and covenants or any description thereof may not reflect the actual state of facts or condition of NYSE Euronext, ICE, ICE Group, Braves Merger Sub, Baseball Merger Sub or any of their respective subsidiaries, affiliates, businesses, or stockholders. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Amended and Restated Merger Agreement. Accordingly, investors should read the representations and warranties in the Amended and Restated Merger Agreement not in isolation but only in conjunction with the other information about NYSE Euronext or ICE and their respective subsidiaries that the respective companies include in reports, statements and other filings they make with the SEC.

**CAUTIONARY STATEMENT REGARDING FORWARD LOOKING STATEMENTS**

This Current Report on Form 8-K contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. In some cases, you can identify forward-looking statements by words such as may, hope, will, should, expect, plan, anticipate, intend, believe, estimate, predict, potential, continue, could, future or the negative of those terms or other words having similar meaning. You should carefully read forward-looking statements, including statements that contain these words, because they discuss our future expectations or state other forward-looking information. Forward-looking statements are subject to numerous assumptions, risks and uncertainties which change over time. ICE and NYSE Euronext caution readers that any forward-looking statement is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking statement.

Forward-looking statements include, but are not limited to, statements about the benefits of the proposed merger involving ICE and NYSE Euronext, including future financial results, ICE s and NYSE Euronext s plans, objectives, expectations and intentions, the expected timing of completion of the transaction and other statements that are not historical facts. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are set forth in ICE s and NYSE Euronext s filings with the U.S. Securities and Exchange Commission (the SEC ). These risks and uncertainties include, without limitation, the following: the inability to close the merger in a timely manner; the inability to complete the merger due to the failure of NYSE Euronext or ICE stockholders to adopt the Amended and Restated Merger Agreement or the failure of ICE stockholders to approve the related ICE Group governance proposals; the failure to satisfy other conditions to completion of the merger, including receipt of required regulatory and other approvals; the failure of the proposed transaction to close for any other reason; the possibility that any of the anticipated benefits of the proposed transaction will not be realized; the risk that integration of NYSE Euronext s operations with those of ICE will be materially delayed or will be more costly or difficult than expected; the challenges of integrating and retaining key employees; the effect of the announcement of the transaction on ICE s, NYSE Euronext s or the

combined

company's respective business relationships, operating results and business generally; the possibility that the anticipated synergies and cost savings of the merger will not be realized, or will not be realized within the expected time period; the possibility that the merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events; diversion of management's attention from ongoing business operations and opportunities; general competitive, economic, political and market conditions and fluctuations; actions taken or conditions imposed by the United States and foreign governments or regulatory authorities; and adverse outcomes of pending or threatened litigation or government investigations. In addition, you should carefully consider the risks and uncertainties and other factors that may affect future results of the combined company, as are described in the section entitled "Risk Factors" in the joint proxy statement/prospectus filed by ICE with the SEC, and as described in ICE's and NYSE Euronext's respective filings with the SEC that are available on the SEC's web site located at [www.sec.gov](http://www.sec.gov), including the sections entitled "Risk Factors" in ICE's Form 10-K for the fiscal year ended December 31, 2012, as filed with the SEC on February 6, 2013, and "Risk Factors" in NYSE Euronext's Form 10-K for the fiscal year ended December 31, 2012, as filed with the SEC on February 26, 2013. You should not place undue reliance on forward-looking statements, which speak only as of the date of this Current Report on Form 8-K. Except for any obligations to disclose material information under the Federal securities laws, ICE undertakes no obligation to publicly update any forward-looking statements to reflect events or circumstances after the date of this Current Report on Form 8-K.

#### **IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND WHERE TO FIND IT**

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. In connection with the proposed transaction, ICE Group will file with the SEC a registration statement on Form S-4, which will include a joint proxy statement/prospectus with respect to the proposed acquisition of NYSE Euronext. The final joint proxy statement/prospectus will be delivered to the stockholders of ICE and NYSE Euronext. **INVESTORS AND SECURITY HOLDERS OF BOTH ICE AND NYSE EURONEXT ARE URGED TO READ THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PROPOSED TRANSACTION CAREFULLY AND IN ITS ENTIRETY, INCLUDING ANY DOCUMENTS PREVIOUSLY FILED WITH THE SEC AND INCORPORATED BY REFERENCE INTO THE JOINT PROXY STATEMENT/PROSPECTUS, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION REGARDING ICE, NYSE EURONEXT AND THE PROPOSED TRANSACTION.** Investors and security holders will be able to obtain a free copy of the joint proxy statement/prospectus, as well as other filings containing information about ICE and NYSE Euronext, without charge, at the SEC's website at <http://www.sec.gov>. Investors may also obtain these documents, without charge, from ICE's website at <http://www.theice.com> and from NYSE Euronext's website at <http://www.nyx.com>.

#### **PARTICIPANTS IN THE MERGER SOLICITATION**

ICE, NYSE Euronext and their respective directors, executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the transactions contemplated by the Amended and Restated Merger Agreement.

You can find information about ICE and ICE's directors and executive officers in ICE's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the SEC on February 6, 2013, and ICE's proxy statement for its 2012 annual meeting of stockholders, as filed with the SEC on March 30, 2012.

You can find information about NYSE Euronext and NYSE Euronext's directors and executive officers in NYSE Euronext's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the SEC on February 26, 2013, NYSE Euronext's proxy statement for its 2012 annual meeting of stockholders, filed with the SEC on March 26, 2012 and NYSE Euronext's preliminary proxy statement for its 2013 annual meeting of stockholders filed with the SEC on March 12, 2013.

Additional information about the interests of potential participants is included in the joint proxy statement/prospectus, and the other relevant documents filed by ICE and NYSE Euronext with the SEC.

**ITEM 9.01. Financial Statements and Exhibits**

(d) *Exhibits*

<b>Exhibit Number</b>	<b>Description</b>
2.1	Amended and Restated Agreement and Plan of Merger, dated as of March 19, 2013, by and among NYSE Euronext, IntercontinentalExchange, Inc., IntercontinentalExchange Group, Inc., Braves Merger Sub, Inc. and Baseball Merger Sub, LLC (the schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**INTERCONTINENTALEXCHANGE, INC.**

Date: March 19, 2013

By: /s/ Scott A. Hill

Name: Scott A. Hill

Title: Senior Vice President and Chief Financial Officer

**EXHIBIT INDEX**

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