

**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, 2020

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: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

799 West Coliseum Way

Midvale, Utah

(Address of principal executive offices)

87-0634302

(I.R.S. Employer Identification Number)

84047

(Zip code)

(801) 947-3100

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.0001 par value per share	OSTK	NASDAQ Global Market

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 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 Securities Exchange Act of 1934 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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer	x	Accelerated filer	o
Non-accelerated filer	o	Smaller reporting company	o
		Emerging growth company	o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second quarter (June 30, 2020), was approximately \$1.1 billion based upon the last sales price reported by Nasdaq. For purposes of this disclosure, shares of Common Stock held by directors and certain officers and by others who may be deemed to be affiliates of the registrant have been excluded. The exclusion of such shares is not intended to, and shall not, constitute a determination as to which persons or entities may be affiliates as that term is defined in the federal securities laws.

There were 42,855,813 shares of the Registrant's common stock, par value \$0.0001, outstanding on February 19, 2021.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III of Form 10-K is incorporated by reference to the Registrant's proxy statement for the 2021 Annual Stockholders Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

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SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report on Form 10-K and the documents incorporated herein by reference, as well as our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. You can find many of these statements by looking for words such as "may," "would," "could," "should," "will," "expect," "anticipate," "predict," "project," "potential," "continue," "contemplate," "seek," "assume," "believe," "intend," "plan," "forecast," "goal," "estimate," or other similar expressions which identify these forward-looking statements.

These forward-looking statements involve risks and uncertainties and relate to future events or our future financial or operating performance. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and business, and on management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to assumptions, risks and uncertainties that are difficult to predict, and that actual results may be materially different from the results expressed or implied by any of our forward-looking statements.

Actual events or results may differ materially from those contemplated by our forward-looking statements for a variety of reasons, including among others:

- the impact that the ongoing novel coronavirus, or COVID-19, pandemic may have on our business and the industries in which we and our subsidiaries operate, including the impact that our business may experience at such time as the pandemic subsides;*
- the impact that any litigation, claims, or regulatory matters could have on our business, financial condition, results of operations, and cash flows;*
- any increases in the price of importing into the U.S. the types of merchandise we sell in our Retail business or other supply chain challenges that limit our access to merchandise we sell in our business;*
- any difficulties we may encounter as a result of our reliance on third-parties that we do not control for the performance of critical functions material to our business;*
- any inability to attract new customers, convert new customers into repeat customers or maintain increased sales volumes;*
- the effect of trends in the furniture and home goods market;*
- any downturn in the U.S. housing industry or other changes in U.S. and global economic conditions or U.S. consumer spending, as a result of the COVID-19 pandemic or otherwise;*
- our exposure to cyber security risks, risks of data loss and other security breaches;*
- any strategic transactions, restructurings or other changes we may make to our business;*
- any challenges that result in the unavailability of our Website or reduced performance of our transaction systems;*
- the possibility that we are unable to protect our proprietary technology and to obtain trademark protection for our marks;*
- current claims of intellectual property infringement to which we are subject and additional infringement claims to which we may become subject in the future;*
- the commercial, competitive, technical, operational, financial, regulatory, legal, reputational, marketing and other obstacles we face in trying to create a profitable business from our blockchain initiatives, including tZERO;*
- the extensive regulatory regimes applicable to tZERO and the possibility that various tZERO subsidiaries or ventures do not receive the regulatory approval required to operate their anticipated businesses;*
- any losses or issues we may encounter as a consequence of accepting or holding bitcoin or other cryptocurrencies;*
- the adequacy of our liquidity and our ability to fund our capital requirements;*
- our ability to attract and retain key personnel;*
- the possibility that the cost of our current insurance policies may increase significantly or fail to adequately protect us as expected; and*
- the other risks described in this report or in our other public filings.*

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Report, especially under the headings "Special Cautionary Note Regarding Forward-Looking Statements," "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events. Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

PART I

ITEM 1. BUSINESS

The following description of our business contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report on Form 10-K, including those set forth above in the Special Cautionary Note Regarding Forward-Looking Statements or in Section 1A under the heading "Risk Factors" or elsewhere in this Annual Report on Form 10-K.

Introduction

Through our online Retail business, we offer a broad range of price-competitive products, including furniture, home decor, bedding and bath, and housewares, among other products. We sell our products and services through our Internet websites located at www.overstock.com, www.o.co, www.overstock.ca, and www.overstockgovernment.com (referred to collectively as the "Website"). Although our four websites are located at different domain addresses, the technology and equipment and processes supporting the Website and the process of order fulfillment described herein are the same for all four websites. Our Retail business initiatives are described in more detail below under "Our Retail Business".

Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), which conducts the majority of its business through its majority-owned subsidiary tZERO Group, Inc. ("tZERO"), a leader in blockchain innovation and liquidity for digital assets. Our Medici business initiatives seek to create or foster a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control in six areas: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. Medici Ventures owns strategic majority and minority equity interests in several blockchain-related companies, each of which focuses on at least one of the areas mentioned above. Our Medici business initiatives are described in more detail below under "Our Medici Business—Medici Ventures" and our tZERO business initiatives are described in more detail below under "Our Medici Business—tZERO". As described below, in January 2021, we announced significant changes in the management of our Medici Business.

Our company, based near Salt Lake City, Utah, was founded as a Utah limited liability company ("LLC") in 1997, reorganized as a C Corporation in the State of Utah in 1998, and reincorporated in Delaware in 2002. We launched our initial website in March 1999. As used herein, "Overstock", "Overstock.com", "the Company", "we", "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise.

Our Retail Business

For the last three fiscal years, our Retail business has generated nearly all of our net revenues. In our Retail business, our goal is to provide goods to furnish and accessorize "Dream Homes for All", particularly for our target customers—consumers who seek smart value on quality, stylish merchandise at competitive prices. We offer millions of products of which over 99% were in-line products (products in active production). We believe that the furniture and home goods market, which is highly fragmented and has traditionally been served by brick and mortar stores, will continue transitioning to online sales, particularly as Millennial consumers (which we define as those born between 1981 - 1996), who are generally comfortable shopping online, start families and move into new homes. We regularly update our product assortment to meet the evolving preferences of our customers and current trends. Our products include, among others, furniture, home décor including area rugs, bedding and bath, home improvement, and kitchen and dining items. We compete primarily based on:

- Simple and easy customer experience with an emphasis on price, value, and quality with a wide assortment of products delivered in a personalized format with the convenience of our mobile app, and with the benefits of our award-winning customer care;
- Proprietary technologies which we believe help us provide our customers with an intuitive shopping experience;
- Logistics capabilities tailored to the furniture and home furnishings category and developed over our many years of e-commerce experience;
- Long-term mutually beneficial relationships with our partners, which numbered approximately 3,000 as of December 31, 2020; and
- Our Club O Loyalty Program, which we believe increases customer engagement and retention.

For 2020, nearly all our Retail sales through our Website were from transactions in which we fulfilled orders through our network of approximately 3,000 third-party manufacturers, distributors and other suppliers ("partners") selling on our Website. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our retail partners. We provide our partners with access to a large customer base and convenient services for order fulfillment, customer service, returns handling, and other services. Our supply chain allows us to ship directly to our customers from our suppliers or from our warehouses. Our warehouses primarily fulfill orders from direct sales of our partners owned inventory, including some customer returns of partner products. Our warehouses ship over 2,000 packages per day on average and up to approximately 3,200 packages per day during peak periods.

During the years ended December 31, 2020, 2019 and 2018 our sales were almost entirely to customers located in the United States and no single customer accounted for more than 1% of our total net revenue.

Additional Offerings

We offer additional products or services that may complement our primary retail offerings but are not significant to our retail revenues, including:

- Businesses advertising products or services on our Website;
- Our international business where we offer products to customers outside the United States using third party logistics providers; and
- Supplier Oasis, a single integration point through which our partners can manage their products, inventory and sales channels, and obtain multi-channel fulfillment services through our distribution network.

Manufacturer, Distributor, and Supplier Relationships

To the extent possible we maintain manufacturer, distributor, and supplier relationships, and seek new manufacturer, distributor, and supplier relationships, and also use our working capital, to ensure a continuous allotment of product offerings for our customers. Generally, our manufacturers, distributors, or suppliers regularly communicate to us the quantity of products that are held in reserve for us, but our arrangements with them generally do not guarantee the availability of those products for a set duration. Our manufacturer, distributor, and supplier relationships are based on historical experience and are generally non-exclusive and we retain the right to select and change our suppliers at our discretion. Generally, manufacturers, distributors, and suppliers do not control the terms under which products are sold through our Website.

Sales and Marketing

We use a variety of methods to target our retail consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail, and viral and social media campaigns. We also do brand advertising through television, video on demand, radio, print ads, and event sponsorships.

Customer Service

We are committed to providing superior customer service. We staff our customer service department with dedicated in-house and outsourced professionals who respond to phone, SMS, instant online chat, and e-mail inquiries on products, ordering, shipping status, returns, and other areas of customer inquiry.

Technology

We use our internally developed Website and a combination of proprietary technologies and commercially available licensed technologies and solutions to support our Retail operations. We use the services of multiple telecommunications companies to obtain connectivity to the Internet. Currently, our primary computer infrastructure is in a data center in Utah. We also have other data centers which we use for backups, redundancy, development, testing, disaster recovery, and corporate systems infrastructure.

Competition

E-commerce is intensely competitive and has relatively low barriers to entry. We believe that competition in this industry is based predominantly on:

- price;
- product quality and assortment;
- shopping convenience;
- website organization and load speed;
- order processing and fulfillment;
- order delivery time;
- customer service;
- website functionality on mobile devices;
- brand recognition; and
- brand reputation.

We compete with other online retailers, traditional retailers, and liquidation "brokers" which may specifically adopt our methods and target our customers. We currently or potentially compete with a variety of companies that can be divided into several broad categories:

- online discount general retailers;
- online private sale sites;
- online specialty retailers;
- online liquidators;
- online retailers who have or are developing significant "brick and mortar" capabilities; and
- traditional general merchandise and specialty retailers and liquidators, many of which have a significant online presence.

Many of our current and potential e-commerce competitors have greater brand recognition, longer operating histories, larger customer bases, and significantly greater financial, marketing, and other resources than we do. Further, any of them may enter into strategic or commercial relationships with larger, more established and well-financed companies, including exclusive distribution arrangements with our vendors or service suppliers that could deny us access to key products or needed services, or acquisitions of our suppliers or service providers, having the same effect. Many of them do or could devote greater resources to marketing and promotional campaigns and devote substantially more resources to their website and systems development than we do. Many have supply chain operations that decrease product shipping times to their customers, have options for in-store product pick-up, allow in-store returns, or offer other delivery and returns options that we do not have. New technologies, the continued enhancement of existing technologies, developments in related areas such as same-day product deliveries, and the development of proprietary delivery systems increase competitive pressures on us.

Financial Information about Business Segments and Geographic Areas

As described further in Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 25—Business Segments, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, we determined our segments based on how we manage our business, which, in our view, consists primarily of our Retail and Medici businesses. Our Retail business is a reportable segment. As described below, our Medici business is comprised of multiple components or operating segments, including our tZERO and Medici Ventures reportable segments. We use pre-tax net income (loss) as the measure to determine our reportable segments. As a result, tZERO and Medici Ventures are the only reportable segments of our Medici business as they are quantitatively significant. The remaining Medici business operating segments are not significant and are included in Other. See Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 25—Business Segments for information regarding our business segments and geographical areas.

Intellectual Property and Trade Secrets

We regard our domain names and other intellectual property as critical to our success. Included in our intellectual property is some of the financial technology we have developed as part of our Medici initiatives. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets.

Our Medici Business

In late 2014, we began working on initiatives to develop and advance blockchain technologies. We pursue these initiatives through our wholly-owned subsidiary, Medici Ventures, and its majority-owned subsidiary tZERO. These initiatives remain in the start-up phase, and neither Medici Ventures nor tZERO has generated significant revenues from any blockchain-based technology or application of blockchain technology. As described below under "*Pelion Transaction Agreement*", we announced significant changes in the oversight of the Medici Business in January 2021.

Medici Ventures

Medici Ventures' strategy is to create or foster a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control in six areas: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. A blockchain is a cryptographically secured, distributed infrastructure, or network, which may be accessed and, in some cases, maintained by each member of the network. The majority of Medici Ventures' business is its approximately 80% interest in tZERO (as of December 31, 2020), which, as described below, is a financial technology company pursuing potential financial applications for blockchain technologies. Medici Ventures also owns strategic majority and minority equity interests in several blockchain-related companies, each of which focuses on at least one of the areas mentioned above. All the companies in which Medici Ventures holds strategic equity interests are startup businesses, businesses in the development stage, or businesses with a short operating history. As a result of the transaction described below in "*Pelion Transaction Agreement*", Medici Ventures has discontinued providing the services of its software engineers, developers, or other technologists to other blockchain companies. Seats on the boards of these companies held by Medici Ventures personnel are expected to be filled by nominees of Pelion following the closing of the transactions contemplated by the Pelion Transaction Agreement.

See "Risk Factors—Additional Risks Relating to our Medici Business."

tZERO

tZERO is a leader in blockchain innovation and liquidity for digital assets. The financial technology company is aiming to democratize access to private capital markets by focusing on the development and adoption of digital securities (which we define below). tZERO offers institutional-grade solutions for issuers looking to digitize their capitalization table through blockchain technology, and trade on a regulated alternative trading system. tZERO democratizes access to private assets by providing a simple, automated, and efficient trading venue to broker-dealers, institutions, and investors. tZERO has developed a suite of technologies (the "tZERO Technology Stack") that enables issuers to issue, and relevant regulated market participants to support the issuance, trading, clearance and settlement of digital securities. tZERO also supports the adoption of digital securities by developing the tZERO Technology Stack for use by regulated venues on which those digital securities can trade, as well as investing in subsidiaries and joint venture entities that own and operate such trading venues. These investments include the alternative trading system (the "tZERO ATS") run by its wholly-owned subsidiary, tZERO ATS, LLC, a U.S. Securities and Exchange Commission ("SEC")-registered broker-dealer which provides a regulated venue for matching buy and sell orders to its broker-dealer subscribers, including for the trading of digital securities, and its joint venture with BOX Digital Markets LLC ("BOX Digital"), intended to develop a U.S. national securities exchange facility with regulatory approvals enabling it to support trading in a type of digital security called a security token. Another wholly-owned subsidiary of tZERO, tZERO Markets, LLC ("tZERO Markets"), is an SEC-registered broker-dealer which offers a website, and in the future intends to provide a mobile application, that allows retail customers to conduct self-directed trading of digital securities. In addition, tZERO also maintains certain other businesses.

Throughout this report we refer to "digital securities" to describe conventional uncertificated securities where the issuer arranges for a digital "courtesy carbon copy" of the transfer agent's share registry to be viewable on the blockchain to enhance the investor's trading experience through added transparency, but which have no controlling legal effect. Securities with such digital enhancements may also be referred to as "digitally-enhanced securities". Digital securities, however, are not issued, traded, cleared, settled or custodied using distributed ledger or blockchain technology. Instead, record ownership of digital securities is kept by an SEC-regulated transfer agent in its traditional books and records and they are traded on the relevant regulated trading venues on a book-entry basis. To enhance the investor experience, issuers arrange for a digital courtesy carbon copy of the transfer agent's share registry of holders of record to be viewable on the blockchain. The digital courtesy carbon copy of the transfer agents' books and records on the blockchain are pseudonymized (that is, such records do not identify the holders of record by name but each holder's assets are shown under a digital wallet address) and do not govern ownership of these securities. The transfer agent's conventional books and records remain as the only controlling record of ownership for corporate and securities law purposes. With respect to investors holding a digital security in a brokerage account, the controlling record of the underlying beneficial ownership is such investor's carrying broker-dealer's conventional books and

records. The use of "digital" is intended solely to differentiate these securities from conventional securities which do not have the digital enhancements necessary to allow the transfer agents records to be viewable on the blockchain.

In certain other instances throughout this report we refer to "peer-to-peer digital assets" or "bearer digital assets", which may include virtual currencies or other pseudonymous bearer digital instruments (including instruments representing securities) which may trade peer-to-peer on a distributed ledger and/or rely on the distributed ledger to govern record ownership. In the future, subject to changes in the applicable regulatory landscape and the capabilities of market participants, tZERO may evolve its focus towards the advancement of digital securities, digital assets, and the integration of blockchain technology into them in other ways.

tZERO's businesses include the broker-dealer activities of its subsidiaries, tZERO ATS, LLC, SpeedRoute, LLC ("SpeedRoute"), and tZERO Markets, LLC. SpeedRoute provides connectivity to its registered broker-dealer clients to U.S. equity exchanges and off-exchange sources of liquidity. tZERO Markets, LLC offers a website, and in the future intends to offer a mobile application, that allows retail customers to conduct self-directed trading of digital securities. tZERO's remaining businesses include tZERO Crypto, Inc., a cryptocurrency wallet and exchange services business, and Verify Investor, LLC, an accredited investor verification company.

The businesses, products, and services that tZERO is pursuing or contemplating will require substantial additional funding, initially for technology development and regulatory compliance, as well as for working capital, marketing and sales, and other substantial costs of developing new products and businesses in emerging areas of technology. These costs have been and are expected to continue to be material, both to tZERO and to Overstock. See also "*Pelion Transaction Agreement*" below.

tZERO's Intellectual Property

tZERO has received certain patents that it views as critical to its success. In particular, in January 2019, it received a patent from the United States Patent and Trademark Office ("USPTO") for an order system that can integrate with conventional asset trading platforms and translate orders for "digital transaction items" (including securities, tokens, shares, cash and other assets) from broker-dealers into orders on a regulated venue which utilizes blockchain technology. In May 2019, tZERO also received a patent for a base layer technology that uses digital signatures to record and verify time-series data such as trades, executions and settlements, allowing low-latency systems, including traditional matching engines or private blockchain ledgers, to be anchored into public blockchain ledgers which are able to verify the existence of previous trades and simultaneously produce an auditable and immutable record of those transactions. These patents to date have not had any material effect on tZERO's business. tZERO believes these patents provide valuable functionality to regulated market participants involved in the trading of digital securities and will assist in protecting tZERO's proprietary technologies against trading solutions developed by competitors.

tZERO's Customers

tZERO ATS, LLC and SpeedRoute, which are tZERO's primary sources of revenue, are reliant upon a small group of broker-dealer subscribers and clients, respectively, for a large part of their revenue. See "Risk Factors—Additional Risks Relating to our tZERO Initiatives—*To date, SpeedRoute and tZERO ATS, LLC's revenues have come from a small number of major customers broker-dealer subscribers and clients, respectively, making SpeedRoute and tZERO ATS, LLC, and by extension tZERO, vulnerable to changes in the business and financial condition of, or demand for SpeedRoute's and tZERO ATS, LLC's services by, such subscriber or client.*"

tZERO's Competitors

We believe other organizations are or may be working to develop applications for distributed ledger or blockchain technologies or other novel technologies in the financial industry or capital markets that may be competitive with tZERO and its blockchain-focused subsidiaries. Although it is difficult to obtain reliable information about blockchain activities by companies that may be our competitors, they may include numerous entities including some that are operating trading venues offshore or otherwise structured to avoid aspects of U.S. regulation.

SpeedRoute, tZERO ATS, LLC, and tZERO Markets compete with a large number of broker-dealers, many of which are substantially larger and have substantially greater financial resources than SpeedRoute, tZERO ATS, LLC, tZERO Markets, tZERO or Overstock.

See "Risk Factors—Additional Risks Relating to our tZERO Initiatives."

Pelion Transaction Agreement

On January 25, 2021, we and Medici Ventures entered into a transaction agreement (the "Transaction Agreement") with Pelion MV GP, L.L.C. ("Pelion"), and Pelion, Inc., as guarantor, pursuant to which the parties agreed, among other things, that Medici Ventures will change its entity type (the "Entity Change") to become a Delaware limited partnership (the "Partnership") and that Pelion will become the sole general partner of the Partnership, and we (along with any other stockholders of Medici Ventures at the time of Entity Change), will become the limited partners of the Partnership, pursuant to a limited partnership agreement to be entered into at the time of the Entity Change. In preparation for the Entity Change, we converted (i) our outstanding intercompany debt owed to us by Medici Ventures into shares of common stock of Medici Ventures and (ii) our intercompany debt from tZERO, into tZERO outstanding common stock, leaving Medici Ventures with 44% of tZERO outstanding common stock and Overstock with 43%. Pursuant to the terms of the limited partnership agreement, we and any other limited partners will agree to make a capital commitment of \$44.6 million to the partnership in proportion to our equity interest in the Partnership, upon 10 business days' prior written notice, which contributions may be in installments. Following the closing of the transactions contemplated by the Transaction Agreement, Pelion will have sole authority and responsibility regarding investing decisions, appointing board members of the portfolio companies, and exercising all shareholder rights for assets Medici Ventures currently holds. Consummation of the transactions contemplated by the Transaction Agreement is subject to applicable regulatory approvals and other customary closing conditions. We expect the transactions contemplated by the Transaction Agreement to be completed within approximately three to six months from the date of the Transaction Agreement. See Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events for additional information.

Legal and Regulatory Matters

From time to time, we receive claims and become subject to regulatory investigations or other governmental actions, consumer protection, employment, intellectual property, and other commercial litigation related to the conduct of our business. We also prosecute lawsuits to enforce our legal rights. Regulatory investigations and other governmental actions as well as any litigation may be costly and time consuming and can divert our management and key personnel from our business operations. Regulatory investigations and other governmental actions as well as any such litigation may result in significant damages, associated costs, or equitable remedies relating to the operation of our business. Any such matters may materially harm our business, prospects, results of operations, financial condition, or cash flows.

These matters and other types of claims could result in legal expenses, fines, adverse judgments or settlements and increase the cost of doing business. They could also require us to change our business practices in expensive and significant ways. In addition, litigation could result in interpretations of the law that may limit our current or future business, require us to change our business practices, or otherwise increase our costs.

Additional litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, or to determine the validity and scope of the proprietary rights of others. Any litigation, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could materially harm our business.

For further information, see (see Item 1A—"Risk Factors") and the information set forth under Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 14—Commitments and Contingencies, *Legal proceedings and contingencies*, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Government Regulation

We are subject to a wide variety of laws, rules and regulations, some of which apply or may apply to us as a result of our Retail business, some of which apply or may apply to us as a result of our Medici or tZERO businesses, and others of which apply to us for other reasons, such as our status as a publicly held company or the places in which we sell certain types or amounts of products. Our Retail business is subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce, and other services we offer. Existing and future laws and regulations may result in increasing expense and may impede our growth. Applicable and potentially applicable regulations and laws include regulations and laws regarding taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, employment, import and export matters, information

reporting requirements, access to our services and facilities, the design and operation of websites, health and sanitation standards, the characteristics and quality of products and services, product labeling and unfair and deceptive trade practices.

Our efforts to expand our Retail business outside of the U.S. exposes us to foreign and additional U.S. laws and regulations, including but not limited to, laws and regulations relating to taxation, business licensing or certification requirements, advertising practices, online services, the use of cryptocurrency, the importation of specified or proscribed items, importation quotas, consumer protection, intellectual property rights, consumer and data protection, privacy, encryption, restrictions on pricing or discounts, and the U.S. Foreign Corrupt Practices Act and other applicable U.S. and foreign laws prohibiting corrupt payments to government officials and other third parties.

Our Medici and tZERO businesses are subject to general business regulations and laws, including some of those described above, but are also affected by a number of other laws and regulations, including but not limited to, laws and regulations relating to money transmitters and money services businesses, including the requirements of the Financial Crimes Enforcement Network of the U.S. Department of the Treasury ("FinCEN") and state requirements applicable to money transmission, cryptocurrencies, provisions of various securities laws and other laws and regulations governing broker-dealers, alternative trading systems and national securities exchanges, anti-money laundering requirements, know-your-customer requirements, record-keeping, reporting and capital and bonding requirements, and a variety of other matters. Blockchain and distributed ledger platforms are recent technological innovations, and the regulation of peer-to-peer digital assets and conventional securities, insofar as blockchain technologies are applied to conventional securities, is developing. In the U.S., the businesses that we are working to develop are or may be subject to a wide variety of complex statutes and rules, most of which were implemented prior to the development of these technologies, and it is sometimes unclear whether or how various statutes or regulations apply.

In addition, tZERO Markets is an SEC-registered broker-dealer and a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Securities Investor Protection Corporation ("SIPC") and is subject to regulation, examination, investigation and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and self-regulatory organizations with which it is registered or licensed or of which it becomes a member. As a result of the services in which tZERO Markets provides, including servicing retail customers, a number of these legal and regulatory requirements are new to tZERO's broker-dealer subsidiaries.

Furthermore, tZERO ATS, LLC operates the tZERO ATS and is, therefore, subject to Regulation ATS as well as other regulations, and partners with broker-dealers that are also subject to regulation by the SEC and FINRA and whose regulatory compliance may impact tZERO ATS, LLC. Regulation ATS establishes the regulatory framework for alternative trading systems that match buy and sell orders but are exempt from registering as a national exchange under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Regulation ATS subjects tZERO ATS, LLC to various rules and regulations, including, but not limited to, quarterly reporting obligations on Form ATS. The tZERO ATS facilitates the trading of three digital securities, our Series A-1 preferred stock, TZROP (defined below), and Aspen Digital, Inc.'s depository receipts for its common stock ("ASPD") and, in the future, is expected to support digital securities from other issuers. Secondary resales of these digital securities must be conducted in compliance with federal and state securities laws which may additionally impact tZERO ATS, LLC.

The joint venture that tZERO and BOX Digital announced in June 2018 is seeking regulatory approvals that would enable the parties to operate the Boston Security Token Exchange ("BSTX"), a national securities exchange facility to support trading in a type of digital security called a security token. BSTX will require approval from the SEC prior to beginning operations. The SEC originally published proposed rule changes relating to BSTX on October 11, 2019, soliciting public comments thereon. Following subsequent amendments and resubmissions of the proposed rule changes relating to BSTX, the SEC disapproved of the proposal on December 18, 2020. BSTX is reviewing the order by the SEC to determine whether to refile the proposed rule changes. Were it to seek approval and be approved for operation by the SEC in the future, as a national securities exchange facility, BSTX would be subject to provisions of the Exchange Act and other rules and regulations applicable to national securities exchanges that are different than those applicable to tZERO's current operations, including, but not limited to, periodic and special examinations by the SEC.

See Item 1A—"Risk Factors—Additional Risks Relating to our Medici Business" and "Additional Risks Relating to our tZERO Initiatives."

Human Capital Management

At December 31, 2020, we had approximately 1,750 full-time employees. We seasonally increase our workforce during our fourth quarter to handle increased workload in both our warehouse and customer service operations. We have never had a work stoppage and none of our employees are represented by a labor union. We consider our employee relations to be

good. Competition for qualified personnel in our industry is high, particularly for software engineers and other technical staff. Overstock places great value on its human capital management and knows its people are critical to driving the business to success. We focus on our human capital management in many ways including:

Diversity & Inclusion

We embrace diversity and collaboration in our workforce, our ways of thinking, and our decision-making. We know that fostering an inclusive culture delivers better business outcomes. Our commitments to improving diversity include 1) increasing the diversity of our team at all levels, 2) continuing real and meaningful gender and race dialogue within our company, 3) amplifying the voices of our underrepresented groups of employees, 4) fostering inclusion and safety within our walls, 5) expanding our company volunteer time off program to include efforts to combat gender and racial injustice, 6) continuing to condemn all forms of gender and racial discrimination and harassment, 7) encouraging our employees to vote by expanding our paid time off program, and 8) tracking and monitoring our progress. Among the many ways we demonstrate these commitments are through our hiring and development practices, flexible and working-parent-friendly programs, anti-discrimination policies, and efforts of our employee resource groups.

Through our commitments, actions, words, investments, and values, we promote a work environment that enables employees to feel safe to express their ideas and perspectives and feel they belong within our team.

Workforce Compensation & Pay Equity

The total rewards philosophy of Overstock and its subsidiaries is to create and maintain competitive programs that attract, motivate, develop, and retain employees based on the prevailing industry and geographic labor markets in those locations where the company does business. Competitive compensation programs consist of cash and non-cash compensation based on relevant pay factors designed to balance market competitiveness and cost containment to retain the human capital that enables the company to achieve business performance goals and objectives. Total rewards are designed to link the market competitiveness of each employee's compensation with overall Company performance, aligning employees' financial interests with the interests of the company.

Elements of our compensation package for all non-executive employees consists of base salary or wages, discretionary and non-discretionary short-term incentives to reward the achievement of behavioral goals and business objectives, and for eligible key contributors, long-term incentives to emphasize a more strategic alignment to support business performance.

Changes in the value of each employee's job are monitored annually and adjustments in base pay and short-term incentives are awarded based on a combination of employee performance to pre-determined goals and the Company's overall performance to broader financial and operational goals and objectives. We determine external market competitiveness by gathering salary information from professionally managed third party salary surveys and by determining pay for individual employees based on their skill level, experience, education, and any other relevant compensatory factors. We use salary market data to create pay structures with pay bands. We assign every job to a pay band by comparing market data to pay band midpoints. We balance internal pay equity with external pay equity to ensure compensation is fairly and equitably dispersed.

Management is committed to the proposition that the total rewards of every employee in pay and benefits are equitably distributed regardless of their race, gender, gender identity, sexual orientation, religion, national origin, color, veteran status, age, or disability. Furthermore, to ensure the commitment to pay equity is aggressively pursued, we define appropriate metrics from which progress can be tracked. The Human Resources Department prepares periodic reports for senior leadership and the Board of Directors to report progress toward equitable pay, promotions, and opportunities.

We offer all employees the ability to save for retirement by matching dollar for dollar up to six percent of their savings into a qualified savings plan up to certain pre-determined limits set by the IRS. For highly compensated employees who meet the salary threshold set by the IRS and who choose to continue pre-tax savings above the qualified savings plan limits, eligible employees can participate in a non-qualified tax deferred savings plan to save for future needs.

Our intention is to offer every employee fair and equitable cash compensation and competitive non-cash benefits to help employees manage their health and wellness and the health and wellness of their families.

Talent Acquisition & Retention

We work diligently to attract the best talent from a diverse range of sources in order to meet the current and future demands of our business. We have established relationships with universities, professional associations, and industry groups to proactively attract talent. We look for ways to improve our recruiting process regularly and ensure each applicant feels welcome and comfortable through the recruiting process. Our panel interviews are set up with a diverse group of interviewers to ensure for the best candidate experience.

We have a strong employee value proposition that leverages our unique culture, collaborative working environment, shared sense of purpose, desire to do the right thing and innovative work to attract talent to our company. We empower employees to find new and better ways of doing things and the scale of our business means that careers can develop in exciting and unexpected directions. To ensure the long-term continuity of our business, we actively manage the development of existing talent to fill the roles that are most critical to the on-going success of our Company.

In 2020, we hired 201 new employees, excluding our customer service department, and 682 new customer service employees. We have an average tenure of five years, with an average tenure of three years in customer service.

Employee Engagement & Wellness

Creating a culture where all employees feel supported and valued is a key part of our corporate mission. The ongoing COVID-19 pandemic has led to unique challenges, and we are striving to ensure the health, safety, and general well-being of our employees as we work through these pandemic-related challenges. We continue to evolve our programs to meet our employees' health and wellness needs, which we believe is essential to attract and retain employees of the highest caliber, and we offer a competitive benefits package focused on fostering work/life integration. We offer comprehensive benefit options to our employees and their families to live healthier and more secure lives. Some examples are medical insurance, prescription drug benefits, dental insurance, vision insurance, hospital indemnity insurance, accident insurance, critical illness insurance, life insurance, disability insurance, health savings accounts, flexible spending accounts, legal insurance, auto/home insurance, identity theft insurance and pet insurance, and a generous 401(k) matching program. In addition to these more traditional benefits offerings we also have programs that encourage better work/life balance. These benefits include an onsite medical clinic, fitness center, and child daycare at our largest facility, employee assistance program (EAP) support, and a 9/80 flexible work schedule. We offer paid parental leave for all new parents who have been with the Company for at least a year to ensure they are able to adjust to a new work/life balance. We also offer a caregiver benefit to parents who need to travel for work, which allows employees who have a child under the age of two to travel with the employee. We will also be exploring more remote working options in the coming months as we begin to return to the office in 2021.

Development & Training

We recognize how important it is for our employees to develop and progress in their careers. We provide a variety of resources to help our employees grow in their current roles and build new skills, including online development resources from a competency model development library to hundreds of online courses in our learning management system. We emphasize individual development planning as part of our annual goal setting process, and offer mentoring programs, along with change management and project management upskilling opportunities. We have leadership development resources for all leaders across the organization and continue to build tools for leaders to develop their teams on the job and in roles to create new opportunities to learn and grow. We also encourage certification, higher education, and continuing professional education by subsidizing these opportunities for our employees.

We have an annual required training for all employees on the topic of Diversity and Inclusion. This program is designed to strengthen our organization by promoting the inclusion of various viewpoints from the natural talents and abilities of our people regardless of race, sexual orientation, gender, religion, or other differences.

Company Culture

We attribute the high levels of employee engagement and retention to our corporate culture. The work environment is often described as results-driven, inclusive, generative, and collaborative. Our corporate vision, mission, values, leadership principles, and employee qualities help define who we are, where we are going, and the behavior we expect of the Company and our employees in order to be successful in the organization.

In order to fulfill our vision of "Dream Homes for All" and the long-term financial goals of the Company, we focus on our mission of customer focus, our leading technology capabilities, and creating enterprise value. Our values articulate our commitment to an inclusive, outcome-driven, and positive work environment, and embody our generative culture and spirit. Our five leadership principles guide the interactions of our leaders with colleagues, creating a psychologically safe environment for productive and collaborative exchanges for improved outcomes. We clearly define, look for, measure, and develop eight qualities in our employees so that we all become empowered to be effective and valuable contributors in the organization. This culture allows us to attract, develop, engage, and retain highly qualified employees for each role in the organization. Our goal is to have every employee feel they are a valued member of a winning team, doing meaningful work, in an environment of trust. The Company regularly reinforces this culture throughout the entire employee experience.

Oversight & Governance

Our focus on human capital management has been a hallmark of the Company for years, understanding that people truly are a company's most valuable asset, and that culture is an organization's ultimate competitive advantage. Our 401(k) committee meets quarterly to review the plan and determine if any changes need to be made to the portfolio, in order to best serve our employees. Our board of directors dedicates ample time in quarterly meetings with management to discuss trends in hiring, engagement, and attrition. Our Compensation Committee is actively involved in determining competitive compensation strategies to help us continually improve in attracting, developing, and retaining top talent for our Company.

Executive Officers of the Registrant

The following persons were executive officers of Overstock as of February 26, 2021:

Executive Officers	Age	Position
Mark Baker	51	Chief Product Officer
Ron Hilton	50	Chief Sourcing & Operations Officer
Jonathan E. Johnson III	54	Chief Executive Officer, President of Medici Ventures, and Director
Adrienne Lee	43	Chief Financial Officer
Carter Lee	51	Chief Administrative Officer and Acting Chief Marketing Officer
Krista Mathews	35	Chief Customer Officer
E. Glen Nickle	56	Chief Legal Officer and Corporate Secretary
Dave Nielsen	51	President
Meghan Tuohig	40	Chief People Officer
Joel Weight	46	Chief Technology Officer

Mr. Mark Baker was appointed as our Chief Product Officer in February 2020. Mr. Baker joined Overstock in 2011 and previously served as Vice President of Product and Technology from December 2018 to February 2020, Senior Director of Software Development from January 2017 to August 2018, Director of Software Development from September 2015 to January 2017, and Director of Application Development from October 2013 to September 2015, as well as various other positions.

Mr. Ron Hilton has served as our Chief Sourcing and Operations Officer since May 2019, and previously served as our Vice President of Sourcing from September 2016 to May 2019, having returned to Overstock after serving for almost two years as the President of Endygo from 2015 to 2016. Mr. Hilton originally joined Overstock in November 2009 and previously served as our Vice President of Merchandising, General Merchandise Manager, and Divisional Merchandise Manager.

Mr. Jonathan E. Johnson III has served as Chief Executive Officer since September 2019, President of Medici Ventures since August 2016, and as a Director since 2013. Mr. Johnson also served as Interim Chief Executive Officer from August 2019 to September 2019 and Chairman of the Board of Directors from 2014 through 2017. Mr. Johnson joined Overstock in 2002 and previously served as our President, Executive Vice Chairman, Acting Chief Executive Officer, Senior Vice President, and General Counsel, as well as various other positions.

Ms. Adrienne Lee joined Overstock as our Chief Financial Officer in March 2020. Prior to joining Overstock, Ms. Lee served as Senior Vice President and CFO of North America RAC from December 2018 to March 2020 and Vice President - Global Financial Planning and Analysis and Corporate Development from March 2014 to December 2018 at The Hertz Corporation.

Mr. Carter Lee was appointed as our Acting Chief Marketing Officer in August 2020 and has served as our Chief Administrative Officer since August 2018. Mr. Lee joined Overstock in 2001 and previously served as Senior Vice President of Technology and People Care from February 2015 to July 2018, Vice President of Technology Operations from January 2008 to January 2015, and held other roles including Director of Internal Systems.

Ms. Krista Mathews was appointed as our Chief Customer Officer in August 2019. Ms. Mathews joined Overstock in 2017 and previously served as Vice President of Private Label and Partner Management from August 2018 to August 2019 and Category Director from October 2017 to July 2018. Prior to joining Overstock, Ms. Mathews served as Sr. Buyer, Books & Magazines at Target Corporation from October 2014 to September 2017.

Mr. E. Glen Nickle has served as our Chief Legal Officer and Corporate Secretary since February 2021, and previously served as Vice President, Legal and General Counsel from July 2016 to February 2021. Mr. Nickle started with Overstock in May 2010 as Associate General Counsel. Before joining Overstock, Mr. Nickle was Associate General Counsel at ICON Health & Fitness, Inc.

Mr. Dave Nielsen has served as the President of Retail since May 2019, and previously served as our Chief Sourcing and Operations Officer from October 2018 to May 2019, having returned to Overstock after serving as the Chief Executive Officer and board member for Global Access from July 2015 to October 2018. Mr. Nielsen originally joined Overstock in 2009 and previously served as our Senior Vice President of Business Development, Senior Vice President and General Merchandise Manager and Co-President.

Ms. Meghan Tuohig has served as our Chief People Officer since February 2019. Ms. Tuohig joined Overstock in 2004 and previously served as Vice President of People Care from January 2015 to February 2019, Director of Loyalty from August 2013 to January 2015, and Director of Collaborative Systems from April 2012 to July 2013, as well as various other positions.

Mr. Joel Weight was appointed as our Chief Technology Officer in February 2020. Mr. Weight joined Overstock in 2011 and previously served as Chief Operations Officer of Medici Ventures from January 2019 to February 2020, Chief Technology Officer of Medici Ventures from October 2016 to January 2019, and Lead Architect and various other Architect roles from October 2013 to October 2016, as well as various other positions.

Available Information

We make our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, available free of charge through the Investor Relations section of our main website, www.overstock.com, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet Website and the information contained therein or connected thereto are not a part of or incorporated into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Any investment in our securities involves a high degree of risk. Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should read all of the risk factors below carefully, and in any reports we file with the SEC after we file this Form 10-K, before making any decision to acquire or hold our securities. The occurrence of any of these risks could harm our business, the trading price of our securities could decline, and investors could lose part or all of their investment.

Holders of, and potential investors in, our Series A-1 Preferred stock should also read "Additional Risks Related Primarily to our Series A-1 Preferred stock," and "Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock," below.

Holders of, and potential investors in, our Series B Preferred stock should also read "Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock," below.

Holders of, and potential investors in, tZROP, issued by tZERO Group, Inc. should also read "Additional Risks Related to tZROP," below.

Summary

The following summarizes some of the key risks and uncertainties that could materially adversely affect us. You should read this summary together with the more detailed description of each risk factor contained below.

General Business Risks

- The duration and extent of the COVID-19 pandemic remains unknown.
- Our ability to maintain increased sales volumes, attract new customers, and convert new customers into repeat customers.
- We may not be able to close the transactions contemplated by the transaction agreement with Pelion, and even if we do, Pelion may not be successful in managing the limited partnership.
- Tariffs or other governmental measures that increase the effective price of various products that we or our partners import into the United States may reduce our sales or profitability.
- We depend on third-party companies to perform functions critical to our business.
- Ongoing shareholder class action lawsuits and shareholder derivative lawsuits may divert management attention and require significant time and expense to resolve.
- Ongoing regulatory investigations and how they are ultimately resolved may impact our operations, future plans and liquidity.
- Our insurance policy costs could increase.
- We may be unable to maintain profitability and/or positive cash flow from operations.
- We may be unable to retain key personnel, or attract and retain additional key personnel.
- We are subject to cyber security risks and risks of data loss or other security breaches.
- Future sales of common or preferred stock could depress our stock price.
- Disclosures about our evolving business model, including commencement or discontinuance of various products and/or services offerings, may create stock volatility and uncertainty about our future performance.
- We may be unable to maintain a workforce with size and skills commensurate with our growing sales volumes.
- We may be unable to protect our proprietary technology and to obtain trademark protection for our marks.
- Our international business efforts could adversely affect us.

tZERO Business Risks

- tZERO has a limited operating history and has not yet generated revenue from any commercially available blockchain-based applications.
- The technology on which tZERO and its subsidiaries rely for its operations may not function properly.
- The three subsidiaries of tZERO that currently generate substantially all of tZERO's revenues, are subject to extensive regulation as registered broker-dealers.

- tZERO's and its subsidiaries' businesses are subject to complex and evolving U.S. and foreign laws and regulations regarding privacy, technology, data protection, and other matters.
- The development and operation of tZERO's business will likely require technology and intellectual property rights.
- tZERO Crypto is subject to extensive regulation.
- tZERO's financial service businesses rely on third parties and their systems for a variety of services.

Digital Securities Development Risks

- Applicable laws and regulations may limit the manner in which blockchain technology can be used in tZERO's business.
- Regulatory authorities may not permit the trading of certain digital securities or involvement by market participants in their trading.
- Digital securities may not be widely adopted and may have limited users.

Blockchain Technology and Blockchain Industry Risks

- The application of blockchain technologies to existing legal and regulatory regimes is uncertain.
- The further development and acceptance of blockchain technologies, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate.
- The prices of peer-to-peer digital assets and digital securities have historically been extremely volatile.

Retail Business Risks

- Our business depends on the Internet, our infrastructure and transaction-processing systems.
- We rely upon paid and unpaid natural search engines to rank our product offerings.
- We face intense competition and may not be able to compete successfully against existing or future competitors.
- Our operations are impacted by economic factors, including our increasing exposure to the U.S. housing industry and the potential for a decrease in consumer spending.
- We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, and for proper labeling of products.
- Our decision to accept and hold cryptocurrency, such as bitcoin, may subject us to exchange risk and additional tax and regulatory requirements.

Risks Related Primarily to our Series A-1 Preferred Stock

- Our Series A-1 Preferred stock may only be sold through the tZERO ATS.
- If we elect to repurchase the Series A-1 Preferred stock on the tZERO ATS, it could have a material adverse effect on the liquidity in, and trading prices of, the Series A-1 Preferred stock.
- We may have the right to convert the outstanding shares of Series A-1 Preferred stock into shares of Series B Preferred stock at any time.
- tZERO ATS and tZERO are involved in ongoing discussions with and are subject to investigation by regulatory authorities.

Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock

- A share of Series A-1 Preferred stock and/or Series B Preferred stock may have a substantially lower market value than a share of our common stock.
- Holders of Series A-1 Preferred stock and Series B Preferred stock have no rights with respect to our common stock.

Risks Relating to Our Company and its Operational, Litigation and Regulatory Environment

Our ability to maintain the substantial increase in sales we have experienced since the onset of the COVID-19 pandemic is uncertain.

We have seen a substantial increase in sales from newly acquired customers and existing customers on our online retail website due in large part to the COVID-19 pandemic, resulting from home confinement mandates from state and local governments and closures of many brick-and-mortar stores. The rapid increase in sales volume resulted in a reduction of certain inventory, shipment delays, and delays in responding to customer service issues with a corresponding reduction in customer satisfaction. The extent to which our increased sales volume will continue or newly acquired customers will convert into repeat customers as vaccinations become more readily available and brick-and-mortar stores continue to re-open is uncertain. Further, this uncertainty could result in a volatility of our stock price.

The duration and extent to which the COVID-19 pandemic might impact our results of operations and overall financial performance remains uncertain.

On March 11, 2020, the World Health Organization ("WHO") declared COVID-19 as a pandemic. This widespread health crisis has profoundly and adversely affected the world economy and employment levels. It has also resulted in new immigration policies and new regulations on pricing and shipment of certain goods. The duration and extent of the impact from the COVID-19 pandemic is currently unknown and difficult to predict, but could result in a loss of new and existing workforce, including key personnel, due to adverse health effects of the disease, limitations on our ability to hire talent abroad, a lack of consumer demand for the services and products we and our subsidiaries offer, an inability to operate our warehouses or other key locations, such as data centers, at full capacity, and could result in an increased risk of penalties or liabilities associated with new policies and regulations, and could adversely affect our business and financial results.

Tariffs, the spread of illness, or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers or fulfillment partners import into the United States could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China and other countries. The United States imposed tariffs on goods from China in 2019 which adversely impacted our revenues. Further, the spread of the COVID-19 virus (also known as coronavirus) has been declared a "pandemic" by the World Health Organization. If the United States imposes additional tariffs, or if a disease or illness such as COVID-19 spreads and such measures or events directly or indirectly increase the price of imported products sold on our Website, or limit our ability to access products sold on our Website, the increased prices and/or supply chain challenges could have a material adverse effect on our financial results, business and prospects. Further, the broader global effects of potentially reduced consumer confidence and spending related to COVID-19 could also have a negative effect on our overall business.

The continuing impacts of COVID-19 could have technology and security consequences, as well as employee fatigue, and could negatively impact our operations.

The spread of COVID-19 has resulted in many of our employees and contractors being forced to work remotely. Additional risks are inherent when employees and contractors work remotely, including risks that third-party internet and phone service providers may not provide adequate services for employees and contractors to perform their responsibilities, risks that hardware, software, or other technological problems or failures could prevent employees or contractors from performing their responsibilities and could take an excessive amount of time to resolve and risks that employees and contractors may not be trained as effectively or monitored as closely from remote locations, creating greater risks for the security of confidential information. Additionally, employees may become fatigued by the work-from-home setting and may become less productive or look for employment that is not work-from-home. Any such occurrences could have a material negative impact on the business.

We depend on third-party companies to perform functions critical to our business, and any failure or increased cost on their part could have a material adverse effect on our business.

We depend on third-party companies, including third-party carriers and a large number of independent fulfillment partners whose products we offer for sale on our Website, to perform functions critical to our ability to deliver products and services to our customers on time and at a reasonable cost. We depend on our carriers and fulfillment partners to perform traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers and delivering purchased merchandise on a timely and cost-effective basis. We also depend on the delivery and product assembly services that we and they utilize, on the payment processors that facilitate our customers' payments for their purchases, and on other third parties over which we have no control, for the operation of our business. Difficulties with any of our significant fulfillment partners or third-party carriers, delivery or product assembly services, payment processors or other third parties involved in our business, regardless of the reason, could have a material adverse effect on our financial results, business and prospects.

We and certain of our former and current officers and directors have been named in shareholder class action lawsuits and shareholder derivative lawsuits, which could require significant additional management time and attention, result in significant additional legal expenses or result in government enforcement actions.

We and certain of our former and current officers and directors have been named in shareholder class action lawsuits and shareholder derivative lawsuits, and may become subject to further litigation, government investigations or proceedings arising therefrom. The pending litigation and any future litigation, investigations or other actions that may be filed or initiated against us or our current or former officers or directors may be time consuming and expensive. We cannot predict what losses, if any, we may incur in these litigation matters, and expect to incur significant legal expenditures in defending and responding to these litigation matters.

Any such legal proceedings, if decided adversely to us, could result in significant monetary damages, penalties and reputational harm, and will likely involve significant defense and other costs. We have entered into indemnification agreements with each of our directors and certain of our officers, requiring us to indemnify them. Further, our insurance may not cover all claims that have been or may be brought against us, and insurance coverage may not continue to be available to us at a reasonable cost. As a result, we may be exposed to substantial uninsured or under-insured liabilities, including pursuant to our indemnification obligations, which could materially adversely affect our business, prospects, results of operations and financial condition.

We and tZERO are both the subjects of, and parties to, investigations by the SEC Division of Enforcement, which has required us to expend significant financial and legal resources. The resolution of those investigations may have a material adverse effect on our business, financial condition, results of operations and cash flows.

As previously disclosed, in February 2018, the Division of Enforcement of the SEC informed tZERO, and subsequently informed us, that it is conducting an investigation and requested that we and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering in connection with its investigation. In December 2018, we received a follow-up request from the SEC in connection with its investigation relating to GSR Capital Ltd., a Cayman Islands exempted company ("GSR"). In October 2019, we received a subpoena from the SEC requiring us to produce documents and other information related to the Series A-1 Preferred stock dividend we announced to stockholders in June 2019 (the "Dividend") and requesting 10b5-1 plans entered into by certain officers and directors. In December 2019, we received a subpoena from the SEC requesting documents related to the GSR transaction and the alternative trading system run by tZERO ATS, LLC. Also, in December 2019, we received a subpoena from the SEC requesting our insider trading policies as well as certain employment and consulting agreements. We have also previously received requests from the SEC regarding GSR and our communications with our former Chief Executive Officer and Director, Patrick Byrne, and the matters referenced in the December 2019 subpoenas. In May 2020, we received a subpoena from the SEC requesting additional data related to the ATS. In January 2021, we received a subpoena from the SEC requesting information regarding our Retail guidance in 2019 and certain communications with current and former executives, board members, and investors. We are cooperating with the SEC's investigation, have provided documents requested in voluntary requests and the 2019 and 2020 subpoenas, and continue to provide documents requested in the 2021 subpoena.

Although we believe that we have fully complied with all relevant laws and regulations, there can be no assurance that the SEC will not commence an enforcement action against us or members of our management, or as to the ultimate resolution of any enforcement action that the SEC may decide to bring. Under applicable law, the SEC has the ability to impose significant sanctions on companies and individuals who are found to have violated the provisions of applicable federal securities laws, including cease and desist orders, civil money penalties, and barring individuals from serving as directors or officers of public companies. We have expended significant financial and legal resources responding to the SEC subpoena and such responses have required a significant amount of the time and attention of our senior management and personnel. Defending any enforcement action brought by the SEC against us or members of our management would involve further significant expenditures and the resolution of any such enforcement action could have a material adverse effect on our business, financial condition, results of operations and cash flows. Additionally, the outcome of any investigation related to the activities of tZERO could result in negative publicity for tZERO or us or limit the products which tZERO may be able to offer, which may have an adverse effect on the current and future business ventures of tZERO or us.

Our D&O insurance policy cost could substantially increase, through increased self-retention amounts and/or premium increases, and coverage under our policy could fail to adequately protect us against liability for conduct of our directors and officers.

We carry directors and officers liability insurance (D&O insurance) for losses and advancement of defense costs in the event legal actions are brought against our directors and officers for alleged wrongful acts in their capacity as directors or officers. In October 2019, our annual D&O insurance policy costs increased significantly, as did our self-insured-retention amounts; further, more exclusions were added to our insurance coverage. Although our D&O insurance policy costs and self-insured retention amounts were reduced in 2020, they did not return to pre-October 2019 levels. As such, our D&O insurance may not be adequate to fully protect the company against liability for the conduct of its directors and officers.

If the costs of maintaining adequate insurance coverage increases significantly in the future, our operating results could be materially adversely affected.

We have a history of significant losses. If we do not maintain profitability and / or positive cash flow from operations, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so.

We have a history of significant losses in years leading up to 2020. At December 31, 2019 our accumulated deficit was \$580.4 million. Although our financial results improved in 2020, we may be unable to maintain profitability. Any efforts to reduce costs in the future may adversely affect our business operations. If we are unable to successfully manage our business while reducing our expenses, our ability to continue in business could depend on our ability to raise sufficient additional capital, obtain sufficient financing, or sell or otherwise monetize significant assets such as our corporate headquarters. Additionally, we may not be able to raise capital on acceptable terms or at all. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

Changes in management roles and responsibilities, the loss of key personnel, or any inability to attract and retain additional personnel could affect our ability to successfully grow our business.

Our performance is substantially dependent on the continued services and on the performance of our senior management and other key personnel. Our performance also depends on our ability to retain and motivate our officers and key employees. As more businesses are allowing employees to work-from-home, the job market has expanded and we are competing with businesses in other locations and states to attract and retain key employees. Some key employees may also leave to work for businesses that have declared they will not return to the office. The loss of the services of key employees for any reason, could harm our business. Our future success depends on our ability to identify, attract, hire, train, retain and motivate highly-skilled personnel. Our failure to attract and retain the necessary personnel could have a material adverse effect on our financial results, business and prospects.

We are subject to cyber security risks and risks of data loss or other security breaches.

Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. We have developed certain software products to assist with the operation and management of our Retail business which could contain flaws or vulnerabilities that could present cyber security-related risks, data loss, other security breaches, or damage to our business, our suppliers, or our customers. We have been subjected to a variety of cyber-attacks, which have increased in number and variety over time. We believe our systems are probed by potential hackers virtually 24/7, and we expect the problem will continue to grow worse over time. Cyber-attacks may target us, our customers, our suppliers, banks, credit card processors, delivery services, e-commerce in general or the communication infrastructure on which we depend. Any flaws or vulnerabilities in the software we created or technologies designed to prevent attacks on our systems and other third-party systems, compromise of our security, data breaches, malfunctions, or errors, could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, any of which could have a material adverse effect on our financial results and business. Moreover, any insurance coverage we may carry may be inadequate to cover the expenses and other potential financial exposure we could face as a result of a cyber-attack or data breach.

We are subject to the risk of possibly becoming an investment company under the Investment Company Act.

The Investment Company Act regulates certain companies that invest in, hold or trade securities. Primarily as a result of a portion of our assets consisting of minority investment positions, we are subject to the risk of inadvertently becoming an investment company. Because registration under the Investment Company Act would make it impractical for us to operate our business, we need to avoid becoming subject to the registration requirements of the Investment Company Act. To do so, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions and/or strategic initiatives due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the value of certain of our holdings or adverse developments with respect to our ownership of certain of our subsidiaries, could result in us inadvertently becoming an investment company. If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company. If it were established that we were an investment company, it would have a material adverse effect on our business and financial operations and our ability to continue our business.

We have an evolving business model, which increases the complexity of our businesses.

In prior years we added additional types of services and product offerings and in some cases, we modified or discontinued those offerings, and in some cases have re-launched offerings we had previously terminated. We may continue to try to offer additional types of products or services, and we do not know whether any of them will be successful. From time to time we have also modified aspects of our business model relating to our product mix and the mix of direct/partner sourcing of the products we offer. In addition, we continue to experiment with new technologies to enhance the customer experience and iterate on delivery of new features. The additions and modifications to our business have increased the complexity of our business and impacted our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Further, our efforts to promote a culture of innovation amongst our technologists in an attempt to stay ahead of the competition may result in the introduction of technologies that are less mature or stable which could cause problems in our website or back-end logistics systems. Future additions to or modifications of our business are likely to have similar effects. Further, any new business, technology, or website we launch that is not favorably received by consumers could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects.

We may be required to recognize impairment losses or allowances for bad debt relating to our equity interests in or creditor relationships with startup businesses.

We hold minority interests and promissory notes in several companies that are in the startup or development stages. Minority interests are inherently risky because we may not have the ability to influence business decisions. Further, these interests are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages, unproven, and may never materialize. These companies may abandon, modify, or alter their product and service mix and overall strategy whether due to COVID-19 or otherwise. Additionally, since these interests are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. Furthermore, the economic impact of the COVID-19 pandemic may limit the ability for these entities to raise capital in the future. Furthermore, we have no assurance that the technology or products of companies we have funded would be successful, even if they were brought to market. We have previously recognized impairment losses or made allowances for bad debt related to these equity interests and may in the future recognize additional impairment losses or make allowances for bad debt related to these interests. Any such impairment losses or allowances for bad debt could be material and could have a material adverse effect on our financial results and business.

The size or skills of our workforce may not be adequate to keep up with growing sales volumes and needs of our Retail business at our current growth rate.

Our Retail business experienced a rapid increase in sales volume in 2020. We have been and are currently growing the workforce to accommodate the increased demand and growing needs of our Retail business, and any insufficiency in the size of our workforce or any insufficiency of certain required skills of our workforce, could prevent us from keeping up with growing demands and needs of the business, or engaging in or executing certain business initiatives effectively, which could have a material adverse effect on our financial results, business and prospects.

Our ownership of less than 100% of our subsidiaries may cause conflicts of interest.

Our wholly-owned subsidiary Medici Ventures owns approximately 80% of the outstanding common stock of tZERO, and tZERO employees, former employees and others own the balance of the shares. tZERO has issued employee stock options that may further dilute our ownership interest. In addition, tZERO may in the future engage in capital raising activities that could further dilute our ownership interest. Medici Ventures and tZERO also issued employee stock options and restricted stock units that could result in the dilution of our ownership interest in Medici Ventures, and tZERO in the future. The boards of directors of tZERO and Medici Ventures must consider the interests of all of their stockholders, and the interests of the other stockholders may differ from our interests. Any significant divergence between our interests and the interests of other stockholders, a significant portion of whom are also likely to be employees of our subsidiaries, could result in disagreements regarding business matters and could have an adverse effect on employee morale and on our business.

Further, Medici Ventures and tZERO have granted compensatory options and restricted stock units under their respective equity plans and warrants have also been sold to purchase Medici Ventures common stock. If all of the currently outstanding options, restricted stock units, and warrants were vested and exercised, our ownership of Medici Ventures and tZERO would be reduced.

We are exploring strategic initiatives, and decisions we make could have material adverse effects on our business and the market price of our common stock.

We have been and are currently exploring certain strategic initiatives, and decisions we make could change our business fundamentally and increase the risks and uncertainties of our business substantially. There can be no assurance that we will pursue or consummate any strategic transaction or, if consummated, that any such transaction will ultimately be favorable to us or our stockholders. Any such transaction could materially adversely affect our business and financial results.

Strategic relationships, joint ventures, purchases of strategic interests in other companies and acquisitions of other companies involve numerous risks, including increased regulatory and integration risks and may require additional capital investment.

We have developed strategic relationships, entered into joint ventures, purchased strategic interests in other companies, and acquired other companies, and we expect to pursue and engage in similar types of activities in the future to support our Retail operations. Each of these types of business transactions involve numerous risks, including difficulties in the evaluation of business opportunities and risks, including regulatory and integration risks, as well as difficulties in the assimilation of acquired operations and products. These types of transactions can also result in the diversion of management's attention from other business matters, employee retention issues, and the risk of liability for liabilities of acquired companies. We may not be able to successfully integrate businesses, operations, personnel, services, products or other assets that we have acquired or may acquire in the future.

Further, acquisitions may also create a need for additional accounting, tax, compliance, documentation, risk management and internal control procedures, and may require us to hire additional personnel to implement, perform and/or monitor such procedures. To the extent our procedures are not adequate to appropriately implement, perform and/or monitor all necessary procedures relating to any new or expanded business, we could be exposed to a material loss or regulatory sanction. We may also recognize impairment charges as a result of future acquisitions. In addition, we may be unable to sell or otherwise monetize any of the interests or companies or other assets or rights we have acquired or may acquire in the future. We also may be unable to maintain our strategic relationships, including those with joint venture partners, or develop new strategic relationships. The occurrence of any of the foregoing which could have a material adverse effect on our financial results, business and prospects.

We have significant deferred tax assets, and we may not be able to realize these assets in the future.

We have established a valuation allowance for our net deferred tax assets, primarily due to realized losses and uncertainty regarding our future taxable income. In addition, the transfer of ownership of a significant portion of our outstanding shares of common or preferred stock in the public market or otherwise, by us or by a significant stockholder, within a three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income. Determining whether a valuation allowance for deferred tax assets is appropriate requires significant judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. We intend to maintain a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances.

We are currently subject to claims that we have infringed intellectual property rights of third parties and may be subjected to additional infringement claims in the future.

We are currently and may in the future be subject to claims that we have infringed the intellectual property rights of others, by offering allegedly infringing products or otherwise. We have contested and expect to continue to contest claims we consider unfounded rather than settling such claims, even when we expect the costs of contesting the claims to exceed the cost of settlement. Any claims may result in significant expenditure of our financial and managerial resources and may result in us making significant damages or settlement payments or changes to our business. We could be prohibited from using software or business processes, or required to obtain licenses from third parties, which could be expensive or unavailable. Any such difficulties could have a material adverse effect on our financial results, business and prospects.

Risks related to software developed by our Medici Ventures businesses could contain flaws or vulnerabilities and expose us or Medici Ventures' customers to cyber security risks and risks of data loss, other security breaches, or damages that could negatively impact our business.

Our Medici Ventures businesses offer certain products and services, which include the development and sale of certain software products which could contain flaws or vulnerabilities that could present cyber security-related risks, data loss, other security breaches, or damages to our own business or our customers. Any flaws or vulnerabilities in the software developed by our Medici Ventures businesses and any data breaches, cyber security breaches, malfunctions, or errors could result in a loss of

opportunity, damages, or an improper or illegal use of ours or our customer's data and could expose our business to a risk of loss and could result in claims, fines, penalties, and litigation. Any flaw, vulnerability, or compromise of our Medici Ventures business software or security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to reputation, and a loss of confidence in our business, any of which could have a material adverse effect on our financial results and business.

We may be unable to protect our proprietary technology and to obtain trademark protection for our marks.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates, and others to establish and protect our proprietary rights, including the law pertaining to trade secrets. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property or trade secrets without authorization. In addition, we cannot ensure that others will not independently develop similar intellectual property. Third parties have in the past recruited and may in the future recruit our employees who have had access to our proprietary technologies, processes and operations. These recruiting efforts expose us to the risk that such employees and those hiring them will misappropriate and exploit our intellectual property and trade secrets. We may be unable to protect against such risks, in the United States or elsewhere, which could have a material adverse effect on our business. Although we have registered and are pursuing the registration of our key trademarks in the United States and some other countries, some of our trade names may not be eligible to receive registered trademark protection. In addition, effective trademark protection may not be available or we may not seek protection in every country in which we market or sell our products and services, including in the United States. Our competitors might adopt product or service marks like our marks or might try to prevent us from using our marks. Any claim by another party against us, or customer confusion related to our trademarks, or our failure to obtain trademark registration, could have a material adverse effect on our financial results, business and prospects.

If one or more states successfully asserts that we are liable for the collection of sales or other taxes for periods prior to the Supreme Court's 2018 decision in South Dakota v. Wayfair, our business could be harmed.

Prior to the Supreme Court's 2018 decision in South Dakota v. Wayfair, in which we were a named party, to overturn its 1992 decision in Quill v. North Dakota, we generally did not collect sales or other similar taxes on sales of goods into states where we had no duty to do so under Quill. Some jurisdictions where we did not collect sales or other taxes have asserted that we should have done so, and other jurisdictions could in the future assert that we should have collected sales taxes or other taxes when we did not, which could have a material adverse effect on our business, regardless of the ultimate outcome.

Our international business efforts could adversely affect us.

We sell products in international markets. International sales and transactions are subject to inherent risks and challenges that could adversely affect us, including:

- the need to develop new supplier and manufacturer relationships;
- the need to comply with additional U.S. and foreign laws and regulations;
- changes in international laws, regulatory requirements, taxes and tariffs;
- our limited experience with different local cultures and standards;
- geopolitical events, such as war and terrorist attacks;
- the risk that the products we offer may not appeal to customers in international markets; and
- the additional resources and management attention required for such expansion.

Our international business could expose us to penalties for non-compliance with laws applicable to international business and trade, including the U.S. Foreign Corrupt Practices Act, which could have a material adverse effect on our business. Foreign data protection, privacy and other laws and regulations are different and often more restrictive than those in the United States. Compliance with such laws and regulations will result in additional costs and may necessitate changes to our business practices, which may adversely affect our business. To the extent that we make purchases or sales denominated in foreign currencies, we would have foreign currency risks, which could have a material adverse effect on our financial results, business and prospects.

Additional Risks Relating to our tZERO Initiatives

The duration and extent to which the COVID-19 pandemic might impact our results of operations and overall financial performance remains uncertain.

The macroeconomic impacts of COVID-19 continue to be significant, evolving and unpredictable and, as a result, tZERO may be subject to specific negative impacts. Potential negative impacts of the COVID-19 pandemic on tZERO may

include stress on tZERO's broker-dealer subsidiaries' and tZERO Crypto's technology due to increased trading volatility and increases in attempted cyber-attacks. See also "*The continuing spread of COVID-19 could have technology and security consequences, as well as employee fatigue, and could negatively impact our operations.*" above.

Further, the continued global economic impacts of COVID-19 could also negatively affect tZERO's business. Such impacts may include a reduced willingness by potential securities issuers to pursue capital raising transactions or seek secondary liquidity for existing capital (thereby reducing tZERO's ability to commercialize the tZERO Technology Stack) or a decline in investor appetite or available capital for trading in securities, including securities that use the tZERO Technology Stack and trade on the tZERO ATS, or bearer digital assets such as cryptocurrencies.

At this point, while the COVID-19 pandemic may have an adverse impact on tZERO's operations, the extent, duration and nature of such impacts remain uncertain.

tZERO is operating in a relatively immature industry, which makes it hard to evaluate its ability to generate revenue through operations, and to date, has not generated revenue from any commercially available blockchain-based applications.

tZERO was formed in 2014 to develop blockchain and financial technology as part of Overstock's Medici initiatives. The relative immaturity of the blockchain industry make it difficult to evaluate its current business and future prospects. tZERO has encountered, and will continue to encounter, risks and difficulties frequently experienced by growth-stage companies in rapidly developing and changing industries, including challenges in forecasting accuracy, determining appropriate uses of its limited resources, gaining market acceptance, managing a complex and evolving regulatory landscape and developing new products and services. The current or future operating model of tZERO's businesses may require changes in order to scale their operations efficiently and be successful. Investors in our common stock should consider tZERO's business and prospects in light of the risks and difficulties it faces as an early-stage company focused on developing products in the field of financial technology.

To date, tZERO has focused primarily on developing its business and exploring novel applications of blockchain technology. This has included developing a suite of technologies which enable the trading of digital securities (the "tZERO Technology Stack") and using this technology to offer products and services to potential issuers of digital securities and regulated market participants in an effort to democratize access to private capital markets. Digital securities are conventional uncertificated securities where the issuer arranges for a digital "courtesy carbon copy" of the transfer agent's share registry to be viewable on the blockchain to enhance the trading experience and may also be referred to as "digitally-enhanced securities". tZERO has generated limited revenue, only a small portion of which can be attributed to its commercialization of the tZERO Technology Stack or the support of such issuers and regulated market participants and has accumulated losses since its inception. As such, tZERO has historically been dependent upon continued financial support from us. If we are unable to generate positive cash flow in our Retail business, raise additional capital, obtain financing, or sell or otherwise monetize significant assets, we may be unable to continue funding tZERO at the rate or levels it requires to operate its business. In the event we were unwilling or unable to continue funding tZERO, tZERO would need to raise external capital to fund its operations, which may not be feasible. In the event we were unable or unwilling to continue funding tZERO or it was unable to raise external capital, it would have a material adverse effect on us and on the current and future business of tZERO.

To date only three digital securities are traded on the tZERO ATS and, other than the tZERO ATS, no other operational exchange, alternative trading system or other regulated trading venue licenses the tZERO Technology Stack.

tZERO continues to develop the tZERO Technology Stack and offer it as part of its services to potential issuers of digital securities and regulated market participants. As of December 31, 2020, tZERO has only utilized the tZERO Technology Stack to digitally-enhance the Series A-1 Preferred stock (exchanged from the Series A Preferred stock in May 2019), TZROP and Aspen Digital, Inc.'s depository receipts for its common stock ("ASPD"), which are the only digital securities trading on the tZERO ATS. tZERO has been engaged to provide technology services, which will utilize the tZERO Technology Stack, to a select number of other prospective issuers of digital securities but there can be no assurance that tZERO will be engaged to provide these services by additional issuers in the future, that these services, if provided, will be profitable, or that these securities will trade on the tZERO ATS.

Additionally, the tZERO Technology Stack is only utilized by regulated market participants facilitating the trading of the Series A-1 Preferred stock, TZROP and ASPD. These entities include the tZERO ATS and tZERO Markets, which are owned by tZERO, and Dinosaur and Apex PRO ("Apex"). BSTX plans to use the tZERO Technology Stack but is not yet operational and BSTX will require regulatory approval before it may begin operations. The trading of digital securities and the technology used by regulated market participants to support the trading of digital securities implicates complex technological considerations and raises numerous legal and regulatory issues that will need to be addressed—likely, in consultation with the regulators of regulated market participants facilitating such trading. As a result of these technological, legal and regulatory considerations, tZERO may not be able to successfully market and commercialize the tZERO Technology Stack to other market

participants. If tZERO is unable to successfully market and commercialize the tZERO Technology Stack, tZERO's business plans would be materially adversely affected. See "Risks Related to the Development of the tZERO Technology Stack" below.

The technology on which tZERO and its subsidiaries rely for its operations may not function properly.

The technology on which tZERO and its subsidiaries and licensees rely, including the technology underlying the tZERO Technology Stack and the wallet and exchange services provided by tZERO Crypto, may not function properly, which would have a material adverse effect on tZERO's plans, operations and financial condition. Although the tZERO Technology Stack has worked for the Series A Preferred stock, Series A-1 Preferred stock, TZROP and ASPD the technology on which tZERO and its subsidiaries and licensees rely, including the technology underlying the tZERO Technology Stack and the wallet and exchange services provided by tZERO Crypto, may not function properly, which would have a material adverse effect on tZERO's plans, operations and financial condition. Although the tZERO Technology Stack has worked to date, the volume of activity faced by tZERO and its subsidiaries and licensees may materially increase in the future as the user base for these services grows, which may stress the technology in new ways. tZERO and its subsidiaries' technology may malfunction because of errors in the underlying technology, an unanticipated increase in transactions using the technology or as a result of cyber-attacks or external security breaches. If tZERO or its subsidiaries' technology does not work as anticipated or malfunctions, any resolution of the issue may take time and be costly to implement or there may be no solution or alternative technology available. The importance of this technology to tZERO's operations means that any problems in its functionality would have a direct materially adverse effect on tZERO's plans and expectations for revenues from its blockchain applications and expose it to material loss. Any such technological problems could have a material adverse effect on tZERO's prospects, operations and financial condition and a material adverse effect on us.

tZERO ATS, LLC, tZERO Markets and SpeedRoute, three subsidiaries of tZERO that currently generate substantially all of tZERO's revenues, are registered broker-dealers that are subject to extensive regulation.

Broker-dealers are subject to extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules. tZERO ATS, LLC, tZERO Markets and SpeedRoute, which currently generate substantially all of tZERO's revenues, are registered with the SEC as broker-dealers under the Exchange Act and in the states in which they conduct securities business and are members, and subject to the rules, of FINRA, and other SROs (as applicable). In addition, tZERO ATS, LLC owns and operates the tZERO ATS, an SEC-registered alternative trading system. tZERO ATS, LLC, tZERO Markets and SpeedRoute are subject to regulation, examination, investigation and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which they are registered or licensed or of which they are a member.

Any failure of tZERO ATS, LLC, tZERO Markets or SpeedRoute to comply with all applicable rules and regulations or satisfy FINRA, the SEC, or any other regulatory authority with which such subsidiary must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us. In addition, tZERO Markets may be subject to even more extensive regulations. See also "*tZERO Markets is registered as a broker-dealer and is subject to extensive regulation, which is more rigorous and expensive to comply with than the regulation applicable to tZERO's other broker-dealer subsidiaries.*" below.

tZERO Markets is registered as a broker-dealer and is subject to extensive regulation, which is more rigorous and expensive to comply with than the regulation applicable to tZERO's other broker-dealer subsidiaries.

tZERO Markets has obtained regulatory approvals that allow it to conduct certain brokerage and investment banking activities, including certain activities which tZERO's other broker-dealer subsidiaries have not historically provided, in particular by providing broker-dealer services to retail investors. As a result, certain of these legal and regulatory requirements have only applied to tZERO since tZERO Markets obtained regulatory approval to provide such services in September 2020 and are therefore relatively new to tZERO and may require greater efforts by tZERO and resources to initially comply with.

Any failure of tZERO Markets to comply with all applicable rules and regulations or satisfy FINRA, the SEC, or any other regulatory authority with which it must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us. See also "*tZERO ATS, LLC, tZERO Markets and SpeedRoute, three subsidiaries of tZERO that currently generate substantially all of tZERO's revenues, are registered broker-dealers that are subject to extensive regulation.*" above.

tZERO's broker-dealer subsidiaries and tZERO are involved in ongoing discussions with and are subject to investigation by regulatory authorities.

tZERO's broker-dealer subsidiaries, tZERO ATS, LLC, tZERO Markets and SpeedRoute, and tZERO have been and remain involved in ongoing oral and written communications with regulatory authorities in connection with ongoing

examinations, inquiries, or investigations, which may result in trading halts on the tZERO ATS and financial and other settlements or penalties. Any such trading halt will adversely affect the trading market for any securities trading on the tZERO ATS, including the Series A-1 Preferred stock, TZROP and ASPD, and may prevent the sale of such securities until the failure is rectified. Additionally, as discussed above, through 2020, we received subpoenas from the SEC requesting documents related to, among other things, the tZERO ATS. Any failure of tZERO or its broker-dealers to satisfy FINRA, the SEC, or any other regulatory authority that they are in compliance with all applicable rules and regulations could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

Our ownership in tZERO is below the threshold required to permit us to use its losses to offset taxable income generated by the rest of our U.S. business.

Due to our ownership percentages of both tZERO common stock and TZROP, we own less than the required percentage to file a federal consolidated income tax return. tZERO therefore files a separate federal tax return from the rest of our U.S. domestic operations, and as a result, certain tax attributes, such as federal net operating losses and tax credits, generated by tZERO are not available to offset taxable income generated by the rest of our U.S. domestic operations, and vice versa.

There can be no assurance that BSTX will seek or receive the regulatory approval it requires to operate.

tZERO and BOX Digital have entered into a joint venture intended to develop a national securities exchange facility of BOX Exchange LLC ("BSTX") that would facilitate the trading of a type of digital security called a security token that would utilize the tZERO Technology Stack. The SEC originally published proposed rule changes relating to BSTX which would facilitate such approvals on October 11, 2019, soliciting public comments thereon. Following subsequent amendments and resubmissions of the proposed rule changes, the SEC formally disapproved of the proposal on December 18, 2020. BSTX is reviewing the order by the SEC to determine what action, if any, to take in response, including whether to refile an amended set of proposed rule changes.

In the event BSTX chooses to refile an amended set of proposed rule changes, there may be delay in the receipt of the regulatory approvals BSTX requires to operate, if they are received at all. Additionally, the revisions required to address concerns raised with respect to BSTX's previously proposed rule changes may require significant revisions to its anticipated operations, which may make its business unattractive, and pursuing such approvals may require the devotion of significant resources. As a result, there can be no assurance that BSTX will choose to recommence the regulatory approval process for BSTX and, if it chooses to do so, whether it will be successful in receiving them. Any failure to receive such approvals may have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

tZERO's and its subsidiaries' businesses are subject to complex and evolving U.S. and foreign laws and regulations regarding privacy, technology, data protection, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to their business practices, increased cost of operations or otherwise harm their businesses.

tZERO and its subsidiaries are subject to a variety of laws and regulations in the United States and abroad that involve matters central to its business, including user privacy, data protection and intellectual property, among others. Foreign data protection, privacy, and other laws and regulations are often more restrictive than those in the United States. These U.S. federal and state and foreign laws and regulations are constantly evolving and can be subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which tZERO and its subsidiaries operate.

tZERO and its subsidiaries have adopted policies and procedures they believe are appropriate to comply with these laws. The growth of their respective businesses and expansion outside of the United States may increase the potential of violating these laws or its internal policies and procedures. The risk of being found in violation of these or other laws and regulations is further increased by the fact that many of these have not been fully interpreted by the regulatory authorities or the courts and are open to a variety of interpretations. Any action brought against tZERO or its subsidiaries for violation of these or other laws or regulations, even if tZERO or its subsidiaries successfully defend against it, could cause tZERO or any of its subsidiaries to incur significant legal expenses and divert its management's attention from the operation of its business. If its operations are found to be in violation of any of these laws and regulations, it may be subject to any applicable penalty associated with the violation, including civil and criminal penalties, damages and fines, it could be required to refund payments received by it, and it could be required to curtail or cease its operations. Any of the foregoing consequences could seriously harm tZERO's or any of its subsidiaries' business and their financial results. These existing and proposed laws and regulations can be costly to comply with and can delay or impede the development of new products, result in negative publicity, increase tZERO's or any of its subsidiaries' operating costs, require significant management time and attention, and subject any of them to claims or other remedies, including fines or demands that they modify or cease existing business practices.

The development and operation of tZERO's business, including the tZERO Technology Stack, will likely require additional, technology and intellectual property rights.

The ability of tZERO to operate its businesses, including its efforts to develop and market its businesses, including the tZERO Technology Stack, may depend on technology and intellectual property rights that tZERO may license from unaffiliated third parties. If for any reason tZERO were to fail to comply with its obligations under an applicable license agreement, or were unable to provide or were to fail to provide the technology and intellectual property that tZERO or any licensee requires, their operations would be negatively affected, which would have a material adverse effect on tZERO's operations and financial condition and could have a material adverse effect on us.

tZERO may face substantial competition from known and unknown competitors as well as the risk that one or more of them may obtain patents covering technology critical to the operation of the tZERO Technology Stack.

We believe that a number of organizations are or may be working to develop applications for distributed ledger or blockchain technologies or other novel technologies in the financial industry or capital markets that may facilitate or enhance the experience of trading securities or other financial assets that may be competitive with tZERO's own technology, including its patented technology. As the blockchain industry matures, tZERO expects that larger existing companies in the financial services and technology industries may compete with it in providing technological solutions related to the capital markets or other potential areas of business tZERO may enter. Such competitors may develop technology for the trading of securities which may or may not utilize blockchain technology which may provide a more attractive trading solution than tZERO may be able to provide. Any or all of them may also compete with tZERO now or in the near future for the time and attention of regulators and for the services of persons with the expertise it needs. Some or all of such organizations may have substantially greater technological expertise, experience with blockchain technologies or the capital markets and/or financial resources than tZERO has or may be able to access, and many of them appear to be attempting to patent technologies that may be competitive with or similar to the technology tZERO has developed and patented. tZERO does not have access to detailed information about the technologies these organizations may be attempting to patent. If other persons, companies or organizations obtain a valid patent covering technology critical to tZERO's business, tZERO, issuers of digital securities or regulated market participants that need the relevant technology in order to operate as intended might be unable or unwilling to license the technology, and it could become impossible for tZERO to successfully develop or market the tZERO Technology Stack, which could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

Further, certain of tZERO's subsidiaries may also face competition in the areas of their respective businesses including cryptocurrency wallet and exchange services, accredited investor verification services, or broker-dealer services, and these competitors may have substantially greater resources than tZERO or its subsidiaries. Any or all of them may compete with tZERO's subsidiaries now for current business or in the near future for potential business.

tZERO Crypto's business may be limited in certain jurisdictions if it is unable to timely receive certain licenses it is in process of obtaining or due to the regulations applicable to it.

The business of tZERO's subsidiary tZERO Crypto, Inc. ("tZERO Crypto"), is a mobile application that allows consumers to buy, sell and hold supported cryptocurrencies. Various aspects of tZERO Crypto's business are heavily regulated. Both the federal government and virtually every state in the U.S. regulate money transmitters and money services businesses. In some states, the licensing requirements and regulations expressly cover companies engaged in digital currency activities; in certain other states it is not clear whether or how the existing laws and regulations apply to digital currency activities. tZERO Crypto is applying for licenses to operate as a money transmitter (or its equivalent), as required, and has obtained such licenses in many states and territories. tZERO Crypto has also registered with FinCEN. There can be no assurance that tZERO Crypto will be able to obtain money transmitter licenses on a timely basis in all states where they have not already been obtained, that they will be obtained at all, or that it will be able to retain such licenses over time as its business or applicable law and regulation evolve, which may limit the services tZERO Crypto is able to offer in certain jurisdictions or require potential product changes.

tZERO Crypto is subject to extensive regulation.

As a money transmitter (or equivalent) licensed in a majority of states and due to its registration with FinCEN, tZERO Crypto is subject to obligations and restrictions with respect to various anti-money laundering, know-your-customer, record-keeping, reporting, capital and bonding requirements, limitations on the investment of customer funds, and examination and inspection by state and federal regulatory agencies. Regulations relating to money transmission and cryptocurrencies are evolving quickly and compliance with existing and evolving requirements requires the dedication of significant resources by tZERO Crypto. As a result, in the event tZERO Crypto was unable to comply with, or dedicate the resources necessary to comply with all rules and regulations or satisfy state and federal regulatory authorities with which it must comply, tZERO

Crypto may be subject to additional liability, including governmental fines, restrictions on its business, or other sanctions, and it could be forced to cease conducting certain aspects of its business with residents of certain jurisdictions, be forced to otherwise change its business practices in certain jurisdictions, or be required to obtain additional licenses or regulatory approvals.

Any failure of tZERO Crypto to comply with all applicable rules and regulations or satisfy state or federal regulatory authorities with which it must comply could have a material adverse effect on tZERO's operations and financial condition and a material adverse effect on us.

tZERO's financial services businesses rely on third parties and their systems for a variety of services and any loss of their services or failure to perform these services adequately could have a material adverse effect on tZERO.

To facilitate its businesses, tZERO's financial services subsidiaries rely on third party financial services counterparties that it does not control, such as clearing firms and third-party cryptocurrency exchanges. The counterparties are critical to the services provided by tZERO's financial services subsidiaries.

tZERO financial services subsidiaries rely on these third parties for a variety of services, including to settle securities trades, process customer payments, custody customer funds, source cryptocurrency for their customers and provide other elements of their services. For example, a single clearing firm is currently used to settle securities trades conducted on the tZERO ATS.

These third parties may fail to provide these services adequately, including as a result of errors in their systems or events beyond their control, may breach their agreements, or may refuse to provide these services on terms acceptable to tZERO's financial services subsidiaries or refuse to extend the term of their services at the end of a contractual term. They might also take actions that degrade the functionality of tZERO's financial service businesses or impose additional costs or requirements on tZERO's financial services subsidiaries, which may be passed off to customers, subscribers or clients.

While there may be other service providers or alternative solutions that could meet the needs of tZERO's financial services subsidiaries, adding or transitioning to new providers may disrupt such subsidiaries' businesses, increase their costs and require changes to their products. If these third parties fail to provide these services adequately or no longer provide these services to tZERO's financial service subsidiaries, and such subsidiaries are unable to find suitable alternatives, tZERO's businesses may be materially and adversely affected.

tZERO or its technology may be the subject of cyber-attacks, which may result in security breaches and the loss or theft of assets, which could expose tZERO to liability and reputational harm and could seriously curtail the utilization of tZERO's services or technology and could result in claims against tZERO or us.

Certain of tZERO's businesses store and transmit user's proprietary information (or may do so in the future) and create technology, including the tZERO Technology Stack, which is involved in third-parties' storage and transmission of users' proprietary information. As a result, tZERO's businesses may be the subject of security breaches, computer malware and other computer hacking attacks which could expose it to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. tZERO has experienced cyberattacks and believes its systems are probed by potential hackers on a daily basis. tZERO expects the problem will continue to grow worse over time. Cyber-attacks may also target tZERO's customers or third-parties and other services on which tZERO or its customers depend on. In the event such cyber-attacks target customers utilizing tZERO's technology they may attempt to identify and exploit weaknesses in tZERO's technology to conduct a cyber-attack.

Security breaches and cyber-attacks are also of particular concern to businesses, like tZERO Crypto, that directly interact with cryptocurrencies. While tZERO Crypto wallet users hold their cryptocurrency directly on their mobile devices (as opposed to being held in custody by tZERO Crypto), tZERO Crypto holds a limited cryptocurrency inventory on hand to facilitate its exchange services and has access to customer information. As a result, tZERO Crypto is subject to an increased risk of cyber-attacks, which could result in loss of cryptocurrency, unauthorized access to customer information and the resulting legal or financial exposures or the unexpected unavailability of tZERO Crypto's services.

Any compromise of tZERO's security or that of a third-party involving tZERO's technology could result in a violation of applicable privacy and other laws, and cause significant financial loss, legal fines and other legal exposure, damage to tZERO's reputation, and a loss of confidence in the maturity of tZERO's security program and tZERO's ability to implement security measures on par with its peers; further, a compromise of tZERO's security could reduce market participants' willingness to adopt and regularly use its technology (including the tZERO Technology Stack), any of which could have a material adverse effect on tZERO and our financial position and business.

tZERO's core technology has been and will be, as applicable, developed by key technology employees of tZERO and its affiliates, and their operation and further development depend on the continued availability of those key employees.

The tZERO Technology Stack and other core technology used for tZERO's operations, have been or will be developed primarily by a small number of key technology employees of tZERO and its affiliates. This includes technology used for the operation of the regulated trading venues tZERO supports, including the tZERO ATS. The loss of the services of any of those key employees could have a material adverse effect on the ability of tZERO to develop, operate or maintain the tZERO Technology Stack or other technology used for tZERO's operations. If tZERO were to lose the services of any such key employees, it could be difficult or impossible to replace them, and the loss of any of them could have a material adverse effect on tZERO's operations and financial condition.

tZERO's success is dependent on its ability to hire, retain or motivate qualified personnel.

tZERO's business largely depends on the talents and efforts of highly skilled individuals, particularly those with technology, operational and regulatory backgrounds. The fields in which tZERO's businesses operate are rapidly growing, making hiring for candidates with suitable backgrounds and relevant experience particularly competitive. tZERO's future success will depend on its continuing ability to identify, hire, develop, motivate, and retain highly skilled personnel. Without such individuals, tZERO may not have or may not be able to obtain the skills or expertise needed to successfully develop, maintain and implement its initiatives. In addition, its compensation arrangements, such as its equity award program, may not always be successful in attracting new employees and retaining and motivating its existing employees, which would affect its future success. Any failure by tZERO to hire, retain or motivate qualified personnel would materially adversely affect tZERO's business and us.

To date, SpeedRoute and tZERO ATS, LLC's revenues have come from a small number of major broker-dealer subscribers and clients, respectively, making SpeedRoute and tZERO ATS, LLC, and by extension tZERO, vulnerable to changes in the business and financial condition of, or demand for SpeedRoute's and tZERO ATS, LLC's services by, such entities.

To date, the primary source of revenue for SpeedRoute and tZERO ATS, LLC has been two major broker-dealer subscribers and clients, making SpeedRoute and tZERO ATS, LLC vulnerable to changes in the business and financial condition of, or demand for services by, such entities. During the year ended December 31, 2020, revenue attributable to these two entities accounted for, respectively, 26% and 17% of SpeedRoute and tZERO ATS, LLC's combined revenue. Additionally, to date, SpeedRoute and tZERO ATS, LLC account for tZERO's primary sources of revenue, making tZERO vulnerable to any changes in the business and financial condition of, or demand for SpeedRoute and tZERO ATS, LLC's services by such entities as well. SpeedRoute, tZERO ATS, LLC and tZERO's income and ability to meet its financial obligations could also be adversely affected in the event of bankruptcy, insolvency or significant downturn in the business of one of these entities.

Strategic transactions tZERO has and may engage in could disrupt its business, divert its management's attention or harm its business.

From time to time tZERO has engaged in strategic transactions, including acquisitions, capital raises, strategic investments and partnerships and divestitures, and may do so again in the future. Many of tZERO's businesses and the counterparties with which it may engage in transactions with are heavily regulated which may complicate such strategic transactions. The identification, evaluation, and negotiation of potential strategic transactions may divert the attention of management and require the incurrence of significant expenses, whether or not such transactions are ultimately completed. We also may not achieve the anticipated benefits from such transactions due to a number of factors, including difficulties resulting from the integration or separation of technologies, accounting or other operational systems, culture or personnel involved in any acquisition, divestment or investment (whether in another entity or tZERO); diversion of management's attention; litigation; prioritization of resources; regulatory constraints or other disruptions to tZERO's operations. Also, the anticipated benefits of such strategic transactions may not materialize or increase tZERO's revenue. If any strategic transaction fails to meet tZERO's expectations, tZERO's business may be materially and adversely effected, which could have a material adverse effect on us.

Additional Risks Related to TZROP

The IRS may disagree with our characterization of the TZROP offering, which would have a material adverse effect on us.

Although we have taken the position that the sale of TZROP in the TZROP offering was a sale of equity for tax purposes, if the IRS disagrees with our characterization and instead requires us to treat the proceeds as income to us for federal income tax purposes, this would reduce our federal net operating loss carryforwards by approximately \$104.2 million as a result of the TZROP offering. In addition, if we are required to treat the proceeds of the security token offering as a liability rather than equity for accounting purposes, that would reduce tZERO's net book value compared to equity treatment, which might delay or prevent tZERO from declaring a dividend on the TZROP.

We are subject to the risks of holding TZROP and the risk that we will be unable to sell the TZROP.

As part of the TZROP offering, we elected to accept TZROP in payment of \$30 million of tZERO's indebtedness to us. As an affiliate of the issuer, we may only resell the TZROP we hold under certain circumstances, and are therefore subject to all of the risks of holding TZROP, including the risk that we will be unable to resell any TZROP. We do not have any contractual rights to require tZERO or any third party to assist us in making such resales and as a result, expect to remain subject to the risks of holding TZROP for the foreseeable future.

TZROP may be subject to registration under the Exchange Act if tZERO has assets above \$10 million and more than a statutory number of registered token holders, which would increase tZERO's costs significantly and require substantial attention from tZERO's management.

Companies with total assets above \$10 million and more than 2,000 holders of record of their equity securities, or 500 holders of record of its equity securities who are not accredited investors, at the end of their fiscal year must register the subject class of equity securities with the SEC under the Exchange Act. If tZERO is required to register TZROP with the SEC under the Exchange Act, it would be a laborious and expensive process and require a substantial portion of tZERO management's attention. Furthermore, if such registration takes place, tZERO would be subject to ongoing public reporting requirements and require additional accounting, tax, compliance, documentation, risk management and internal control procedures, necessitating the need for tZERO to hire additional personnel to implement, perform and/or monitor such procedures and creating materially higher compliance and reporting costs going forward.

Risks Related to the Development of Digital Securities and the tZERO Technology Stack

Applicable law and regulation may impact the manner in which blockchain technology may be used to enhance securities in the future, limiting tZERO's business.

The complex legal and regulatory requirements applicable to issuers and SEC-registered exchanges, alternative trading systems or other regulated venues and market participants currently limits the extent to which tZERO is able to further enhance securities using blockchain technology. For instance, regulators have emphasized the legal complexity raised by custodying securities on the blockchain and that it may not currently be regulatorily permissible in certain circumstances, regardless of whether tZERO is able to provide technology supporting securities with such features. Recent regulatory guidance relating to the application of blockchain technology such as the SEC's December 23, 2020 Statement on Broker-Dealer Digital Asset Securities Custody have provided a proposed framework as to the broader integration of blockchain technology in securities. However, whether these rules will be adopted, the in-practice application of the guidance and the extent to which market participants will adopt such proposed framework remain unknown.

The ability of tZERO to provide additional applications of blockchain technology to digital securities or the financial industry more broadly may be dependent on legislators or regulatory authorities adopting additional rules and regulations or modifying existing rules and regulations, or interpretations thereof, which may take significant time to occur and would be largely outside of tZERO's control. There can be no assurance that digital securities or any future legally and regulatorily compliant advancement thereof which tZERO may be able to develop will meet investor expectations—for example, there can be no assurance that it will enable less expensive or more efficient trading than is possible from other available trading solutions, whether traditional or otherwise.

The current user experience for digital securities, like TZROP and others traded on the tZERO ATS, is not analogous to one involving a virtual currency or any other anonymous bearer digital instrument that trades peer-to-peer on a distributed ledger because distributed ledger technology does not play a role in the sale, issuance, transfer or custody of digital securities. However, in the future regulatory authorities may take the position that the existing regulatory framework precludes the enhancement of digital securities with a digital "courtesy carbon copy". Additionally, regulatory guidance may permit the creation of viable alternatives to digital securities, such as securities that trade directly on the blockchain, which supersede digital securities. As a result, legal and regulatory developments could render the issuance and trading of digital securities impermissible, change the manner in which digital securities are permitted to be enhanced by blockchain technology or render them obsolete.

Any such regulatory issues may limit the commercial viability of tZERO's business, which would have a material adverse impact on tZERO's business and could have a material adverse effect on us.

Regulatory authorities may not permit the trading of certain digital securities or involvement by market participants in their trading or require changes to permit such trading to occur, limiting tZERO's businesses.

Depending on the particular digital security and regulated trading venues on which a security would trade, numerous regulatory authorities, including FINRA and the SEC, may need to be consulted or provide their consent before any trading could occur. Any such regulatory authorities could prevent such trading from ever occurring if they objected to aspects of the anticipated method in which such trading would occur, including how the tZERO Technology Stack would be used and whether such regulated trading venues are permitted to trade digital securities. Applicable legal or regulatory requirements or authorities may also require changes to the manner in which such trading might occur before permitting it to occur, which may require tZERO to make changes to the underlying technology for specific licensees or more broadly before trading may begin. The regulatory landscape that potential issuers and the tZERO ATS and other regulated market participants involved in the trading of digital securities and their partners need to navigate in order to successfully permit a digital security to begin trading is complex, and there can be no assurance that they will successfully do so. Assisting partners in addressing such considerations may require significant time and resources from tZERO both in navigating any legal and regulatory concerns or adapting the tZERO Technology Stack in a way that realizes the requirements of the particular digital security or regulated market participant.

Any such regulatory issues may limit the commercial viability of tZERO's business, including the tZERO Technology Stack and regulated trading venues trading digital securities which tZERO has an interest in or its subsidiaries operate, which would have a material adverse impact on tZERO's business and could have a material adverse effect on us.

Digital securities may not be widely adopted and may have limited users.

It is possible that digital securities will not be used by a large number of issuers or investors or tradeable on many regulated trading venues (or venues with sufficient market participants) or that there will be limited public interest in the continued creation and development of digital securities. Additionally, it is possible that other technology for the trading of securities which may or may not utilize blockchain technology will be developed or receive greater public interest, competing with or limiting demand for digital securities. Similarly, tZERO has focused its efforts on promoting the use of digital securities in private capital markets to date, however, such private company securities may not gain market acceptance as a popular investment asset, which may limit demand for digital securities. Such a lack of use or interest could negatively impact the continued development and commercialization of the tZERO Technology Stack, the business of tZERO Markets and the growth of the tZERO ATS trading ecosystem and have a material adverse effect on the business and financial position of tZERO and have a material adverse effect on us.

Some market participants may oppose the development of blockchain-based systems like those central to tZERO's commercial mission, which could adversely affect tZERO.

Many participants in the system currently used for trading public securities in the United States may oppose the development of capital markets systems and processes that involve the use of blockchain technology, whether by permitting trading to occur directly on the blockchain or by adding digital courtesy carbon copies such as those used by digital securities. The market participants who may oppose such a system may include entities with significantly greater resources, including financial resources and political influence, than tZERO or we have. The ability of tZERO to operate and achieve its commercial goals could be adversely affected by any actions of any such market participants that result in additional regulatory requirements or other activities that make it more difficult for tZERO to operate could adversely affect tZERO's ability to achieve its commercial goals, which could have a material adverse effect on us.

Risks Related to Blockchain Technology and the Blockchain Industry

The application of blockchain technologies to existing legal and regulatory regimes is uncertain, and new laws and regulations or policies may materially adversely affect tZERO's business.

Certain of tZERO's businesses transact directly in peer-to-peer digital assets while others intend to advance existing industries by promoting the integration of blockchain technologies, either by creating technology to enable or investing in regulated venues to enable the issuance, trading, clearance and settlement of digital securities or providing avenues through which market participants can trade digital securities. The application of blockchain technologies to the legal and regulatory regimes applicable to these businesses, many of which were developed for earlier technologies, is often unclear and varies significantly among international, federal, state and local jurisdiction. Such legal and regulatory regimes are also rapidly evolving as legislators and regulatory authorities take greater interest in blockchain technology.

Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, or guidance, or take other actions, which may severely impact the adoption of blockchain technologies. Any guidance which is adopted may impose additional regulatory obligations on tZERO's business, curtail the products and services which they may offer or otherwise impact tZERO's businesses in unexpected ways. Additionally, in the future, tZERO expects to evolve its focus towards the advancement of financial industry through the integration of blockchain technology in new ways which may present novel questions of legal and regulatory interpretation. Failure by tZERO, its subsidiaries or any of their partners (including issuers of digital securities or market participants utilizing the tZERO Technology Stack) to comply with any laws, rules and regulations applicable to them, some of which may not exist yet or are subject to interpretation and may be subject to change, could result in a variety of adverse consequences, including civil penalties and fines, the need to implement product changes, or an increase in costs related to compliance or operational changes and reputational harm, any of which could have a substantial and materially adverse effect to tZERO's business and us.

The further development and acceptance of blockchain technologies, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate. The slowing or stopping of the development or acceptance of blockchain technologies, peer-to-peer digital assets and assets enhanced by blockchain technologies would have a material adverse effect on tZERO's business plans and could have a material adverse effect on us.

The growth of blockchain technology and the blockchain industry in general, as well as the specific blockchain networks which peer-to-peer digital assets such as cryptocurrencies and assets enhanced by blockchain technology, including digital securities such as TZROP, utilize, is subject to a high degree of uncertainty. The factors affecting the further development and acceptance of blockchain technology and the growth of the blockchain industry include, without limitation:

- worldwide growth in the adoption and use of peer-to-peer digital assets, assets enhanced by blockchain technology and other blockchain technologies;
- government and quasi-government regulation of peer-to-peer digital assets and assets enhanced by blockchain technology and their use, or restrictions on or regulation of access to and operation of blockchain networks or similar systems;
- the maintenance and development of the open-source software protocol of blockchain networks;
- changes in consumer demographics and public tastes and preferences;
- the availability and popularity of other forms or methods of buying and selling goods and services, or trading assets including new means of using government-backed currencies or existing networks;
- exploitable flaws inherent in blockchain technology (e.g., "double-spend" attacks or "51%" attacks);
- general economic conditions affecting investment in and demand for peer-to-peer digital assets and assets enhanced by blockchain technology; and
- a decline in the popularity or acceptance of peer-to-peer digital assets and assets enhanced by blockchain technology.

The blockchain industry as a whole has been characterized by rapid changes and innovations and is constantly evolving. Although it has experienced significant growth in recent years, the slowing or stopping of the development, general acceptance and adoption and usage of blockchain networks, peer-to-peer digital assets such as cryptocurrencies and assets enhanced by blockchain technology such as digital securities may materially adversely affect tZERO's business plans.

The prices of peer-to-peer digital assets and digital securities have historically been extremely volatile. Fluctuations in the price of individual assets could affect market perception of blockchain technology and thereby materially and adversely affect tZERO's business.

The prices of peer-to-peer digital assets, such as bitcoin and ether, and digital securities, including TZROP, have historically been subject to dramatic price fluctuations and are highly volatile. A fluctuation in the price of a single peer-to-peer digital asset or digital security may cause volatility in the value of such assets generally or a subset thereof. For example, a security breach that affects confidence and causes price fluctuations in bitcoin or ether may affect market perception of blockchain technology and may discourage potential investors from investing in or utilizing all peer-to-peer digital assets. Even though digital securities are conventional, uncertificated book-entry securities, investors may perceive them to be part of the same asset class as peer-to-peer digital assets due to their enhancement with a digital "courtesy carbon copy" of the transfer agent's share registry, and the price volatility of peer-to-peer digital assets may thereby affect investor perception of and demand for digital securities. This volatility may adversely affect interest in and demand for cryptocurrencies, such as those tZERO Crypto provides wallet and exchange services for, or digital securities which the tZERO Technology Stack enables and which trade on regulated venues tZERO invests in, each of which would materially adversely affect tZERO's business and us.

Additionally, tZERO Crypto holds a limited amount of cryptocurrency in an inventory to facilitate purchases and sales of cryptocurrency with its customers which have historically been subject to dramatic fluctuations and are highly volatile. This may subject tZERO Crypto to cryptocurrency price volatility risk which may materially adversely affect its financial condition.

Additional Risks Relating to our Retail Business

Our business depends on the Internet, our infrastructure and transaction-processing systems.

We are completely dependent on our infrastructure and on the availability, reliability and security of the Internet and related systems. Although we have migrated and continue to migrate some of our computer systems and operations to the cloud, a substantial amount of our computer and communications hardware is located at a single Overstock owned and operated facility. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, acts of war, break-ins, earthquake and similar events. Our back-up facility by itself is not adequate to support fulfillment of sales orders. Our servers and applications are vulnerable to malware, physical or electronic break-ins and other disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. Any system interruption that results in the unavailability of our Website or our mobile app or reduced performance of our transaction systems could interrupt or substantially reduce our ability to conduct our business. We have experienced periodic systems interruptions due to server failure, application failure, power failure and intentional cyber-attacks in the past, and may experience additional interruptions or failures in the future. Any failure or impairment of our infrastructure or of the availability of the Internet or related systems could have a material adverse effect on our financial results, business and prospects. In addition, the occurrence of any event that would adversely affect e-commerce or discourage or prevent consumers from shopping online or via mobile apps could significantly decrease the volume of our Retail sales.

We rely upon paid and unpaid natural search engines to rank our product offerings, and our financial results may suffer if we are unable to regain our prior rankings in natural searches.

We rely on paid and unpaid natural search engines to attract consumer interest in our product offerings, including Google, Bing, and Yahoo!. Changes to their ranking algorithms may adversely affect our product offerings in paid and/or unpaid searches, and we may at times be subject to ranking penalties if the operators of search engines believe we are not in compliance with their guidelines. Search engine companies change their natural search engine algorithms periodically, and our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time, which has led us to pursue revenue growth in other more expensive marketing channels. Google's search engine is dominant in our business and has historically been a significant source of traffic to our website, much of it at essentially no incremental cost to us. Search engine companies may also determine that we are not in compliance with their guidelines from time to time, as has occurred in the past, and they may penalize us in their search algorithms as a result. In recent years, we have experienced declines in our rankings in Google's natural search engine, which has required us to utilize more expensive marketing channels or otherwise compensate for the loss of some of the natural search traffic. Any future declines in our rankings in Google's natural search engine could have a material adverse effect on our business.

Our business depends on effective marketing, including marketing via email and social network messaging and our competitors have and may continue to directly increase our marketing costs and also have and may continue to cause us to decrease certain types of marketing.

We depend on effective marketing and high customer traffic. We depend on email to promote our site and offerings and to generate a substantial portion of our revenue. If a significant portion of our target customers no longer utilize email, or if we are unable to effectively and economically deliver email to our potential customers, whether for legal, regulatory or other reasons, it would have a material adverse effect on our business. We also rely on social network messaging services for marketing purposes, and anything that limits our ability or our customers' ability or desire to utilize social network services could have a material adverse effect on our business. In addition to competing with us for customers, suppliers, and employees, our competitors have and may continue to directly increase our operating costs, by driving up the cost of various forms of online advertising. We may elect to decrease our use of sponsored search or other forms of marketing from time to time in order to decrease our costs, which may have a material adverse effect on our financial results and business. We may also elect to spend additional amounts on sponsored search or other forms of marketing from time to time in order to increase traffic to our Website, or to take other strategic actions to increase traffic and/or conversion. If we are unable to develop, improve, implement and maintain effective and efficient cost-effective advertising and marketing programs, it would have a material adverse effect on our financial results and business.

We face intense competition and may not be able to compete successfully against existing or future competitors.

The online retail market is evolving rapidly and intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including:

- online retailers with or without discount departments, including Amazon.com, AliExpress (part of the Alibaba Group), eBay, and Rakuten.com;

- online shopping services, including Google Shopping;
- online specialty retailers such as Wayfair, Blue Nile, Bluefly, Houzz, Hayneedle, Zappos.com, and Zulily;
- furniture specialists including Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanigan and Rooms To Go;
- traditional general merchandise and specialty retailers and liquidators including Bed, Bath & Beyond, Best Buy, Costco, Crate and Barrel, Ethan Allen, Gilt, Home Depot, HomeGoods, Hudson's Bay Company, IKEA, J.C. Penney Company, Kirkland's, Kohl's, Lands' End, Lowe's, Macy's, Nordstrom, Pier 1 Imports, Pottery Barn, Restoration Hardware, Ross Stores, Saks Fifth Avenue, Sears, T.J. Maxx, Target, Wal-Mart, and Williams-Sonoma, all of which also have an online presence; and
- online liquidators such as SmartBargains.

We expect that existing and future traditional manufacturers and retailers will continue to add or improve their e-commerce offerings, and that our existing and future e-commerce competitors, including Amazon, will continue to increase their offerings, their delivery capabilities, and the ways in which they enable shoppers to purchase goods, including their mobile technology and the voice-activated shopping services offered by Amazon. Further, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms and some shoppers may begin their searches at these websites rather than utilize traditional search engines at all. Many of our competitors specialize in one or more of the areas in which we offer products. For example, our furniture offerings compete with numerous retail furniture websites and traditional furniture retail specialists. In the past, some of our competitors ran at net losses to gain market share in the online retail market. We also face competition from shopping services such as Google Express, which offers products from Walmart, Costco, Target and other retailers on a voice-activated shopping platform. Competition from Amazon and from other competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition, greater access to capital and significantly greater financial, marketing and other resources than we do, affect us and have had and could continue to have a material adverse effect on our financial results, business and prospects.

Economic factors, including our increasing exposure to the U.S. housing industry and the potential for a decrease in consumer spending, could adversely affect us.

Economic conditions, particularly any weakness in the United States housing market, may adversely affect our financial performance. Over the last several years, the percentage of our sales from home-related products has increased substantially. We believe that our sales of home-related products are affected by the strength of the U.S. housing industry, and that downturns in the U.S. housing industry could have a material adverse effect on our financial results, business and prospects. Similarly, a substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macro-economic conditions that impact consumer spending, including discretionary spending. Difficult macro-economic conditions, particularly high levels of unemployment or underemployment, also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, tax rates, consumer debt levels, and fuel and energy costs could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits and could have a material adverse effect on our financial results, business and prospects.

If we do not successfully optimize and operate our warehouse, distribution center, and customer service operations, our business could be harmed.

We have expanded, contracted and otherwise modified our warehouse, distribution center, and customer service operations from time to time in the past, and expect that we will continue to do so. If we do not successfully optimize and operate our warehouse, distribution center, and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. Because it is difficult to predict demand, we may not be able to manage our facilities in an optimal way, which may result in excess or insufficient inventory or warehousing capacity. We may also fail to staff our fulfillment and customer service centers at optimal levels. Our failure to manage our warehouse operations, distribution centers or our fulfillment and customer service centers optimally could adversely affect our financial results and customer experience and could have a material adverse effect on our financial results, business and prospects.

We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, and for proper labeling of products.

We rely on our suppliers' and fulfillment partners' representations of product safety, content and quality. We also rely on our suppliers and fulfillment partners to ensure proper labeling of products. Issues or concerns regarding product safety, labeling, content or quality could result in consumer or governmental claims and could adversely affect our financial results and

business. Any indemnity agreement we may have with a supplier or fulfillment partner of a product may be inadequate or inapplicable, and any insurance coverage we may carry may be inadequate. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our financial results, business and prospects.

Our decision to accept and hold cryptocurrency, such as bitcoin, may subject us to exchange risk and additional tax and regulatory requirements.

In 2014, we began accepting bitcoin as a form of payment for purchases on our website. Neither bitcoin nor any of the other cryptocurrencies we may hold are considered legal tender or backed by any government, and bitcoin and other cryptocurrencies we may hold have experienced price volatility, technological glitches and various law enforcement and regulatory interventions. The use of cryptocurrency such as bitcoin has been prohibited or effectively prohibited in some countries. If we fail to comply with regulations or prohibitions applicable to us, we could face regulatory or other enforcement actions and potential fines and other consequences. Our Board of Directors has authorized us to retain, in bitcoin, up to 50% of our sales revenues paid for by customers in bitcoin. From time to time we hold bitcoin and other cryptocurrencies directly, and we have exchange rate risk on the amounts we hold as well as the risks that regulatory or other developments may adversely affect the value of the cryptocurrencies we hold. We may choose not to hedge or may be unable to fully hedge our exposure to cryptocurrencies and may at times be unable to convert cryptocurrencies to U.S. dollars. If any regulatory authority asserts that we require a license or other regulatory approval to conduct business or own an interest in other businesses involving cryptocurrencies, it could have a material adverse effect on our financial results and business.

Our insurance coverage and indemnity rights may not adequately protect us against loss.

The types, coverage, or the amounts of any insurance coverage we may carry from time to time may not be adequate to compensate us for any losses we may actually incur in the operation of our business. Further, any insurance we may desire to purchase may not be available to us on terms we find acceptable or at all. We are not indemnified by all of our suppliers or fulfillment partners, and any indemnification rights we may have may not be enforceable or adequate to cover actual losses we may incur as a result of our sales of their products. Actual losses for which we are not insured or indemnified, or which exceed our insurance coverage or the capacity of our indemnitors or our ability to enforce our indemnity agreements, could have a material adverse effect on our financial results, business and prospects.

We are partially self-insured with respect to our employees' health insurance. If the actual costs of these claims exceed the amounts we have accrued for them, we would incur additional expense.

Beginning January 1, 2017, we are partially self-insured with respect to our employees' health insurance, except to the extent of stop-loss coverage that limits our losses both on a per employee basis and an aggregate basis. The actual costs of our employees' health insurance claims could exceed our estimates of those costs for a number of reasons, including more claims or larger claims than we expect, and increases in the costs of healthcare generally. If the actual cost of our employees' health insurance claims and related expenses exceeds the amounts we have accrued, we may be required to record additional charges for these claims and/or to establish additional cash reserves, which could have a material adverse effect on our financial results, business and prospects.

Additional Risks Relating to our Medici Business

The transactions with Pelion we announced in January 2021, as well as the conversion of Medici Ventures into a limited partnership, are subject to certain regulatory approval and closing conditions that may not be completed.

The consummation of the transactions with Pelion that we announced on January 25, 2021 (the "Medici Closing"), as contemplated by the transaction agreement that we filed as Exhibit 10.1 to our Current Report on Form 8-K on January 25, 2021 ("Transaction Agreement"), including the conversion of Medici Ventures into a limited partnership, is subject to the satisfaction or waiver of a number of closing conditions, including regulatory approvals. Such regulatory approvals include confirmation of the transaction regulators of tZERO's businesses, including FINRA and state money transmission licensing authorities. The relevant regulators may impose conditions on the Medici Closing, and any such conditions could have the effect of delaying the Medici Closing or causing a termination of the Transaction Agreement. There can be no assurance as to whether regulatory approval will be received, the timing of that approval if it is received, or whether any conditions will be imposed to such approval.

Conditions to consummation of the transactions contemplated by the Transaction Agreement may not be fulfilled in a timely manner or at all, and, accordingly, the Medici Closing may be delayed or may not be completed. In addition, we and/or Pelion may elect to terminate the Transaction Agreement under certain circumstances as outlined in the Transaction Agreement.

Uncertainty about the effect of the Medici Closing on the employees of our subsidiaries affected by the transactions may have an adverse effect on us.

If the Medici Closing is not completed for any reason, we:

- may experience negative reactions from the financial markets, including negative effects on our stock price;
- will have incurred substantial expenses and will be required to pay certain costs relating to the Medici Closing, including legal, accounting, and other fees, whether or not the Medici Closing is completed; and
- will have devoted substantial time and resources to matters relating to the Conversion, that could otherwise have been devoted to other opportunities that may have been beneficial to the Company.

If the Medici Closing is consummated, Pelion may not be successful in managing the limited partnership in accordance with the Transaction Agreement and could have to resign if there is a change in the interpretation or application of the Investment Advisers Act of 1940 (the "Advisers Act"), either of which would prevent us from receiving the anticipated benefits of the Medici Closing.

If the Medici Closing occurs, Pelion will become the general partner of Medici Ventures, and as general partner, will have control over the limited partnership and its activities, including day to day operations and investment decisions. Pelion will, subject to certain protective limitations in the first three years, be able to sell investments of the limited partnership at any time, make additional investments, modify, amend or change existing investments, make new investments and otherwise control the activities of the limited partnership.

The success of the Partnership following the Medici Closing, including anticipated benefits of the new structure, will depend on Pelion's ability to successfully manage the activities of the limited partnership including Medici Ventures' existing portfolio company investments. Pelion may not be successful in managing the Partnership and we may not receive the benefits we anticipate of the transaction with Pelion. Moreover, even if successful in managing the Partnership, Pelion has the right to withdraw as general partner after the Medici Closing in the event of a "Trigger Event," as defined in the Limited Partnership Agreement included within our Form 8-K filing on January 25, 2021. A Trigger Event generally relates to a change in Pelion's status under the Advisers Act. The occurrence of a "Trigger Event" is beyond our control, and, as a result, there can be no assurance that Pelion will remain as general partner for the term contemplated by the Limited Partnership Agreement.

Certain equity financings completed by some of our subsidiaries could result in the acceleration of the vesting of outstanding equity awards granted by such subsidiaries.

Pursuant to equity incentive plans entered into by our subsidiaries, Medici Ventures and tZERO, upon a "change in control" (as defined in the plans), outstanding equity awards that were issued under such plans would be subject to acceleration, vesting, and/or the lapsing of applicable restrictions on such awards. For purposes of the relevant tZERO plan, a "change in control" includes Overstock and any entity or entities directly or indirectly controlled by Overstock ceasing to be the legal or beneficial owner of a majority of the total voting power of the outstanding stock of tZERO. As a result, a sale of a number of shares by tZERO that would result in Overstock owning less than a majority of the total voting of the outstanding stock of tZERO would result in the acceleration of the vesting of the awards granted by tZERO. Further, the exercise of a sufficient number of outstanding equity awards issued under such plans could constitute a "change of control" as defined in such plan and thereby cause the accelerated vesting of unvested awards.

The businesses that we are pursuing through our Medici Ventures initiatives have emerging business models, without profits, and may require additional capital.

Companies in which Medici Ventures holds an interest are in the early stages of their business and do not generate profits. Some of these businesses are conducting pilot projects without charge to demonstrate capabilities and develop a reputation. Although these companies intend to generate profits in the future, they have not done so to date. If companies in which Medici Ventures has an interest cannot generate profits, such companies might require additional capital, which could have a material adverse effect on our financial results, business and prospects.

The businesses that we are pursuing through our Medici Ventures initiatives are novel and subject to technical, operational, financial, regulatory, legal, reputational and marketing risks.

Medici Ventures has acquired interests in various businesses, including financial technology companies, broker-dealers, and digital currency transfer and payment businesses. We have limited experience with the operation of such businesses. Virtually every state in the U.S. regulates money transmitters and money service businesses. In some states the licensing requirements and regulations expressly cover companies engaged in digital currency activities; in other states it is not clear whether or how the existing laws and regulations apply to digital currency activities. Further, U.S. federal law requires

registration of most such businesses with FinCEN. These licenses and registrations subject companies to various anti-money laundering, know-your-customer, record-keeping, reporting and capital and bonding requirements, limitations on the investment of customer funds, and inspection by state and federal regulatory agencies. Under U.S. federal law, it is a crime for a person, entity or business that is required to be registered with FinCEN or licensed in any state to fail to do so. Further, under U.S. federal law, anyone who owns all or part of an unlicensed money transmitting business may be subject to civil and criminal penalties. For example, if Bitt, Spera, Ripio, or FinClusive take any action that could subject them to registration with FinCEN or to licensing requirements in any state before they become properly licensed and registered, we could be subject to potential civil and criminal penalties. In addition, our majority-owned subsidiary tZERO is working on financial applications of blockchain technology, including the development and management of a trading platform for digital "tokens," "coins," and digital securities. See "Additional Risks Relating to our tZERO Initiatives" above. These areas, along with other areas, are areas in which we do not have substantial experience, and which are subject to the risks of new and novel businesses, including technical, operational, financial, regulatory, legal and reputational risks, as well as the risk that we may be unable to market, license or sell our technology successfully or profitably. The occurrence of any such risks, any such penalties, or even allegations of criminal or civil misconduct, could have a material adverse effect on us and on our financial results and business.

We may be required to write off amounts relating to our interests in startup businesses.

At December 31, 2020, Overstock and its subsidiaries held minority interests totaling approximately \$49.1 million in several companies that are in the startup or development stages and we may acquire additional minority interests in other entities in the future. Minority interests are inherently risky because we may not have the ability to influence business decisions. Further, these interests are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. Additionally, since these interests are in companies that are in the early startup or development stages, even if their technology or products are viable, they may not be able to obtain the capital or resources necessary to successfully bring their technology or products to market. Furthermore, we have no assurance that the technology or products of companies we have funded would be successful, even if they were brought to market. We have written off amounts related to these interests in the past and may in the future write off additional amounts related to these interests. Any such write-offs could be material and could have a material adverse effect on our financial results and business.

If we do not keep pace with technological and regulatory changes, it may impair our ability to market, license or sell the products and services developed as part of our Medici initiatives.

The market for products and services based on blockchain technology is characterized by rapid technological change, frequent product and service innovation and evolving industry standards. The success of our Medici initiatives depends on several factors, including the timely completion, introduction and market acceptance of such products and services, as well as our ability to comply with changing regulations and laws. Failure in this regard may significantly impair our competitiveness and financial results. In addition, we may need to continuously modify and enhance our offerings to keep pace with changes in Internet-related hardware, software, communication, browser and database technologies. We may not be successful in either developing these modifications and enhancements or in bringing them to market in a timely fashion. Furthermore, uncertainties about the timing and nature of new network platforms or technologies, or modifications to existing platforms or technologies, could increase our research and development expenses. Any failure of products and services to keep pace with technological or regulatory changes or operate effectively with future network platforms and technologies could reduce the demand for our products and services. The occurrence of any of the foregoing could have a material adverse effect on our financial results and business.

The blockchain related products and services that we are developing as part of our Medici initiatives have the potential to be used in ways we do not intend, including for criminal or other illegal activities.

Blockchain related products and services, in particular cryptocurrencies, have the potential to be used for financial crimes or other illegal activities. Because the Medici initiatives are novel there are uncertainties regarding any legal and regulatory requirements for preventing blockchain related products and services from being put to such uses, and there are uncertainties regarding the liabilities and risks to the Company if we are unable to prevent such uses. Even if we comply with all laws and regulations regarding financial and blockchain related products and services, we have no ability to ensure that our customers, partners or others to whom we license or sell our products and services comply with all laws and regulations applicable to them and their transactions. Any negative publicity we receive regarding any allegations of unlawful uses of our Medici initiatives could damage our reputation. More generally, any negative publicity regarding unlawful uses of blockchain technology in the marketplace could reduce the demand for our products and services. The occurrence of any of the foregoing could have a material adverse effect on our financial results and business.

Risks Relating to Our Common Stock and Other Securities

The trading prices of our securities may be adversely affected by short-selling activities involving our common stock.

The trading prices of our common stock and other securities have been and may continue to be volatile. Our stock price fluctuations may be due in part to short-selling activity related to our common stock. The practice of short-selling activity may adversely affect our common stock price, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

The trading prices of our securities may be affected by the prices of cryptocurrencies, particularly bitcoin, despite our disclosures that we generally hold very little bitcoin, and by perceptions regarding the business prospects of blockchain technology generally.

The trading prices of our securities may be affected by the prices of cryptocurrencies, particularly bitcoin, which may be the result of an apparent misperception that the value of our business is related to the value of bitcoin, despite our disclosures that we generally hold very little bitcoin. The market price of our securities may also be affected by perceptions regarding the business prospects of our Medici business and blockchain technology generally. To the extent that our blockchain initiatives do not succeed in a timely manner or at all, or the development or acceptance of blockchain networks, blockchain assets or blockchain applications slows or stops, the trading prices of our securities could decrease significantly, which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

Our quarterly operating results are volatile and may adversely affect the market prices of our common stock and preferred stock, and you may lose all or a part of your investment.

Our revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control. In addition to the other risk factors described in this report, factors that have caused and/or could cause our quarterly operating results to fluctuate and in turn affect the market prices of our common stock and preferred stock include:

- increases in the cost of advertising and changes in our sales and marketing expenditures;
- expenses we incur in our Medici and tZERO business development efforts;
- our inability to retain existing customers or encourage repeat purchases;
- the extent to which our existing and future marketing campaigns are successful;
- price competition, particularly in the costs of marketing as well as in product pricing;
- the amount and timing of operating costs and capital expenditures;
- the amount and timing of our purchases of inventory;
- our inability to manage distribution operations or provide adequate levels of customer service;
- increases in the cost of fuel, transportation or distribution;
- our inability to implement technology changes or integrate operations and technologies from acquisitions or other business combinations;
- our efforts to offer new lines of products and services; and
- our inability to attract users to our website.

Any of the foregoing could have a material adverse effect on our financial results and business and our ability to raise capital and could have a material adverse effect on the holders of our common stock and of our preferred stock.

Our outstanding preferred stock could adversely affect the holders of our common stock in some circumstances.

We have two series of preferred stock outstanding. The preferred stock could adversely affect the holders of our common stock in some circumstances. The preferred stock generally votes with the common stock, with holders of the preferred stock having one vote for each share held. As of December 31, 2020, the 4,560,289 outstanding shares of preferred stock constituted approximately 10% of the total number of shares of the preferred stock and the common stock, taken together. Holders of the Series A-1 Preferred stock are entitled to an annual cash dividend of \$0.16 per share, and holders of the Series B Preferred stock are entitled to an annual cash dividend at the annual rate of 1.0% multiplied by \$15.68, in each case in preference to any dividend payment to the holders of the common stock, out of funds legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of our preferred stock are also generally entitled to participate in any dividends we pay on the common stock. The preferred stock ranks equally with the common stock upon our liquidation, winding up or dissolution, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. Generally, in a business combination, we are obliged to use all

commercially reasonable efforts to cause each share of the preferred stock to be treated as a share of common stock. Any of the foregoing could have a material adverse effect on the holders of the common stock in connection with any such transactions.

Future sales or other distributions of our common or preferred stock may depress our stock price or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

Sales or other distributions of a substantial number of shares of our common stock or our preferred stock, in the public market or otherwise, by us or by a significant stockholder, has in the past and could in the future, depress the trading price of our common or preferred stock and impair our ability to raise capital through the sale of additional equity securities. The transfer of ownership of a significant portion of our outstanding shares of common or preferred stock in the public market or otherwise, by us or by a significant stockholder, within a three-year period could adversely affect our ability to use our net operating losses and tax credit carryforwards to offset future taxable net income.

In addition, we may issue additional shares of our common or preferred stock from time to time in the future in amounts that may be significant. We have sold common stock including under our "at the market" sales agreement with JonesTrading and D.A. Davidson and in follow-on underwritten offerings in the past and may do so in the future. The sale of substantial amounts of our common or preferred stock, by us or a significant stockholder, or the perception that these sales may occur, could adversely affect the trading prices of either or both of these securities or subject us to limitations on our ability to use our net operating and tax credit carryforwards.

The trading prices of our securities may be adversely affected by the evolving nature of our business model.

The trading prices of our common stock and other securities have been and may continue to be volatile. Our stock price fluctuations may be due in part to our disclosures about our commencement or discontinuance of various product and/or service offerings. Our stock price may be adversely affected by our future actions, including any decisions we may make or announcements to pursue or not to pursue certain business strategies or product or service offerings, and by any announcements we may make regarding any such matters, any of which could cause the trading prices of our securities to decrease significantly which in turn could adversely affect our ability to raise capital and could have a material adverse effect on our financial results, business and prospects.

Anti-takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our Board of Directors. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions:

- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings;
- providing that our Board of Directors is classified into three classes of directors with staggered three-year terms;
- only permitting the Board of Directors to fix the number of directors and to fill vacancies;
- prohibiting cumulative voting in the election of directors;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our Board of Directors;
- controlling the procedures for the conduct and scheduling of Board of Directors and stockholder meetings; and
- designating a state court located in the State of Delaware as the sole and exclusive forum for specified matters.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents certain stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of at least two-thirds of our outstanding common stock not held by such 15% or greater stockholder.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock or other securities and could also affect the price that some investors are willing to pay for our common stock or other securities.

Additional Risks Related Primarily to our Series A-1 Preferred Stock

Our Series A-1 Preferred stock may only be sold through the tZERO ATS.

The amended and restated certificate of designation for the Series A-1 Preferred stock provides that shares of the Series A-1 Preferred stock can be sold only on the tZERO ATS. The Series A-1 Preferred stock is not and will not be listed on any national securities exchange or other trading market of any kind. The limitation on trading shares of Series A-1 Preferred stock through the tZERO ATS may adversely affect the liquidity for, and market price of, the shares of Series A-1 Preferred stock. It may at times be very difficult to sell any shares of the Series A-1 Preferred stock.

The Series A-1 Preferred stock may only be sold through a brokerage account established with a broker-dealer that subscribes to and effects trading on the tZERO ATS. A limited number of broker-dealers facilitate trades of securities on the tZERO ATS. In the event one or more of such broker-dealer subscribers ceases to operate, it may impair trading of the Series A-1 Preferred, which could materially and adversely affect the trading prices of the Series A-1 Preferred stock. In such a case, however, the Board could exercise its authority to change or add additional alternative trading systems, trading markets or venues on which the Series A-1 Preferred stock may be sold.

Likewise, Apex PRO ("Apex"), is the only broker-dealer that clears transactions effected on the tZERO ATS. If for any reason Apex ceases to clear trades for current or future ATS-executing broker-dealers of tZERO ATS and no clearing firm succeeds Apex, trading in the Series A-1 Preferred stock on the tZERO ATS may be interrupted and such an interruption would likely materially and adversely affect the trading price of the Series A-1 Preferred stock.

The tZERO ATS has had limited volume. Even if a more liquid trading market for the Series A-1 Preferred does develop on the tZERO ATS utilizing the tZERO Technology Stack or other technology developed by tZERO, the depth and liquidity of that market and the ability to sell the Series A-1 Preferred stock may nevertheless be limited, which may have a material adverse effect on the liquidity for, and the market price of, the Series A-1 Preferred stock.

Moreover, peer-to-peer transfers of the Series A-1 Preferred stock outside of orders submitted to the tZERO ATS by an ATS-executing broker-dealer, or with a broker-dealer that itself maintains an account with an ATS-subscribing broker-dealer, on behalf of its customers ("peer-to-peer transfers"), are not permitted, subject to limited circumstances. Computershare will register peer-to-peer transfers of record ownership of the Series A-1 Preferred stock in limited circumstances that do not constitute "sales" for purposes of securities laws, such as a transfer from broker-dealer to broker-dealer, with the stockholder's carrying broker-dealer being reflected as the record holder, or a transfer by a stockholder who is the record holder pursuant to a divorce decree, death or gift (and then only following compliance with Computershare's procedures, including delivery of appropriate documentation). However, the Board is authorized to exclude additional transactions or classes of transactions from the requirement to make "sales" on the tZERO ATS.

The restrictions on the tax reporting of holder's cost basis in shares of Series A-1 Preferred stock will not allow normal tax planning in the sale of shares of Series A-1 Preferred stock and may result in disadvantageous tax consequences to a seller of Series A-1 Preferred stock.

Only one method of cost basis reporting (the first-in, first-out, or "FIFO" method) is available for the Series A-1 Preferred stock. As a result, sellers of Series A-1 Preferred stock may be required to pay more tax on their sales or to pay taxes earlier than if other normal methods of cost basis reporting had been available, which could have an adverse tax effect on sellers of Series A-1 Preferred stock and the market price of the Series A-1 Preferred stock.

The record of ownership of each digital wallet address will be available to the general public and it may be possible for members of the public to determine the identity of the record holders of the Series A-1 Preferred stock.

Although the record of ownership included in the blockchain is a non-controlling digital "courtesy carbon copy" of the records maintained by Computershare, it will be made publicly available. The publicly available information will include the digital wallet address of each holder of record transacting in Series A-1 Preferred stock and the security position information of such holder of record and the entire history of debits and credits to the relevant security position information of each digital wallet address, but it will not include any personal identifiable information. As a result, it may be possible for members of the public to determine the identity of the record holders of certain wallet addresses based on the publicly available information in

the courtesy carbon copy, as well as other publicly available information, including any ownership reports required to be filed with the SEC regarding the Series A-1 Preferred stock.

The Series A-1 Preferred stock depends on Computershare as the transfer agent for the Series A-1 Preferred stock.

Computershare serves as the transfer agent for the Series A-1 Preferred stock and ownership of the Series A-1 Preferred stock is determined by the books and records of Computershare. Our agreement with Computershare can be terminated by either party on 60 days' notice. If Computershare chooses to exercise its termination rights or otherwise ceases to operate as a transfer agent, we would seek to engage a successor transfer agent. In the absence of finding such a successor, Overstock would need to assume the role of transfer agent. While we believe we could successfully assume the role of transfer agent, no assurance can be given that we would be able to do so and if we are unable to do so the trading market for the Series A-1 Preferred stock would be adversely affected and it may be difficult or impossible for Overstock to pay dividends or liquidation preference or provide voting rights to the correct holders of record of the Series A-1 Preferred stock.

The potential application of U.S. laws regarding traditional investment securities to the Series A-1 Preferred is unclear.

We believe that the Series A-1 Preferred stock should be treated as any other conventional, uncertificated book-entry security. However, various regulators may disagree with this assertion and conclude that the Series A-1 Preferred stock should not be treated as any other traditional investment security. For example, we believe that the Series A-1 Preferred stock is not a "digital asset security" within the meaning of the July 8, 2019 Joint Staff Statement on broker-dealer Custody of Digital Asset Securities (the "July Statement"), and that as a result, broker-dealers will have a good control location consistent with the July Statement. However, federal securities regulatory authorities may disagree with that conclusion and we could be required to take further steps with regulators to establish a good control location. The occurrence of any such issue or dispute could have a material adverse effect on the liquidity for, and market price of, the Series A-1 Preferred stock. In addition, if regulatory authorities take the position that Series A-1 Preferred stock is a "digital asset security," then broker-dealers may need to submit a Form CMA with FINRA in order to hold the Series A-1 Preferred stock on your behalf, and that could prevent other broker-dealers from becoming executing broker-dealers to the tZERO ATS. As a result, holders of the Series A-1 Preferred stock may not be able to open an account with another ATS-executing broker-dealer authorized to facilitate trading of the Series A-1 Preferred stock on the tZERO ATS.

If we elect to repurchase the Series A-1 Preferred stock on the tZERO ATS, it could have a material adverse effect on the liquidity in, and trading prices of, the Series A-1 Preferred stock.

We do not currently intend to repurchase any of the Series A-1 Preferred stock on the tZERO ATS. However, we could do so, subject to applicable regulations regarding issuer repurchases of their capital stock. If we do so, we would do so only at prices lower than the prices at which we are entitled to redeem the shares. If we repurchase shares of Series A-1 Preferred stock, the trading market for the Series A-1 Preferred stock could become less liquid, which would likely cause the trading prices of the Series A-1 Preferred stock to decrease, which would give us an economic incentive to repurchase additional shares. The occurrence of the foregoing could have a material adverse effect on the liquidity in, and trading prices of, the Series A-1 Preferred stock. There are no restrictions on our repurchase of shares of Series A-1 Preferred stock while there is any arrearage in the payment of dividends.

Technology on which the tZERO ATS relies for its operations may not function properly.

The technology on which the tZERO ATS relies, including the tZERO Technology Stack, may not function properly because of internal problems or as a result of cyber-attacks or external security breaches. Any such malfunction may adversely affect the ability of holders with a brokerage account at a tZERO ATS subscriber to execute trades of the Series A-1 Preferred stock on the tZERO ATS. If the technology used by the tZERO ATS does not work as anticipated, trading of the Series A-1 Preferred stock could be limited or even suspended. In such as case, however, our board of directors has the authority to change or add alternative trading systems, trading markets or venues on which the Series A-1 Preferred stock may be sold, but there can be no assurance that they will choose to do so in the future, or that any such additional trading venues would be found or prove suitable to support the Series A-1 Preferred stock.

The technology on which the tZERO ATS depends has been developed by our indirectly held majority-owned subsidiary, tZERO, and is licensed to its wholly-owned subsidiary, tZERO ATS, LLC, and the Series A-1 Preferred stock depends on both tZERO and tZERO ATS, LLC, neither of which has substantial resources.

tZERO is an indirectly held majority-owned subsidiary of ours and owns 100% of the equity interest in tZERO ATS, LLC. tZERO licenses the technology to tZERO ATS, LLC, and tZERO uses tZERO technology, including the tZERO Technology Stack, to operate the tZERO ATS. tZERO is a growth-stage company, and neither tZERO nor tZERO ATS, LLC has substantial resources. If any one or more of Overstock, tZERO or tZERO ATS, LLC were unable to fund its operations in

the future, or if any one or more of them were to become the subject of a bankruptcy or other insolvency proceeding, tZERO ATS, LLC might be unable to continue to operate the tZERO ATS, and the Series A-1 Preferred stock could be materially adversely affected. In any such event, or if the tZERO ATS, LLC or tZERO technology were to be unable to operate as intended for any reason, holders of our capital stock, including the Series A-1 Preferred stock, could lose their ability to trade our Series A-1 Preferred stock, which would have a material adverse effect on the market value of that stock, and may have a material adverse effect on the liquidity for, and the price of, our Common Stock.

Transactions involving the Series A-1 Preferred stock may not be properly reflected on the blockchain.

A significant feature of the Series A-1 Preferred stock is that, while the records of Computershare (as our transfer agent) govern record ownership of the Series A-1 Preferred stock, for all record holders on the transfer agent's official and controlling records there is a "courtesy carbon copy" of certain Computershare ownership records on the blockchain. Following Computershare's approval of any change in record ownership, the security position information relevant to a record holder's digital wallets addresses on the blockchain is updated consistent with changes to Computershare's official books and records. To the extent that Computershare's records and the "courtesy carbon copy" get out of sync, there could be a delay while we correct any such inconsistencies and such inconsistencies may cause investor confusion with respect to their record holdings of the Series A-1 Preferred stock, which could adversely affect the liquidity for, and market value of, the Series A-1 Preferred stock.

The potential application of U.S. laws regarding virtual currencies and money transmission to tZERO ATS, LLC's use of the Ethereum blockchain is unclear.

The non-controlling blockchain-based "courtesy carbon copy" of record ownership uses tZERO technology, which, in turn, uses the Ethereum blockchain. Although tZERO's wholly owned subsidiary, tZERO Crypto maintains certain licenses in connection with its virtual currency applications, none of the parties involved in the operation of the tZERO ATS using tZERO technology is licensed under the virtual currency or money transmission regulations of any state in the United States or registered with FinCEN. If any regulatory authority were to assert that additional licensing or registration was required by tZERO ATS, LLC or tZERO, it could affect the operations or viability of either of them, and could adversely affect the availability of the tZERO ATS as a trading venue for the Series A-1 Preferred stock. This in turn would have a material adverse effect on the liquidity of the Series A-1 Preferred stock and the holders' ability to trade such securities. In addition, because tZERO ATS, LLC is a wholly-owned subsidiary of tZERO, any negative impact on the value of the tZERO ATS or tZERO technology, including the tZERO Technology Stack, could have an adverse impact on the value of Overstock, which would cause our stock price to decrease.

Although the Series A-1 Preferred stock has characteristics similar to those of our common stock, the differences may adversely affect the trading prices of the Series A-1 Preferred stock.

Each share of Series A-1 Preferred stock is intended to have voting and dividend rights and rights upon liquidation substantially similar to those of one share of our common stock, except that the Series A-1 Preferred stock will have a dividend preference over the common stock, the Series A-1 Preferred stock will be limited to trading on the tZERO ATS, and we will have the right to convert the Series A-1 Preferred stock into Series B Preferred stock. These provisions may have a material adverse effect on the liquidity for, and trading price of, the Series A-1 Preferred stock.

We do not expect there to be any market makers on the tZERO ATS to develop a trading market in the Series A-1 Preferred stock and certain broker-dealers may not be willing to trade on the tZERO ATS.

Most securities that are publicly traded in the United States have one or more broker-dealers acting as "market makers" for the security. A market maker is a firm that stands ready to buy and sell the security on a regular and continuous basis at publicly quoted prices. We have no assurances that the Series A-1 Preferred stock will ever have any market makers on the tZERO ATS. Further, certain broker-dealers might be unwilling to execute trades for their clients on the tZERO ATS, which could cause problems with the transfer of shares paid as part of the Dividend out of certain brokerage and retirement accounts. We expect the lack of market makers and unwillingness of certain broker-dealers to effectuate transfers of the Series A-1 Preferred stock on the tZERO ATS could cause problems and contribute to a lack of liquidity in the Series A-1 Preferred stock on the tZERO ATS, which could have a material adverse effect on holders' ability to trade them.

Additional Risks Related to both our Series A-1 Preferred stock and our Series B Preferred stock

We do not intend to issue any additional shares of Series B Preferred stock, which is expected to continue to result in very limited trading.

We do not intend to issue any additional shares of Series B Preferred stock. This will likely result in limited trading in the Series B Preferred and the number of shares of Series B is limited to 370,000.

A share of Series A-1 Preferred stock and/or Series B Preferred stock may have a substantially lower market value than a share of our common stock.

The trading prices of the Series A-1 Preferred stock and the Series B Preferred stock have been at times, and may be in the future, substantially lower than the trading price of our common stock, which could have a material adverse effect on holders of Series A-1 Preferred stock and holders of Series B Preferred stock.

It is uncertain whether the IRS will treat the Series A-1 Preferred stock and Series B Preferred stock as common stock or preferred stock for U.S. federal income tax purposes.

We intend to treat the Series A-1 Preferred stock and Series B Preferred stock as common stock for U.S. federal income tax purposes. Nevertheless, it is unclear whether the IRS will treat the Series A-1 Preferred stock and Series B Preferred stock as common stock for U.S. federal income tax purposes. If the IRS were not to treat either the Series A-1 Preferred stock or the Series B Preferred stock as common stock for U.S. federal income tax purposes, it could have a material adverse effect on the holders of Series A-1 Preferred stock and the holders of Series B Preferred stock.

Holders of Series A-1 Preferred stock and Series B Preferred stock will have no rights with respect to our common stock.

Holders of Series A-1 Preferred stock and holders of the Series B Preferred stock will have no rights with respect to our common stock, and no right to convert shares of Series A-1 Preferred stock or Series B Preferred stock into shares of common stock or to exchange shares of Series A-1 Preferred stock or Series B Preferred stock for shares of common stock, except that holders of Series A-1 Preferred stock and holders of Series B Preferred stock will have the right to vote with the common stock on any matter submitted to a vote of the holders of the common stock, the right to receive payments upon liquidation equally with the holders of the common stock, and the right to receive dividends in preference to the holders of the common stock and to participate in any dividend paid to the holders of our common stock, subject to the limitations set forth in the respective certificates of designation of Series A-1 Preferred stock and Series B Preferred stock.

Our obligation to pay dividends on the Series A-1 Preferred stock and Series B Preferred stock is limited, and our ability to pay dividends on the Series A-1 Preferred stock and Series B Preferred stock may be limited.

Our obligation to pay preferential dividends on the Series A-1 Preferred stock is subject to our Board of Directors declaring such dividend payments. Further, although we will be contractually restricted from paying a dividend on the common stock unless we have paid preferential cumulative \$0.16 per share annual dividends on the Series A-1 Preferred stock and preferential cumulative 1.0% annual dividends on the Series B Preferred stock, we have never paid a cash dividend on the common stock and we have no present intention of doing so. Consequently, our failure to pay preferential dividends on the Series A-1 Preferred stock and on the Series B Preferred stock might have no legal effect on us at all, although it could adversely affect the liquidity for, and trading prices of, the Series A-1 Preferred stock and of the Series B Preferred stock. Further, our payment of any dividends will be subject to contractual and legal restrictions and other factors our Board of Directors deems relevant. Further, we may elect not to pay dividends on the Series A-1 Preferred stock, the Series B Preferred stock or both rather than limiting other proposed expenditures, including expenditures that may not be contractually required. Moreover, agreements governing any future indebtedness of ours may further limit our ability to pay dividends on our capital stock, including the Series A-1 Preferred stock and the Series B Preferred stock. In addition, our ability to pay dividends is limited by applicable law. Although there are no arrearages in cumulative preferred dividends and we declared and paid a cash dividend of \$0.16 per share to the holders of our then outstanding preferred stock during 2017, 2018, 2019, and 2020, there is no assurance that we will be able or that our Board of Directors will decide to do so in 2021 or the future. Any of the foregoing facts or events could have a material adverse effect on the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock and on the liquidity for, and trading prices of, the Series A-1 Preferred stock and the Series B Preferred stock.

Voting rights on the Series A-1 Preferred stock and Series B Preferred stock generally will be limited to voting together with the holders of the common stock and Series A-1 Preferred stock or Series B Preferred stock as a single class, and the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock collectively will have only a small percentage of the voting power on any matter submitted to the holders of the common stock, Series A-1 Preferred stock and Series B Preferred stock, voting together as a single class.

Voting rights of the Series A-1 Preferred stock or Series B Preferred stock generally will be limited to voting together with the holders of the common stock, Series A-1 Preferred stock and Series B Preferred stock, as a single class. If an amendment requiring stockholder approval is proposed to our amended and restated certificate of incorporation, the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock will vote together with the holders of the common stock as a single class, but neither the holders of the Series A-1 Preferred stock nor the holders of the Series B Preferred stock will be entitled to a class vote on the amendment, unless the proposed amendment would adversely affect the special rights, preferences, privileges and voting powers of the Series A-1 Preferred stock or Series B Preferred stock, respectively increases or decreases of the authorized number of shares of Series A-1 Preferred stock or Series B Preferred stock, respectively. These limited voting rights could have a material adverse effect on holders of Series A-1 Preferred stock and holders of Series B Preferred stock and on the trading prices of the Series A-1 Preferred stock and the Series B Preferred stock.

The holders of the Series A-1 Preferred stock and Series B Preferred stock will have no right as a separate class to elect any members of our board of directors under any circumstances, including upon any failure of our board of directors to declare or pay any dividend on the Series A-1 Preferred stock or Series B Preferred stock. Further, the holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock, together, also will have no right by themselves to elect any members of our board of directors under any circumstances. The holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock will be entitled only to vote with the holders of the common stock as a single class in the election of directors and on any other matter coming before a vote of the holders of the common stock. Holders' lack of such rights could have a material adverse effect on holders of the Series A-1 Preferred stock and the holders of the Series B Preferred stock and the liquidity for, and trading prices of, the Series A-1 Preferred stock and the Series B Preferred stock.

The Series A-1 Preferred stock and the Series B Preferred stock will rank junior to all of our and our subsidiaries' liabilities in the event of a bankruptcy, liquidation or winding up of our or our subsidiaries' business.

In the event of our bankruptcy, liquidation or winding up, our assets will be available to make payments to holders of Series A-1 Preferred stock and to holders of Series B Preferred stock only after all of our liabilities have been paid, and neither the Series A-1 Preferred stock nor the Series B Preferred stock will have any preference over our common stock in the event of our bankruptcy, liquidation or winding up. In addition, the Series A-1 Preferred stock and Series B Preferred stock will rank structurally junior to all existing and future liabilities of our subsidiaries. Holders' rights to participate in the assets of our subsidiaries upon any liquidation or reorganization of any subsidiary will rank junior to the claims of creditors. In the event of our bankruptcy, liquidation or winding up, there may not be sufficient assets remaining, after paying our and our subsidiaries' liabilities, to pay any amounts to the holders of Series A-1 Preferred stock or Series B Preferred stock then outstanding. We may incur significant debt or other liabilities in the future, and the Series A-1 Preferred stock and Series B Preferred stock contain no covenant or restriction on our ability to incur debt or other obligations. Any bankruptcy, liquidation or winding up of our company or any of its wholly or partially owned subsidiaries would have a material adverse effect on the liquidity for, and trading prices of, the Series A-1 Preferred stock and Series B Preferred stock.

Moreover, we do not own all of the equity securities of our subsidiaries, including tZERO. For example, we have adopted an employee equity incentive plan pursuant to which tZERO has issued, and may continue to issue, shares or other equity interests or awards having the economic effects of equity interests to employees. As a result, following satisfaction of the claims of creditors of those subsidiaries as discussed above, our right to receive distributions as a stockholder with respect to our equity interests in those majority owned subsidiaries will be shared with third party equity holders of tZERO and our other subsidiaries, whether now existing or created in the future, including our employees holding shares of any of them.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We own and lease various properties in the United States and internationally. We use the properties for corporate office space, data centers, and warehouse, fulfillment and customer service space. As of February 19, 2021, we operated the following facilities (square feet in thousands):

	<u>United States</u>	<u>International</u>	<u>Total</u>
Owned facilities	236	—	236
Leased facilities	1,065	21	1,086
Total facilities	<u>1,301</u>	<u>21</u>	<u>1,322</u>

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to significant damages, associated costs, or equitable remedies relating to the operation of our business. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 14—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, which is incorporated by reference in answer to this Item.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market information

The principal U.S. trading market for our common stock is the Nasdaq Global Market. Our common stock is traded under the symbol "OSTK."

Holders

As of February 19, 2021, there were 98 holders of record of our common stock. Many of our shares of common stock are held by brokers and other institutions on behalf of the beneficial owners.

Dividends

We have never declared or paid any cash dividends on our common stock. On May 19, 2020, we distributed a digital dividend in the form of one Series A-1 Preferred stock share for every 10 shares of common stock or preferred shares held by a stockholder on the record date of April 27, 2020. With regard to cash dividends, we currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends on our common stock in the foreseeable future. Any future determination to pay any dividends on our common stock will be at the discretion of our Board of Directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the Board of Directors deems relevant.

At December 31, 2020 we had 4,560,289 shares of our Preferred Stock (as defined below) outstanding. The Preferred Stock ranks senior to our common stock with respect to dividends. Holders of the Class A-1 Preferred Stock are entitled to an annual cash dividend of \$0.16 per share, and holders of the Class B Preferred Stock are entitled to an annual cash dividend at the annual rate of 1.0% multiplied by \$15.68, in each case in preference to any dividend payment to the holders of the common stock, out of funds legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the Preferred Stock are also entitled to participate in any dividends we pay to the holders of the common stock, subject to potentially different treatment if we effect a stock dividend, stock split or combination of the common stock. There are no arrearages in cumulative preferred dividends. We declared and paid a cash dividend of \$0.16 per share on our preferred stock during 2020, 2019, and 2018.

Recent sales of unregistered securities

None.

Issuer purchases of equity securities

None.

Preferred Stock

In December 2016, we issued 695,898 shares of our preferred stock, consisting of 126,565 shares of our Blockchain Voting Series A Preferred stock (the "Series A Preferred") and 569,333 shares of our Voting Series B Preferred stock (the "Series B Preferred"), in a public offering registered under the Securities Act of 1933, as amended.

On May 1, 2019, we informed holders of our Series A Preferred stock of an opportunity to exchange (the "Exchange") outstanding Series A Preferred stock for newly-issued shares of the Company's Series A-1 Preferred stock (the "Series A-1 Preferred" and together with the Series A Preferred stock and Series B Preferred stock, the "Preferred Stock"). Between June 26, 2019 and July 30, 2019, the Exchange was completed for participating stockholders. In connection with the Exchange, 124,546 shares of Series A Preferred stock were validly tendered and accepted for exchange by the Company and the Company issued 124,546 shares of Series A-1 Preferred stock in exchange therefore. In connection with the completion of the Exchange, 2,019 shares of Series A Preferred stock were converted into shares of Series B Preferred stock (such transaction, the "Conversion"). Following the completion of the Exchange and the Conversion, the Company eliminated the Series A Preferred stock by filing a Certificate of Elimination with the Delaware Secretary of State.

As of December 31, 2020, the 4,560,289 shares of Preferred Stock that remained outstanding constituted approximately 10% of the total number of shares of the Preferred Stock and the common stock, taken together. Neither the Series A-1 Preferred stock nor the Series B Preferred stock is registered under the Securities Exchange Act of 1934, as amended. The Series A-1 Preferred stock are digital securities that trade exclusively on the alternative trading system run by tZERO ATS, LLC, an SEC-registered broker-dealer and member of FINRA and SIPC. The tZERO ATS utilizes the tZERO Technology Stack to facilitate trading of the Series A-1 Preferred stock. While the Series A-1 Preferred stock benefit from a digital "courtesy carbon copy" of record ownership on the blockchain, the records of Computershare, acting as transfer agent and registrar, govern record ownership of the Series A-1 Preferred stock in all instances. In order to trade the Series A-1 Preferred stock, holders must open an account with a broker-dealer subscribing to the tZERO ATS or maintain an account with an ATS-subscribing broker-dealer. The Series B Preferred stock are conventional securities that trade in the over-the-counter market and are quoted on the OTCQX market operated by OTC Markets Group (Ticker: OSTBP).

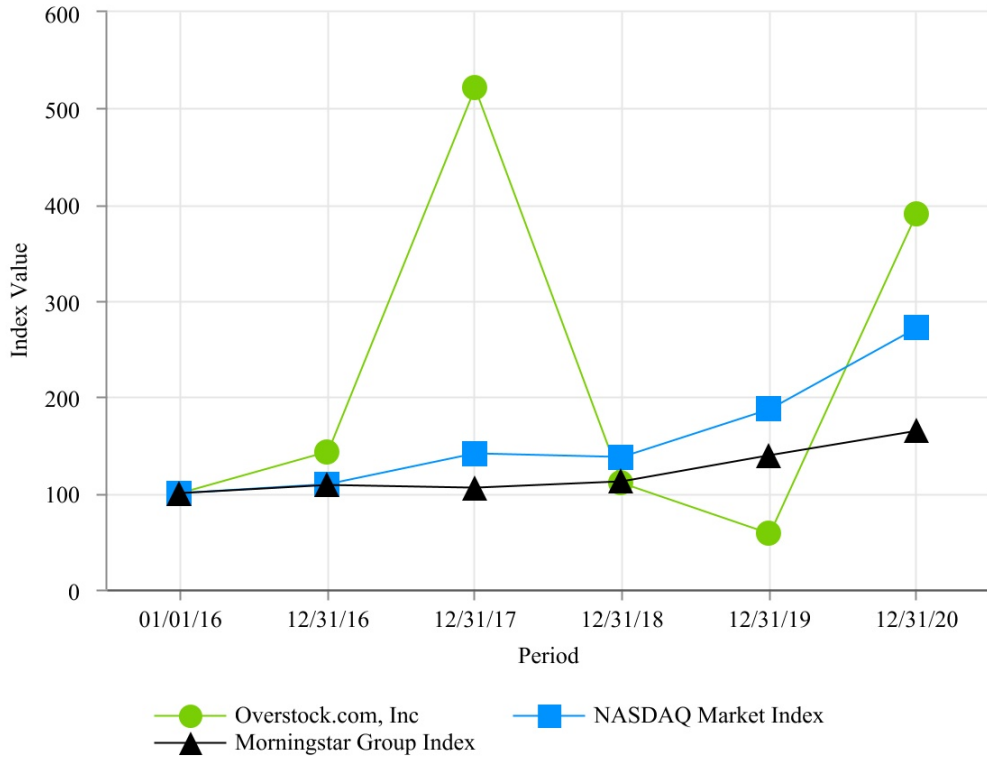
Holders of the Preferred Stock do not have any right to convert or exchange such shares for shares of our common stock or any other security; however, at our sole discretion, we may convert the Series A-1 Preferred stock shares into Series B Preferred stock at any time on a one-to-one basis. In the event of any liquidation, any amount available for distribution to stockholders after payment of all liabilities will be distributed proportionately among the holders of common stock, the holders of Series A-1 Preferred stock and the holders of Series B Preferred stock, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. If we are party to any merger or consolidation in which our common stock is changed into or exchanged for stock or other securities of any other person (or the Company) or cash or any other property (or a right to receive the foregoing), we will use all commercially reasonable efforts to cause each outstanding share of the Preferred Stock to be treated as if such share were an additional outstanding share of common stock in connection with any such transaction.

Securities Authorized for Issuance under Equity Compensation Plans

Except as set forth herein, the information required by this Item is included in Part III, Item 12.

COMPARISON OF 5-YEAR CUMULATIVE TOTAL RETURN

The following graph compares the total cumulative stockholder return on our common stock with the total cumulative return of the NASDAQ Market Index—U.S. ("NASDAQ Market Index") and the Morningstar Specialty Retail Index ("Morningstar Group Index") during the period commencing on January 1, 2016 through December 31, 2020. The graph assumes a \$100 investment at the beginning of the period in our common stock, the NASDAQ Market Index and the Morningstar Group Index, and the reinvestment of any dividends. The NASDAQ Market Index and the Morningstar Group Index are included for comparative purposes only. They do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of the stock involved, and they are not intended to forecast or be indicative of possible future performance of the Company's common stock. Historic stock price performance is not necessarily indicative of future stock price performance.



ITEM 6. SELECTED FINANCIAL DATA

The selected consolidated financial data presented below should be read in conjunction with the consolidated financial statements of Overstock.com, Inc. and related notes included elsewhere in this Annual Report on Form 10-K and the discussion under Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations." The following Consolidated Statements of Operations data for the fiscal years ended December 31, 2020, 2019, and 2018 and the Consolidated Balance Sheets data as of December 31, 2020 and 2019 are derived from our audited Consolidated Financial Statements included in this Annual Report on Form 10-K. The following Consolidated Statements of Operations data for the fiscal years ended 2017 and 2016 and the Consolidated Balance Sheets data as of December 31, 2018, 2017, and 2016 is derived from our audited Consolidated Financial Statements that are not included in this Annual Report on Form 10-K. The historical financial and operating information may not be indicative of our future performance. The following discussion and analysis also should be read in conjunction with the disclosures in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors."

	Year ended December 31,				
	2020	2019	2018	2017	2016
(in thousands, except per share data)					
Consolidated Statements of Operations Data:					
Revenue, net					
Retail	\$ 2,493,915	\$ 1,434,974	\$ 1,800,187	\$ 1,728,104	\$ 1,784,782
Other	55,868	24,444	21,405	16,652	15,181
Total net revenue	<u>2,549,783</u>	<u>1,459,418</u>	<u>1,821,592</u>	<u>1,744,756</u>	<u>1,799,963</u>
Cost of goods sold					
Retail	1,922,559	1,147,025	1,452,195	1,392,558	1,458,411
Other	47,691	19,300	15,489	11,647	10,203
Total cost of goods sold	<u>1,970,250</u>	<u>1,166,325</u>	<u>1,467,684</u>	<u>1,404,205</u>	<u>1,468,614</u>
Gross profit	<u>579,533</u>	<u>293,093</u>	<u>353,908</u>	<u>340,551</u>	<u>331,349</u>
Operating expenses:					
Sales and marketing	263,046	143,120	274,479	180,589	147,896
Technology	136,998	135,338	132,154	115,878	106,760
General and administrative	127,263	138,124	164,481	90,718	89,298
Litigation settlement	—	—	—	—	(19,520)
Total operating expenses	<u>527,307</u>	<u>416,582</u>	<u>571,114</u>	<u>387,185</u>	<u>324,434</u>
Operating income (loss)	52,226	(123,489)	(217,206)	(46,634)	6,915
Interest income	1,733	1,797	2,208	659	326
Interest expense	(1,971)	(342)	(1,468)	(2,937)	(877)
Other income (expense), net	(4,828)	(12,501)	(3,488)	1,178	14,181
Income (loss) before income taxes	47,160	(134,535)	(219,954)	(47,734)	20,545
Provision (benefit) for income taxes	989	185	(2,384)	64,188	9,297
Consolidated net income (loss)	<u>\$ 46,171</u>	<u>\$ (134,720)</u>	<u>\$ (217,570)</u>	<u>\$ (111,922)</u>	<u>\$ 11,248</u>
Less: Net loss attributable to noncontrolling interests	(9,830)	(12,879)	(11,500)	(2,044)	(1,274)
Net income (loss) attributable to stockholders of Overstock.com, Inc.	<u>\$ 56,001</u>	<u>\$ (121,841)</u>	<u>\$ (206,070)</u>	<u>\$ (109,878)</u>	<u>\$ 12,522</u>
Net income (loss) per share of common stock:					
Net income (loss) attributable to common shares—basic	\$ 1.25	\$ (3.46)	\$ (6.83)	\$ (4.28)	\$ 0.49
Net income (loss) attributable to common shares—diluted	\$ 1.24	\$ (3.46)	\$ (6.83)	\$ (4.28)	\$ 0.49
Weighted average shares of common stock outstanding:					
Basic	41,217	34,865	29,976	25,044	25,342
Diluted	41,607	34,865	29,976	25,044	25,426

	As of December 31,				
	2020 ⁽¹⁾	2019 ⁽¹⁾	2018	2017	2016
	(in thousands)				
Consolidated Balance Sheets Data:					
Cash and cash equivalents	\$ 516,500	\$ 112,266	\$ 141,512	\$ 203,215	\$ 183,098
Restricted cash	2,681	2,632	1,302	455	430
Working capital	255,159	(38,636)	(26,219)	50,534	(4,843)
Total assets	830,214	417,727	461,219	433,815	485,076
Long-term debt	41,334	—	3,069	39,909	44,179
Total liabilities	393,888	239,872	250,513	261,692	312,116
Stockholders' equity	436,326	177,855	210,706	172,123	172,960

(1) — As a result of the adoption of new accounting guidance on January 1, 2019, we recognized lease assets and liabilities for operating leases with terms of more than twelve months. Prior period amounts were not adjusted and continue to be reported in accordance with our historic accounting policies. See Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 2—Accounting Policies and Supplemental Disclosures for additional information.

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

The following discussion and analysis contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Cautionary Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Annual Report on Form 10-K, including those set forth above under "Special Cautionary Note Regarding Forward-Looking Statements" or in Item 1A under the heading "Risk Factors" or elsewhere in this Annual Report on Form 10-K. In addition, our future results may be significantly different from our historical results.

The following discussion and analysis also should be read in conjunction with the disclosures in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors." Our ability to pursue some or all of the strategies described below, and the extent to which we would be able to pursue some or all of them, will depend on the resources we have available, and may require significantly more capital than we currently have. These costs have been and are expected to continue to be material. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" below.

Our Retail Business

Our online Retail business seeks to provide goods to furnish and accessorize "Dream Homes for All" of our target customers—consumers who seek smart value on quality, stylish merchandise at competitive prices. In our Retail business, customer demand increased significantly beginning in the second half of March 2020 and continuing through December 2020 as consumers migrated to online shopping as a result of the COVID-19 pandemic. We regularly update our home furnishings product assortment to meet the evolving preferences of our customers and current trends. Our products include, among others, furniture, home décor including rugs, bedding and bath, home improvement, and kitchen and dining items. Our supply chain allows us to ship directly to our customers from our suppliers or from our warehouses. See Item 1—"Business—Our Retail Business" for further information on our Retail business.

Strategies for our Retail Business

Our Retail business initiatives enable our long-term focus on our three brand pillars, "Product Findability," "Smart Value," and "Easy Delivery and Support." Initiatives for the Retail business include:

- *Improve Mobile Experience* - As more website visitors move to mobile, we are focusing on ensuring our mobile experience is fast, frictionless, and meets the unique needs of the mobile shopping journey. We believe an improved mobile experience improves product findability, conversion, search engine rankings, and organic traffic.

- *Overhaul Discounting and Pricing Experience* - "Smart Value" is the central brand pillar of our value proposition. We believe clarifying our pricing and discounting experience allows customers to more confidently purchase at Overstock. Savvy shoppers expect a "smart deal," including saving through coupons, site sales, Club O rewards and financing. We have historically offered free shipping on orders over \$45. We initially introduced free shipping on everything to the continental U.S in late March 2020 in response to the COVID-19 pandemic stay-at-home orders, with the goal of easing consumers' financial burdens. As this shopping benefit continued to resonate with new and existing customers, we made the limited-time offer permanent for shoppers across the continental U.S. We believe our net promoter score (NPS), repeat purchase rates and conversion will improve as we better optimize the mix of offers and clarify the pricing and discounting experience.
- *Real Time Performance and SKU Profitability* - We are improving our ability to address site, assortment and pricing issues more quickly by enhancing our real-time visibility into site, category, and marketing channel performance. We believe this initiative allows us to improve margin by more quickly resolving site issues for an improved customer experience.
- *Expand Partner Sponsored Marketing* - We are expanding the "Overstock Sponsored Product" program, a platform for our drop ship partners to promote their products to shoppers through a cost-per-click auction platform. In addition, we have implemented a marketing allowance program required across our partner network. This marketing allowance program allows us to optimize the marketing promotion type, mix of acquisition spend and on-sale assortment to better meet the needs of our target customer segments and adapt to seasonal relevance.

Our Medici Ventures Business

Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, which conducts the majority of its business through its majority-owned subsidiary tZERO. Medici Ventures also owns strategic minority equity interests in several blockchain-related companies, all of which are startup businesses, businesses in the development stage, or businesses with a short operating history. As a result of the transaction described in Item 1—"Business—Our Medici Business—Pelion Transaction Agreement" and Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events, Medici Ventures has discontinued providing the services of its software engineers, developers, or other technologists to other blockchain companies. Active seats on the boards these companies previously held by Medici Ventures will be filled by nominees of Pelion following the close of the Pelion Transaction Agreement.

Our tZERO Business

tZERO is a leader in blockchain innovation and liquidity for digital assets. tZERO and its affiliates are working with regulators and other stakeholders to expand the role of blockchain in the lifecycle of digital securities and to facilitate the infrastructure, issuance, recording, trading, clearing, settlement, and regulatory compliance of "digital asset securities" described in the July 8, 2019 Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities and the Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act Release No. 90788 (Dec. 23, 2021) in a manner consistent with existing market and legal infrastructure. In addition, tZERO also maintains certain businesses not focused on digital securities, including the broker-dealer activities of certain of its subsidiaries. See Item 1—"Business—Our Medici Business—tZERO" for further information on our tZERO business.

The transaction described in Item 1—"Business—Our Medici Business—Pelion Transaction Agreement" and Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events is not expected to have a significant impact on tZERO's business strategies.

Strategies for our tZERO Business

tZERO's primary initiatives currently consist of the following:

- *Promote trading* - tZERO ATS, LLC is focused on onboarding and trading high-quality digital securities. tZERO ATS, LLC is working with prospective issuers spanning various industries, including real estate, technology, health care and sports, as they seek to issue new digital securities using the tZERO Technology Stack and provide liquidity to existing investors. Additionally, tZERO is enhancing the tZERO Technology Stack to support third party issuance protocols in order to support securities which have been digitally enabled by other technology companies and has established relationships with market participants to help prospective issuers raise capital, prior to tokenizing and trading on the tZERO ATS.

- *Enhance liquidity* - tZERO ATS, LLC is focused on enhancing liquidity. To achieve this, tZERO ATS, LLC is in continual discussions with additional broker-dealers interested in subscribing to the tZERO ATS, which would enable their customers to trade digital securities traded on the tZERO ATS. tZERO also continues to develop new avenues for investors to access digital securities including tZERO Markets, an SEC-registered broker-dealer able to accept retail customers and BSTX, which may seek regulatory approval for a U.S. national exchange facility and thereby provide a new trading venue for digital securities.
- *Create a world class trading experience* - tZERO continues to seek opportunities to enhance the tZERO Technology Stack and improve investors' trading experience for all types of financial products. tZERO is working to allow digital securities to be traded via a mobile application to complement their accessibility via tZERO Markets' web platform. It is also developing further enhancements of tZERO Crypto's separate wallet and exchange services, such as providing additional features for its mobile application and ensuring it is accessible on a web platform. tZERO has and will partner with third-parties in order to provide this functionality in the most efficient and effective manner. tZERO believes a world-class combined trading experience will be key to investors' adoption of digital securities and tZERO's other products and services, including cryptocurrencies.
- *Advocacy* - tZERO operates businesses which are subject to complex and often uncertain legal environments and believes active engagement with regulatory authorities is necessary to realize the full potential of its business. tZERO continues, in partnership with other industry participants, to advocate regulatory reform with legislators and regulators in order to spur market innovation through the adoption of distributed ledger technology and digital asset securities.

tZERO also continues to identify, evaluate and pursue various opportunities for strategic transactions to enhance the services and expertise it offers its customers as well as to refine its strategic operational focus. Subject to board approval, tZERO's management exercises substantial discretion in identifying appropriate strategic transactions and negotiating the terms of such transactions. Management's determinations are based on numerous financial, strategic and operational assumptions, and there can be no assurance that such assumptions will prove to be true. Moreover, such strategic transactions may fail to produce the benefits expected at the time tZERO enters into such transactions.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the consolidated financial statements and accompanying notes. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the critical accounting policies, estimates and judgments addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. For additional information, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 2—Accounting Policies and Supplemental Disclosures. Although we believe that our estimates, assumptions, and judgments are reasonable, they are based upon information presently available. Actual results may differ significantly from these estimates. Our critical accounting policies are as follows:

- revenue recognition; and
- accounting for the tZERO digital security offering.

Revenue recognition

We derive our revenue primarily from our Retail business through our Website from merchandise sold at a point in time and shipped to customers. When we are the principal in a transaction and control the specific good or service before it is transferred to the customer, revenue is recorded gross; otherwise, revenue is recorded on a net basis.

Revenue is recognized when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer or the date a service is provided and is recognized in an amount that reflects the expected consideration to be received in exchange for such goods or services. As such, customer orders are recorded as unearned revenue prior to delivery of products or services ordered.

As we ship high volumes of packages through multiple carriers, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times based on historical data. However, actual shipping times may differ from our estimates.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before taxes for the year ended December 31, 2020 (in thousands):

Change in the Estimate of Average Transit Times (Days)	Year Ended December 31, 2020	
	Increase (Decrease) Revenue	Increase (Decrease) Income Before Income Taxes
2	\$ (8,934)	\$ (1,638)
1	\$ (3,567)	\$ (627)
As reported	As reported	As reported
(1)	\$ 11,266	\$ 2,297
(2)	\$ 20,481	\$ 4,149

Shipping and handling is considered a fulfillment activity, as it takes place prior to the customer obtaining control of the merchandise, and fees charged to customers are included in net revenue upon completion of our performance obligation. We present revenue net of sales tax, discounts, and expected refunds.

Our merchandise sales contracts include terms that could cause variability in the transaction price for items such as discounts, credits, or sales returns.

We recognize gift cards and Club O rewards in the period they are redeemed. Unredeemed gift cards and Club O rewards not subject to requirements to remit balances to governmental agencies are recognized as net revenue based on historical redemption patterns.

Our Other revenue occurs primarily through our broker-dealer subsidiaries in our tZERO segment. We recognize revenue for our broker-dealer subsidiaries based on the gross amount of consideration that we expect to receive on securities transactions (commission revenue) on a trade date basis.

Accounting for the tZERO Digital Security offering

On December 18, 2017, tZERO launched an offering (the "TZROP offering") of the right to acquire tZERO's Preferred Equity Tokens, Series A ("TZROP") through a Simple Agreement for Future Equity ("SAFE"). The TZROP offering closed on August 6, 2018, and on October 12, 2018 tZERO issued the TZROP in settlement of the SAFEs. The SAFEs were accounted for as a prepaid contract to obtain equity interest in tZERO and were classified as a component of noncontrolling interest in our consolidated financial statements. The TZROP issued under the TZROP offering to settle the SAFEs represent a form of preferred stock and are classified as a component of noncontrolling interest within our consolidated financial statements. For additional information, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 16—Stockholders' Equity.

For information about recent accounting pronouncements, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 2—Accounting Policies and Supplemental Disclosures.

Comparison of Years Ended December 31, 2020 and 2019

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Revenue increased 75% in 2020 compared to 2019. This increase was primarily due to increased Retail product sales resulting from a 71% increase in customer orders, 111% new customer growth, and strong repeat customer behavior, due in part to a consumer migration toward online shopping in response to COVID-19 stay at home mandates.

Gross profit increased 98% in 2020 compared to 2019 primarily due to an increase in Retail product sales and an increase in gross margin. Gross margin increased to 22.7% in 2020, compared to 20.1% in 2019, primarily due to our new partner marketing allowance program that was fully rolled out in the second quarter of 2020, which requires all of our partners to participate and allows us to advertise more strategically to our customers. Gross margin also benefited from reduced promotional discounting as we balanced spend to support new customer acquisition efforts, gained leverage in our fixed warehouse infrastructure, increased fees charged to partners due to unmet contractual service levels, and lower customer service costs as sales outpaced staffing expense during the early part of the COVID-19 pandemic.

Sales and marketing expenses as a percentage of revenue increased to 10.3% in 2020 compared to 9.8% in 2019 primarily due to increased spending to support our customer acquisition strategy, resulting in a 111% increase in new customers compared to the twelve months ended December 31, 2019.

Technology expenses increased \$1.7 million in 2020 compared to 2019 primarily due to staff-related costs, including accrued bonuses.

General and administrative expenses decreased \$10.9 million in 2020 compared to 2019 primarily due to an \$8.6 million reversal of a legal settlement accrual, a \$2.5 million Visa settlement, a \$4.3 million decrease in consulting expenses, and a reduction in discretionary spending due to adjustments related to the COVID-19 pandemic, partially offset by an \$8.8 million increase in staff-related costs, including accrued bonus.

Liquidity

Our consolidated cash and cash equivalents balance increased from \$112.3 million as of December 31, 2019 to \$516.5 million as of December 31, 2020, an increase of \$404.2 million, primarily as the result of cash inflows from operating activities of \$196.5 million and from the sale of common stock of \$195.5 million, net of offering costs (including commissions) for the year ended December 31, 2020 and \$47.5 million of proceeds from cash generated by new debt agreements, which was partially offset by expenditures for fixed assets of \$19.1 million during the year ended December 31, 2020.

Additional commentary related to Medici Ventures

The majority of Medici Ventures' business is its 80% interest in tZERO, which is described below. As described in Item 1—"Business—Our Medici Business—Pelion Transaction Agreement" and Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events, we entered into a transaction agreement with Pelion that, when consummated, will alter our ownership of Medici Ventures. The remaining business activities of Medici Ventures are focused on developing and advancing blockchain technology. As a result of its business model of providing technical assistance to companies in which Medici Ventures owns an interest, as well as the early stage of development of the companies in which it owns interests, Medici Ventures has not yet generated material revenues. For the year ended December 31, 2020, our pre-tax loss in our Medici Ventures business, excluding our loss in our tZERO business, was \$10.0 million, and we expect to continue to incur significant losses in our Medici Ventures business during 2021.

Additional commentary related to tZERO

To date, tZERO has focused primarily on developing its businesses and exploring opportunities for novel financial applications of blockchain technology. tZERO does not yet have a stable customer base or backlog orders and has not yet generated any meaningful revenue from any commercially available applications of its blockchain initiatives. The businesses, products, and services that tZERO is pursuing or contemplating will require substantial additional funding, initially for technology development and regulatory compliance, as well as for working capital, marketing and sales, and other substantial costs of developing new products and businesses in emerging areas of technology. For the year ended December 31, 2020, our pre-tax loss in our tZERO business, excluding our loss in the non-tZERO portion of our Medici business, was \$45.7 million, and we expect to continue to incur significant losses in our tZERO business during 2021. As described in Item 1—"Business—Our Medici Business—Pelion Transaction Agreement" and Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events, we entered into a transaction agreement with Pelion that, when consummated, will alter our ownership of tZERO.

Additional commentary related to COVID-19

Overstock has continued to respond to the challenges and opportunities created by the COVID-19 pandemic. In our Retail business, customer demand increased significantly beginning in the second half of March 2020 and continuing through December 2020, particularly in our key home furnishings categories. We have seen a substantial year over year increase in our website traffic and number of new customers. Our online-only platform and partner network with thousands of fulfillment centers have enabled us to meet this increase in demand. Our three warehouses have remained operational based on our sustained implementation of sound safety measures, including staggered shifts and social distancing. We have hired in key areas throughout the company to support our current and expected growth. There are continued challenges created by the increased volume throughout the supply chain in factory production capacity, inbound freight delays, as well as carrier delivery constraints and fulfillment performance from some suppliers. Most of our Medici Ventures blockchain companies have seen relatively little disruption, and several are working on solutions to problems exacerbated by the global pandemic. We have evaluated and implemented a phased re-entry plan for our offices; most of our corporate employees continue to work from home without incident. We cannot predict how the COVID-19 pandemic or the ongoing development and rollout of vaccinations will unfold in the coming months. Nevertheless, the challenges arising from the pandemic have not adversely affected our liquidity, revenues, or capacity to service our debt, nor have these conditions required us to reduce our capital expenditures.

Results of Operations

Our Annual Report on Form 10-K for the year ended December 31, 2019, filed March 13, 2020, includes a discussion and analysis of our year-over-year changes, financial condition, and results of operations for the years ended December 31, 2019 and 2018 in Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Retail revenue, costs of goods sold, gross profit and gross margin

The following table reflects our Retail net revenue, costs of goods sold, gross profit and gross margin for the years ended December 31, 2020 and 2019 (in thousands):

Retail	Year ended December 31,	
	2020	2019
Revenue, net	\$ 2,493,915	\$ 1,434,974
Cost of goods sold		
Product costs and other cost of goods sold	1,823,755	1,081,051
Fulfillment and related costs	98,804	65,974
Total cost of goods sold	1,922,559	1,147,025
Gross profit	\$ 571,356	\$ 287,949
Year-over-year percentage growth		
Revenue, net	73.8 %	
Cost of goods sold		
Product costs and other cost of goods sold	68.7 %	
Fulfillment and related costs	49.8 %	
Total cost of goods sold	67.6 %	
Gross profit	98.4 %	
Percent of total revenue, net		
Cost of goods sold		
Product costs and other cost of goods sold	73.1 %	75.3 %
Fulfillment and related costs	4.0 %	4.6 %
Total cost of goods sold	77.1 %	79.9 %
Gross profit	22.9 %	20.1 %

The 74% increase in Retail net revenue for the year ended December 31, 2020, as compared to the same period in 2019, was primarily due to increased Retail product sales resulting from a 71% increase in customer orders, 111% new customer growth, and strong repeat customer behavior, largely due to a consumer migration toward online shopping in response to COVID-19.

International sales were less than 2% of total net revenues for 2020 and 2019.

Our overall gross margins fluctuate based on changes in supplier cost and/or sales price, including competitive pricing; inventory management decisions; sales coupons and promotions; product mix of sales; and operational and fulfillment costs. Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as merchant processing fees associated with customer payments made by credit cards and other payment methods and other variable fees, and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, and our ability to effectively manage customer service costs and merchant fees. Fulfillment and related costs remained relatively flat during the year ended December 31, 2020 as compared to 2019.

Gross margins for the past eight quarterly periods and years ending December 31, 2020 and 2019 were:

Retail	Q1	Q2	Q3	Q4	FY
2020	21.9 %	23.2 %	23.5 %	22.5 %	22.9 %
2019	19.9 %	19.7 %	20.0 %	20.7 %	20.1 %

Retail gross profit for the year ended December 31, 2020 increased 98% compared to the same period in 2019, primarily due to an increase in Retail product sales and an increase in gross margin. Retail gross margin increased to 22.9% for the year ended December 31, 2020, compared to 20.1% for the same period in 2019, primarily due to our new partner marketing allowance program that was fully rolled out in the second quarter of 2020, which requires all of our partners to participate and allows us to advertise more strategically to our customers. Gross margin also benefited from reduced promotional discounting as we balanced spend to support new customer acquisition efforts, gained leverage in our fixed warehouse infrastructure, an increase in fees charged to partners due to unmet contractual service levels, and lower customer service costs due to slower growth in our staffing relative to sales.

Other revenue, costs of goods sold, gross profit and gross margin

The following table reflects our net revenue for the years ended December 31, 2020 and 2019 (in thousands):

Other	Year ended December 31,	
	2020	2019
Revenue, net	\$ 55,868	\$ 24,444
Cost of goods sold	47,691	19,300
Gross profit	\$ 8,177	\$ 5,144
Year-over-year percentage growth		
Revenue, net	128.6 %	
Cost of goods sold	147.1 %	
Gross profit	59.0 %	

The 129% increase in Other net revenue for the year ended December 31, 2020, as compared to the same period in 2019, was primarily due to an increase in SpeedRoute trading volume on increased market volatility during the year.

Other gross profit for the year ended December 31, 2020 increased 59.0% compared to the same period in 2019, primarily due to an increase in SpeedRoute trading volume on increased market volatility during the year.

Other gross margin decreased to 14.6% for the year ended December 31, 2020, compared to 21.0% for the same period in 2019, primarily due to a shift in trade execution volume to transactions with lower commission rates.

Operating expenses

Sales and marketing expenses

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail and viral and social media campaigns. We also do brand advertising through television, radio, print ads, and event sponsorships.

The following table reflects our sales and marketing expenses for the years ended December 31, 2020 and 2019 (in thousands):

	Year ended December 31,	
	2020	2019
Sales and marketing expenses	\$ 263,046	\$ 143,120
Advertising expense included in sales and marketing expenses	\$ 245,332	\$ 124,342
Year-over-year percentage growth		
Sales and marketing expenses	83.8 %	
Advertising expense included in sales and marketing expenses	97.3 %	
Percentage of net revenues		
Sales and marketing expenses	10.3 %	9.8 %
Advertising expense included in sales and marketing expenses	9.6 %	8.5 %

The 50 basis point increase in sales and marketing expenses for the year ended December 31, 2020, as compared to the same period in 2019, was primarily due to increased spending to support our customer acquisition strategy, resulting in a 111% increase in new customers compared to the twelve months ended December 31, 2019.

We are also experiencing an increasingly competitive digital marketing landscape. We have competitors who are spending significant amounts on advertising, bidding up the cost of certain marketing channels, such as paid keywords, and expect this trend to continue. While we may not choose to match their levels of spending, this has increased our marketing costs in recent years.

We do not include costs associated with our discounted shipping and other promotions, such as coupons in sales and marketing expense. Rather, we account for them as a reduction of revenue and therefore affect sales and gross margin. We consider discounted shipping and other promotions, such as our historical policy of free shipping on orders over \$45 and our recent policy of free shipping on all orders, as an effective marketing tool, and intend to continue to offer them as we deem appropriate as part of our overall marketing plan.

Technology expenses

We seek to invest efficiently in technology, including web services, customer support solutions, website search, expansion of new and existing product categories, and in investments in technology to enhance the customer experience, improve our process efficiency and support and expand our logistics infrastructure. We expect to continue to increase our technology expenses to support these initiatives and these increases may be material.

The frequency and variety of cyberattacks on our Website, our corporate systems, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks have not been material. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table reflects our technology expenses for the years ended December 31, 2020 and 2019 (in thousands):

	Year ended December 31,	
	2020	2019
Technology expenses	\$ 136,998	\$ 135,338
Year-over-year percentage growth		
Technology expenses	1.2 %	
Technology expenses as a percent of net revenues	5.4 %	9.3 %

Technology expenses increased \$1.7 million for the year ended December 31, 2020, as compared to the same period in 2019, primarily due to staff-related costs, including accrued bonuses.

General and administrative expenses

The following table reflects our general and administrative expenses for the years ended December 31, 2020 and 2019 (in thousands):

	Year ended December 31,	
	2020	2019
General and administrative expenses	\$ 127,263	\$ 138,124
Year-over-year percentage growth		
General and administrative expenses	(7.9)%	
General and administrative expenses as a percent of net revenues	5.0 %	9.5 %

The \$10.9 million decrease in general and administrative expenses for the year ended December 31, 2020, as compared to the same period in 2019, was primarily due to an \$8.6 million reversal of a legal settlement accrual, a \$2.5 million Visa settlement, a \$4.3 million decrease in consulting expenses, and a reduction in discretionary spending due to adjustments related to the COVID-19 pandemic, partially offset by an \$8.8 million increase in staff-related costs, including accrued bonus.

Other expense, net

The \$7.7 million decrease in other expense, net for the year ended December 31, 2020, as compared to the same period in 2019, was primarily due to a \$10.7 million gain recognized on the deconsolidation of the Medici Land Governance business, partially offset by an increase in losses associated with our equity securities.

Income taxes

Our effective tax rate for the years ended December 31, 2020 and 2019 was 2.1% and (0.1%), respectively. Our effective tax rate is affected by recurring items such as research tax credits and non-recurring items such as changes in valuation allowances. We record valuation allowances against deferred tax assets when there is uncertainty about our ability to generate future income in relevant jurisdictions, and the effects of the COVID-19 pandemic on our business make estimates of future income more challenging due to the unpredictable nature of the ultimate scope and duration of the pandemic. It is also affected to a lesser extent by tax rates in foreign jurisdictions and the relative amount of income we earn in those jurisdictions, which we expect to be fairly consistent in the near term. Our low effective tax rate is primarily attributable to the valuation allowance we are maintaining on our net deferred tax assets.

We have indefinitely reinvested foreign earnings of \$3.8 million at December 31, 2020. We would need to accrue and pay various taxes on this amount if repatriated. We do not intend to repatriate these earnings.

Liquidity and Capital Resources

Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity in light of the most recent developments driven by the COVID-19 pandemic. We proactively seek opportunities to improve the efficiency of our operations and have in the past and may in the future take steps to realize internal cost savings, including aligning our staffing needs based on our current and expected future levels of operations and process streamlining.

Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents and accounts receivable, net. At December 31, 2020, we had cash and cash equivalents of \$516.5 million and accounts receivables, net of \$30.1 million. Our ability to access the liquidity of our subsidiaries may be limited by tax and legal considerations and other factors.

Cash flow information is as follows (in thousands):

	Year ended December 31,	
	2020	2019
Cash provided by (used in):		
Operating activities	\$ 196,474	\$ (81,612)
Investing activities	(23,555)	(26,852)
Financing activities	231,364	80,548

At December 31, 2020, we had \$150.0 million available under our "at the market" sales program which permits us to conduct "at the market" public offerings of our common stock under a sales agreement, dated June 26, 2020, with JonesTrading Institutional Services LLC ("JonesTrading") and D.A. Davidson & Co. ("D.A. Davidson"). We did not sell any shares under our at the market sales program during the year ended December 31, 2020.

We completed a public offering of our common stock on August 14, 2020 and issued 2,415,000 shares of our common stock pursuant to an underwriting agreement, dated August 11, 2020, for proceeds totaling \$192.7 million, net of \$11.4 million in offering costs.

Cash flows from operating activities

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers. As a result of increased online shopping migration from the COVID-19 pandemic, we saw our Retail product sales accelerate beginning in the second half of March 2020 and continuing through December 2020, as customers turned to online shopping, which caused our cash, cash equivalents and accounts receivable balances to increase compared to prior year-end and also resulted in an increase in our accounts payable and unearned revenue balance as of December 31, 2020. Due to uncertainty surrounding the COVID-19 pandemic, we are unable to predict the duration such favorable conditions and its sustained impact on cash flows. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity in light of the most recent developments driven by the COVID-19 pandemic.

The \$196.5 million of net cash provided by operating activities during the year ended December 31, 2020 was primarily due to consolidated net income, adjusted for non-cash items, of \$100.6 million and cash provided by changes in operating assets and liabilities of \$95.9 million.

The \$81.6 million of net cash used in operating activities during the year ended December 31, 2019 was primarily due to consolidated net loss, adjusted for non-cash items, of \$64.9 million and cash used by changes in operating assets and liabilities of \$16.7 million.

Cash flows from investing activities

The \$23.6 million of net cash used in investing activities during the year ended December 31, 2020 was primarily from expenditures for property and equipment of \$19.1 million and purchases of equity securities of \$5.4 million, partially offset by \$6.3 million in proceeds from the sale of equity securities.

The \$26.9 million of net cash used in investing activities during the year ended December 31, 2019 was primarily from expenditures for property and equipment of \$21.8 million and purchases of equity securities of \$12.6 million, partially offset by \$7.3 million in proceeds from the sale of equity securities.

Cash flows from financing activities

The \$231.4 million provided by financing activities during the year ended December 31, 2020 resulted primarily from \$195.5 million of net proceeds from sales of our common stock, net of offering costs (including commissions), and \$47.5 million of proceeds from our long-term debt secured by our building and land.

The \$80.5 million provided by financing activities during the year ended December 31, 2019 resulted primarily from \$83.0 million of net proceeds from sales of our common stock under the at the market offering.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2020 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating leases (1)	\$ 32,796	\$ 8,412	\$ 12,834	\$ 5,697	\$ 5,853
Loan agreements (2)	59,420	4,826	10,528	3,261	40,805
Total contractual cash obligations	<u>\$ 92,216</u>	<u>\$ 13,238</u>	<u>\$ 23,362</u>	<u>\$ 8,958</u>	<u>\$ 46,658</u>

- (1) — Represents the future minimum lease payments under non-cancellable operating leases. For information regarding our operating lease obligations, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 13—Leases contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.
- (2) — Represents future interest and principal payments on our financing agreements. For information regarding our financing agreements, see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 12—Borrowings contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Potential Commitment relating to Pelion Transaction Agreement

As described in Item 1—"Business—Our Medici Business—Pelion Transaction Agreement" and Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 27—Subsequent Events, we entered into a transaction agreement with Pelion and Pelion, Inc., as guarantor, pursuant to which Medici Ventures would convert into a Delaware limited partnership and Pelion would become the sole general partner of the Limited Partnership, and we (along with any other stockholders of Medici Ventures at the time of the Medici Closing), would become the limited partners of the Partnership, pursuant to a limited partnership agreement to be entered into at the time of such transaction. Pursuant to the terms of the limited partnership agreement to be entered into in connection therewith, we and any other limited partners agree to make a capital commitment of \$44.6 million to the Partnership in proportion to our equity interest in the Partnership. The capital commitments may be called in one or more cash installments as specified by the general partner upon 10 business days' prior written notice.

Tax contingencies

We are involved in various tax matters, the outcomes of which are uncertain. As of December 31, 2020, and 2019, tax contingencies were \$900,000 and \$1.5 million, respectively, which are included in our reconciliation of unrecognized tax benefits (see Item 8 of Part II, "Financial Statements and Supplementary Data"—Note 21—Income Taxes contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K). The decrease in tax contingencies in 2020 was primarily a result of negotiated settlements. Changes in state, federal, and foreign tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Borrowings

2020 loan agreements

In March 2020, we entered into two loan agreements. The loan agreements provide a \$34.5 million Senior Note, carrying interest at an annual rate of 4.242%, and a \$13.0 million Mezzanine Note, carrying interest at an annual rate of 5.002%. The loans carry a blended annual interest rate of 4.45%. The Senior Note is for a 10-year term (stated maturity date is March 6, 2030) and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note has a stated 10-year term, though the agreement requires principal and interest payments monthly over approximately a 46-month term payment period. Both loans are secured by our corporate headquarters and the related land. We incurred insignificant debt issuance costs with the new loan agreements.

Other Factors that May Affect Future Results

We periodically evaluate opportunities to repurchase our equity securities, obtain credit facilities, or issue additional debt or equity securities. In addition, we may, from time to time, consider the investment in, or acquisition of, complementary businesses, products, services, or technologies, any of which might affect our liquidity requirements or cause us to issue additional debt or equity securities. There can be no assurance that financing arrangements will be available in amounts or on terms acceptable to us, if at all. Our future results may be significantly different from our historical results for several other reasons as well. Other reasons that our future results may be significantly different from our historical results include the potential effects on us of the accounting and tax changes discussed in this Annual Report on Form 10-K, and other reasons described in Item 1. "Business" under "Our Retail Business" and "Our Medici Business," as well as the risk factors described in Item 1A. "Risk Factors."

Any investment in our securities involves a high degree of risk. Investors should consider carefully the risks and uncertainties described in this Form 10-K, including the risks described in Item 1A of Part I, "Risk Factors", and all other information in this Form 10-K and in our other filings with the SEC including those we file after we file this Form 10-K, before deciding whether to purchase or hold our securities. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business. The occurrence of any of the risks described under "Risk Factors" in this report could harm our business. The trading price of our securities could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources that would be material to investors.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk for the effect of interest rate changes, foreign currency fluctuations, and changes in the market values of our investments. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

Interest Rate Sensitivity

The fair value of our cash and cash equivalents (highly-liquid instruments with a remaining maturity of 90 days or less at the date of purchase) would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments.

Our loan agreements carry a fixed blended annual interest rate of 4.45%. Since the Notes bear interest at a fixed rate, we have no direct financial statement risk associated with changes in interest rates. We did not hold any such Notes as of December 31, 2019.

Foreign Currency Risk

Most of our sales and operating expenses are denominated in U.S. dollars, and therefore, our total revenue and operating expenses are not currently subject to significant foreign currency risk.

Investment Risk

The fair values of our marketable and equity securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions. Volatile market conditions arising from the COVID-19 pandemic or ongoing developments regarding the production, approval and distribution of vaccines may result in significant changes in the value of our marketable and equity securities. At December 31, 2020, our recorded value in marketable and equity securities in public and private companies was \$49.1 million, compared to \$52.4 million at December 31, 2019, of which \$2.9 million relates to publicly traded companies, compared to \$11.1 million at December 31, 2019, recorded at fair value, which are subject to market price volatility. We perform a qualitative assessment for our equity securities in private companies to identify impairment. If this assessment indicates that an impairment exists, we estimate the fair value of the equity security and, if the fair value is less than carrying value, we write down the equity security to fair value.

Our assessment includes a review of recent operating results and trends, recent sales/acquisitions of the equity securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that market sensitivities are not practicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Overstock.com, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Overstock.com, Inc. and subsidiaries (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes and financial statement schedule II (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 26, 2021 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Financial Accounting Standards Board (FASB) Accounting Standards Update No. 2016-02, *Leases (Topic 842)*, and related amendments.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Estimate of unearned product revenue on undelivered product

As discussed in Notes 2, 11 and 19 to the consolidated financial statements, the Company recognizes product revenue when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer. As the Company ships high volumes of packages, the Company uses estimates to determine which shipments are delivered and recognized as product revenue at the end of the period. The Company's delivery estimates are based on average transit times, which are calculated using the following factors: (i) the type of shipping carrier, (ii) the fulfillment source, (iii) the delivery destination, and (iv) actual transit time experience. Unearned product revenue on undelivered product is included as a component of unearned revenue in the Company's consolidated balance sheet. The Company's unearned product revenue on undelivered product was \$46.4 million at December 31, 2020.

We identified the evaluation of the estimate of unearned product revenue on undelivered product as a critical audit matter. There was a high degree of subjectivity associated with the estimate, specifically related to the estimate of the average transit times.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's process to estimate unearned product revenue on undelivered product. This included controls related to the Company's unearned product revenue process, including management's control over the estimate of average transit times and the associated judgment applied around adjustments to the estimate of average transit times. In addition, we assessed the estimate of average transit times, by performing the following:

- Comparing the estimate of average transit times at period-end to the estimate of average transit times in prior periods;
- Evaluating the estimate of average transit times in the current period to the Company's actual historical transit time experience;
- Assessing the impact to the estimate of average transit times at period-end by evaluating internal and external information including factors that may cause shipment disruptions such as seasonal demands, significant weather conditions, mandated restrictions on travel and work, or carrier reported logistical issues; and
- Inspecting sales and shipping documents for a selection of product shipments that were used in the transit time estimate and recalculating the transit time by delivery type, and comparing to the Company's estimate of average transit times.

/s/ KPMG LLP

We have served as the Company's auditor since 2009.

Salt Lake City, Utah
February 26, 2021

Overstock.com, Inc.
Consolidated Balance Sheets
(in thousands)

	December 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	\$ 516,500	\$ 112,266
Restricted cash	2,681	2,632
Marketable securities at fair value	1,762	10,308
Accounts receivable, net	30,125	24,728
Inventories	6,243	5,840
Prepays and other current assets	25,429	21,589
Total current assets	582,740	177,363
Property and equipment, net	122,550	130,028
Intangible assets, net	13,997	11,756
Goodwill	34,950	27,120
Equity securities	47,290	42,043
Operating lease right-of-use assets	24,523	25,384
Other long-term assets, net	4,164	4,033
Total assets	\$ 830,214	\$ 417,727
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 109,749	\$ 75,416
Accrued liabilities	135,595	88,197
Unearned revenue	72,311	41,821
Operating lease liabilities, current	6,630	6,603
Other current liabilities	3,296	3,962
Total current liabilities	327,581	215,999
Long-term debt, net	41,334	—
Operating lease liabilities, non-current	20,305	21,554
Other long-term liabilities	4,668	2,319
Total liabilities	393,888	239,872
Commitments and Contingencies (Note 14)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value, authorized shares - 5,000		
Series A-1, issued and outstanding - 4,204 and 4,210	—	—
Series B, issued and outstanding - 357 and 357	—	—
Common stock, \$0.0001 par value, authorized shares - 100,000		
Issued shares - 46,331 and 42,790		
Outstanding shares - 42,768 and 39,464	4	4
Additional paid-in capital	970,873	764,845
Accumulated deficit	(525,233)	(580,390)
Accumulated other comprehensive loss	(553)	(568)
Treasury stock at cost - 3,563 and 3,326	(71,399)	(68,807)
Equity attributable to stockholders of Overstock.com, Inc.	373,692	115,084
Equity attributable to noncontrolling interests	62,634	62,771
Total stockholders' equity	436,326	177,855
Total liabilities and stockholders' equity	\$ 830,214	\$ 417,727

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Operations
(in thousands, except per share data)

	Year Ended December 31,		
	2020	2019	2018
Revenue, net			
Retail	\$ 2,493,915	\$ 1,434,974	\$ 1,800,187
Other	55,868	24,444	21,405
Total net revenue	2,549,783	1,459,418	1,821,592
Cost of goods sold			
Retail	1,922,559	1,147,025	1,452,195
Other	47,691	19,300	15,489
Total cost of goods sold	1,970,250	1,166,325	1,467,684
Gross profit	579,533	293,093	353,908
Operating expenses:			
Sales and marketing	263,046	143,120	274,479
Technology	136,998	135,338	132,154
General and administrative	127,263	138,124	164,481
Total operating expenses	527,307	416,582	571,114
Operating income (loss)	52,226	(123,489)	(217,206)
Interest income	1,733	1,797	2,208
Interest expense	(1,971)	(342)	(1,468)
Other expense, net	(4,828)	(12,501)	(3,488)
Income (loss) before income taxes	47,160	(134,535)	(219,954)
Provision (benefit) for income taxes	989	185	(2,384)
Consolidated net income (loss)	\$ 46,171	\$ (134,720)	\$ (217,570)
Less: Net loss attributable to noncontrolling interests	(9,830)	(12,879)	(11,500)
Net income (loss) attributable to stockholders of Overstock.com, Inc.	\$ 56,001	\$ (121,841)	\$ (206,070)
Net income (loss) per share of common stock:			
Net income (loss) attributable to common shares—basic	\$ 1.25	\$ (3.46)	\$ (6.83)
Net income (loss) attributable to common shares—diluted	\$ 1.24	\$ (3.46)	\$ (6.83)
Weighted average shares of common stock outstanding:			
Basic	41,217	34,865	29,976
Diluted	41,607	34,865	29,976

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Comprehensive Income (Loss)
(in thousands)

	Year Ended December 31,		
	2020	2019	2018
Consolidated net income (loss)	\$ 46,171	\$ (134,720)	\$ (217,570)
Other comprehensive income:			
Unrealized gain on cash flow hedges, net of tax of \$0, \$0 and \$0	15	16	15
Other comprehensive income	15	16	15
Comprehensive income (loss)	\$ 46,186	\$ (134,704)	\$ (217,555)
Less: Comprehensive loss attributable to noncontrolling interests	(9,830)	(12,879)	(11,500)
Comprehensive income (loss) attributable to stockholders of Overstock.com, Inc.	<u>\$ 56,016</u>	<u>\$ (121,825)</u>	<u>\$ (206,055)</u>

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands, except per share data)

	Year Ended December 31,		
	2020	2019	2018
Equity attributable to stockholders of Overstock.com, Inc.			
Shares of common stock issued			
Balance at beginning of year	42,790	35,346	30,632
Common stock issued upon vesting of restricted stock	710	270	234
Common stock issued for asset purchase	—	—	147
Exercise of stock warrants	—	—	1,250
Common stock sold through offerings	2,831	7,174	2,883
Other	—	—	200
Balance at end of year	46,331	42,790	35,346
Shares of treasury stock			
Balance at beginning of year	3,326	3,200	3,135
Common stock repurchased through business combination	—	47	—
Tax withholding upon vesting of restricted stock	237	79	65
Balance at end of year	3,563	3,326	3,200
Total shares of common stock outstanding	42,768	39,464	32,146
Common stock			
Balance at beginning of year	\$ 4	\$ 3	\$ 3
Common stock sold through ATM offering	—	1	—
Balance at end of year	\$ 4	\$ 4	\$ 3
Shares of Series A preferred stock issued and outstanding			
Balance at beginning of year	—	127	127
Exchange of shares to Series A-1	—	(125)	—
Conversion of shares to Series B	—	(2)	—
Balance at end of year	—	—	127
Shares of Series A-1 preferred stock issued and outstanding			
Balance at beginning of year	4,210	—	—
Exchange of shares from Series A	—	125	—
Dividend declared, not yet distributed	—	4,085	—
Shares declared, not distributed (Note 16)	(6)	—	—
Balance at end of year	4,204	4,210	—
Shares of Series B preferred stock issued and outstanding			
Balance at beginning of year	357	355	555
Conversion of shares from Series A	—	2	—
Other	—	—	(200)
Balance at end of year	357	357	355
Preferred stock	\$ —	\$ —	\$ —

Continued on the following page

Overstock.com, Inc.
Consolidated Statements of Changes in Stockholders' Equity
(in thousands, except per share data)

	Year Ended December 31,		
	2020	2019	2018
Additional paid-in capital			
Balance at beginning of year	\$ 764,845	\$ 657,981	\$ 494,732
Stock-based compensation to employees and directors	12,930	18,229	10,316
Common stock issued for asset purchase	—	—	4,430
Issuance and exercise of stock warrants	—	—	50,588
Common stock sold through offerings, net	192,692	85,801	94,554
Other	406	2,834	3,361
Balance at end of year	<u>\$ 970,873</u>	<u>\$ 764,845</u>	<u>\$ 657,981</u>
Accumulated deficit			
Balance at beginning of year	\$ (580,390)	\$ (458,897)	\$ (254,692)
Cumulative effect of change in accounting principle	—	—	5,040
Net income (loss) attributable to stockholders of Overstock.com, Inc.	56,001	(121,841)	(206,070)
Declaration and payment of preferred dividends	(731)	(77)	(77)
Other	(113)	425	(3,098)
Balance at end of year	<u>\$ (525,233)</u>	<u>\$ (580,390)</u>	<u>\$ (458,897)</u>
Accumulated other comprehensive loss			
Balance at beginning of year	\$ (568)	\$ (584)	\$ (599)
Net other comprehensive income	15	16	15
Balance at end of year	<u>\$ (553)</u>	<u>\$ (568)</u>	<u>\$ (584)</u>
Treasury stock			
Balance at beginning of year	\$ (68,807)	\$ (66,757)	\$ (63,816)
Tax withholding upon vesting of restricted stock	(2,592)	(1,407)	(2,941)
Common stock repurchased through business combination	—	(643)	—
Balance at end of year	<u>(71,399)</u>	<u>(68,807)</u>	<u>(66,757)</u>
Total equity attributable to stockholders of Overstock.com, Inc.	<u>\$ 373,692</u>	<u>\$ 115,084</u>	<u>\$ 131,746</u>
Equity attributable to noncontrolling interests			
Balance at beginning of year	\$ 62,771	\$ 78,960	\$ (3,505)
Proceeds from security token offering, net	—	—	82,354
Stock-based compensation to employees and directors	—	—	4,040
Tax withholding upon vesting of restricted stock	—	—	(1,681)
Paid in capital for noncontrolling interest	5,000	—	5,932
Fair value of noncontrolling interest at acquisition	3,320	—	4,468
Net loss attributable to noncontrolling interests	(9,830)	(12,879)	(11,500)
Other	1,373	(3,310)	(1,148)
Total equity attributable to noncontrolling interests	<u>\$ 62,634</u>	<u>\$ 62,771</u>	<u>\$ 78,960</u>
Total stockholders' equity	<u><u>\$ 436,326</u></u>	<u><u>\$ 177,855</u></u>	<u><u>\$ 210,706</u></u>

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Consolidated Statements of Cash Flows
(in thousands)

	Year ended December 31,		
	2020	2019	2018
Cash flows from operating activities:			
Consolidated net income (loss)	\$ 46,171	\$ (134,720)	\$ (217,570)
Adjustments to reconcile consolidated net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	30,816	31,031	31,697
Non-cash operating lease cost	5,774	6,676	—
Stock-based compensation to employees and directors	12,930	18,229	14,356
Gain on sale of cryptocurrencies	(700)	(569)	(8,370)
Impairment of cryptocurrencies	501	334	10,463
Impairment of equity securities	1,017	7,090	536
Losses on equity method securities	14,459	7,734	3,869
(Gain) loss on disposal of business	(10,705)	—	3,565
Impairments on intangible assets	—	1,406	6,000
Other non-cash adjustments	300	(2,106)	(2,969)
Changes in operating assets and liabilities, net of acquisitions:			
Accounts receivable, net	(11,482)	13,385	(5,558)
Inventories	(403)	8,268	628
Prepays and other current assets	(5,320)	5,956	(3,622)
Other long-term assets, net	105	(660)	(2,870)
Accounts payable	34,327	(27,158)	16,499
Accrued liabilities	52,064	(281)	5,661
Unearned revenue	30,715	(8,757)	9,150
Operating lease liabilities	(6,134)	(8,013)	—
Other long-term liabilities	2,039	543	(399)
Net cash provided by (used in) operating activities	196,474	(81,612)	(138,934)
Cash flows from investing activities:			
Purchase of intangible assets	—	—	(9,597)
Purchase of equity securities	(5,388)	(12,641)	(48,731)
Proceeds from sale of equity securities and marketable securities	6,306	7,339	—
Disbursement for notes receivable	(900)	(4,715)	(3,059)
Acquisitions of businesses, net of cash acquired	11	4,886	(12,912)
Deposit on purchase of a business	—	—	(8,000)
Expenditures for property and equipment	(19,132)	(21,774)	(28,680)
Deconsolidation of cash of Medici Land Governance, Inc.	(4,056)	—	—
Other investing activities, net	(396)	53	56
Net cash used in investing activities	(23,555)	(26,852)	(110,923)

Continued on the following page

Overstock.com, Inc.
Consolidated Statements of Cash Flows
(Continued)
(in thousands)

	Year ended December 31,		
	2020	2019	2018
Cash flows from financing activities:			
Payments on long-term debt	(2,635)	(3,141)	(40,000)
Proceeds from long-term debt	47,500	—	—
Proceeds from issuance and exercise of stock warrants	—	—	50,588
Proceeds from security token offering, net of offering costs and withdrawals	—	—	82,354
Proceeds from sale of common stock, net of offering costs	195,540	82,954	94,554
Paid in capital for noncontrolling interest	—	—	6,700
Payments of taxes withheld upon vesting of restricted stock	(2,592)	(1,407)	(4,622)
Other financing activities, net	(6,449)	2,142	(573)
Net cash provided by financing activities	231,364	80,548	189,001
Net increase (decrease) in cash, cash equivalents, and restricted cash	404,283	(27,916)	(60,856)
Cash, cash equivalents, and restricted cash, beginning of year	114,898	142,814	203,670
Cash, cash equivalents, and restricted cash, end of year	<u>\$ 519,181</u>	<u>\$ 114,898</u>	<u>\$ 142,814</u>

See accompanying notes to consolidated financial statements.

Overstock.com, Inc.
Notes to Consolidated Financial Statements

1. BASIS OF PRESENTATION

Business and organization

As used herein, "Overstock," "Overstock.com," "the Company," "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise. We were formed on May 5, 1997 as D2-Discounts Direct, a limited liability company ("LLC"). On December 30, 1998, we were reorganized as a C Corporation in the State of Utah and reincorporated in Delaware in May 2002. On October 25, 1999, we changed our name to Overstock.com, Inc.

Through our online retail business, we offer a broad range of price-competitive products, including furniture, home decor, bedding and bath, and housewares, among other products. We sell our products and services through our Internet websites located at www.overstock.com, www.o.co, www.overstock.ca, and www.overstockgovernment.com (referred to collectively as the "Website"). Although our four websites are located at different domain addresses, the technology, equipment, and processes supporting the Website and the process of order fulfillment described herein are the same for all four websites.

In late 2014, we began working on initiatives to develop and advance blockchain technology, which initiatives we refer to collectively as Medici. Our Medici business initiatives seek to leverage the security, transparency and immutability of cryptographically protected and distributed ledgers, such as blockchains, and are focused on solving important problems, including financial transaction issues, particularly in the area of securities settlement. Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), which conducts a majority of its business through its majority-owned subsidiary tZERO Group, Inc. ("tZERO"), formerly tØ.com, Inc., a financial technology company pursuing potential financial applications of blockchain technologies as well as other businesses. Medici Ventures currently holds equity interests in several technology companies whose focuses include commercial blockchain applications for identity and social media, property and land, money and banking, capital markets, supply chain, and voting.

On January 25, 2021, we entered into a Transaction Agreement with Medici Ventures, Pelion MV GP, L.L.C., a Delaware limited liability company ("Pelion"), and Pelion, Inc., a Utah corporation as guarantor, pursuant to which the parties have agreed, among other things, that Medici Ventures will convert into a Delaware limited partnership (the "Partnership"). Pelion will become the sole general partner of the Partnership, and we will become a limited partner of the Partnership. See Note 27—Subsequent Events for additional information.

Basis of presentation

We have prepared the accompanying consolidated financial statements pursuant to generally accepted accounting principles in the United States ("GAAP"). Preparing financial statements requires us to make estimates and assumptions that affect the amounts that are reported in the consolidated financial statements and accompanying disclosures. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, our actual results may be different from our estimates. The results of operations presented herein are not necessarily indicative of our results for any future period.

For purposes of comparability, we reclassified certain immaterial amounts in the prior periods presented to conform with the current year presentation.

2. ACCOUNTING POLICIES AND SUPPLEMENTAL DISCLOSURES

Principles of consolidation

The accompanying consolidated financial statements include our accounts and the accounts of our wholly-owned subsidiaries and subsidiaries for which we exercise control. All intercompany account balances and transactions have been eliminated in consolidation. Included in our consolidated financial statements are the financial results of Bitt Inc. from the date of acquisition on October 27, 2020; tZERO Crypto, Inc., formerly Bitsy, Inc., from the date of acquisition date on January 1, 2019; Verify Investor, LLC from the date of acquisition on February 12, 2018; and Mac Warehouse, LLC from the date of acquisition on June 25, 2018.

In February 2020, Medici Land Governance, Inc. ("MLG"), an indirect majority-owned subsidiary, consummated the sale of shares of its common stock to an unrelated third party. Upon completion of the transaction, our indirect ownership in MLG was reduced from 57% to 35% of MLG's issued and outstanding shares of common stock. As a result of our loss of a controlling financial interest in MLG under the voting interest model, we performed an assessment of control under the variable interest entity ("VIE") model and determined MLG does not meet the qualifications of a VIE for purposes of consolidation. Accordingly, we deconsolidated MLG's consolidated net assets and noncontrolling interest from our consolidated financial statements and results beginning on February 22, 2020, the date that control ceased. The amount of gain recognized on the deconsolidation was \$10.7 million, which is included in our consolidated statements of operations in Other expense, net. The gain primarily relates to the remeasurement of our retained equity interest in MLG at fair value, which was determined based on the same price per share MLG provided for the sale of common stock to the third-party and price per share we received in settling a portion of our intercompany debt for additional shares in MLG. Post deconsolidation, MLG became one of our equity method investees for which we perform services. See Note 9—Equity Securities for additional information.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in our consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, Club O and gift card breakage, sales returns, vendor incentive discount offers, inventory valuation, depreciable lives and valuation of property and equipment, and internally-developed software, goodwill valuation, intangible asset valuation, equity securities valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies.

Our estimates involving, among other items, forecasted revenues, sales volume, pricing, cost and availability of inventory, consumer demand and spending habits, the continued operations of our supply chain and logistics network, and the overall impact of social distancing on our workforce are even more difficult to estimate as a result of uncertainties associated with the scope and duration of the global novel coronavirus ("COVID-19") pandemic and various actions taken by governmental authorities, private business and other third parties in response to the pandemic, the ultimate geographic spread of the virus, the ongoing economic effect of the pandemic and the post-pandemic economic recovery. Although these estimates are based on our best knowledge of current events and actions that we may undertake in the future, the variability of these factors depends on a number of conditions, including uncertainty associated with the COVID-19 pandemic, how long these conditions will persist, ongoing developments related to the production, approval and distribution of vaccines, what additional measures may be introduced or reintroduced by governments or private parties or what effect any such additional measures may have on our business and thus our accounting estimates may change from period to period. To the extent there are differences between these estimates and actual results, our consolidated financial statements may be materially affected.

Supplemental cash flow information

The following table shows supplemental cash flow information (in thousands):

	Year Ended December 31,		
	2020	2019	2018
Supplemental disclosures of cash flow information:			
Cash paid during the period:			
Interest paid, net of amounts capitalized	\$ 1,808	\$ 264	\$ 1,319
Income taxes paid (refunded), net	1,452	(1,259)	(726)
Non-cash investing and financing activities:			
Proceeds from sale of common stock included in accounts receivable	—	2,848	—
Acquisition of assets through stock issuance	—	—	4,430
Note receivables converted for Bitt acquisition	4,772	—	—
Receivables converted for Bitt acquisition	4,397	—	—
Common stock repurchased through business combination	—	643	—
Receivables converted to equity securities	1,309	2,887	200
Deposit applied to business combination purchase price	—	7,347	—
Equity method security applied to business combination purchase price	—	3,800	—
Recognition of right-of-use assets upon adoption of ASC 842	—	30,968	—

See also Note 13—Leases for additional supplemental disclosures of cash flow information related to our leases and Note 4—Business Combinations for additional supplemental disclosures of cash flow information related to the noncash consideration transferred for the Bitt, Inc. acquisition, including amounts related to noncash conversion of notes and receivables, and the fair value of the equity interest held prior to the consummation of the business acquisition.

Cash equivalents

We classify all highly liquid instruments, including instruments with a remaining maturity of three months or less at the time of purchase, as cash equivalents. Cash equivalents were \$567,000 and \$2.8 million at December 31, 2020 and 2019, respectively.

Restricted cash

We consider cash that is legally restricted and cash that is held as compensating balances for credit arrangements as restricted cash.

Fair value of financial instruments

We account for our assets and liabilities using a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our market assumptions. These two types of inputs have created the fair-value hierarchy below. This hierarchy requires us to minimize the use of unobservable inputs and to use observable market data, if available, when determining fair value.

- Level 1—Quoted prices for identical instruments in active markets;
- Level 2—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets; and
- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

Our assets and liabilities that are adjusted to fair value on a recurring basis are cash equivalents, certain marketable and equity securities, and deferred compensation liabilities, which fair values are determined using quoted market prices from daily exchange traded markets on the closing price as of the balance sheet date and are classified as Level 1. Our other financial instruments, including cash, restricted cash, accounts receivable, accounts payable, accrued liabilities, finance obligations, and debt are carried at cost, which approximates their fair value. Certain assets, including long-lived assets, certain equity securities, goodwill, cryptocurrencies, and other intangible assets, are measured at fair value on a nonrecurring basis; that is, the assets are not measured at fair value on an ongoing basis, but are subject to fair value adjustments using fair value measurements with unobservable inputs (level 3), apart from cryptocurrencies which use quoted prices from various digital currency exchanges with active markets in certain circumstances (e.g., when there is evidence of impairment).

Accounts receivable, net

Accounts receivable consist primarily of trade amounts due from customers in the United States and uncleared credit card transactions at period end. Accounts receivable are recorded at invoiced amounts and do not bear interest. From time to time, we grant credit to some of our business customers on normal credit terms (typically 30 days). We maintain an allowance for expected credit losses based upon our business customers' financial condition and payment history, our historical collection experience, and any future expected economic conditions.

Inventories

Inventories include merchandise purchased for resale which are accounted for using a standard costing system which approximates the first-in-first-out ("FIFO") method of accounting and are valued at the lower of cost and net realizable value. Inventory valuation requires us to make judgments, based on currently available information, about the likely method of disposition, such as through sales to individual customers, returns to product vendors, liquidations, and expected recoverable values of each disposition category.

Prepays and other current assets

Prepays and other current assets represent expenses paid prior to receipt of the related goods or services, including advertising, license fees, maintenance, packaging, insurance, prepaid inventories, other miscellaneous costs, and cryptocurrency-denominated assets ("cryptocurrencies").

Property and equipment, net

Property and equipment are recorded at cost and stated net of depreciation and amortization. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the related assets or the term of the related finance lease, whichever is shorter, as follows:

	Life (years)
Building	40
Land improvements	20
Building machinery and equipment	15-20
Furniture and equipment	5-7
Computer hardware	3-4
Computer software, including internal-use software and website development	2-4

Leasehold improvements are amortized over the shorter of the term of the related leases or estimated useful lives.

Included in property and equipment is the capitalized cost of internal-use software and website development, including software used to upgrade and enhance our Website and processes supporting our business. We capitalize costs incurred during the application development stage of internal-use software and amortize these costs over the estimated useful life. Costs incurred related to design or maintenance of internal-use software are expensed as incurred.

Upon sale or retirement of assets, cost and related accumulated depreciation and amortization are removed from the balance sheet and the resulting gain or loss is reflected in our consolidated statements of operations.

Equity securities and marketable securities under ASC 321

At December 31, 2020, we held minority interests (less than 20%) in certain public and privately held entities, accounted for under ASC Topic 321, *Investments—Equity Securities* ("ASC 321"), which are included in Equity securities and Marketable securities at fair value in our consolidated balance sheets. We measure our ASC 321 equity securities and marketable securities at fair value, unless there is no readily determinable fair value for the underlying security. Where there is no readily determinable fair value, we have elected the measurement alternative described in ASC 321, where the securities are measured at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or similar equity securities of the same issuer. Dividends received are reported in earnings if and when received. We review our securities individually for impairment by evaluating if events or circumstances have occurred that may indicate the fair value of the security is less than its carrying value. If such events or circumstances have occurred, we estimate the fair value of the security and recognize an impairment loss equal to the difference between the fair value of the security and its carrying value which is recorded in Other expense, net in our consolidated statements of operations. In such cases, the estimated fair value of the security is determined using unobservable inputs including assumptions by the investee's management including quantitative information such as lower valuations in recently completed or proposed financings. These inputs are classified as Level 3. Because several of these private companies are in the early startup or development stages, these entities are subject to potential changes in cash flows, valuation, as well as inability to raise additional capital which may be necessary for the liquidity needed to support their operations.

Equity securities accounted for under the equity method under ASC 323

At December 31, 2020, we held minority interests in privately held entities, accounted for under the equity method under ASC Topic 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"), which are included in Equity securities in our consolidated balance sheets. We can exercise significant influence, but not control, over these entities through either holding more than a 20% voting interest in the entity or through our representation on the entity's board of directors.

Based on the nature of our ownership interests and the extent of our contributed capital, we have variable interests in certain of these entities. However, we have insufficient voting rights or other means to influence the investee such that we do not have power to direct the investee's activities that most significantly impact the economic performance of each entity. Further, we are not the investee's primary beneficiary and we therefore do not consolidate the investee in our financial statements. Our investments, plus any loans, off-balance sheet commitments, and other subordinated financial support related to these variable interest entities totaled \$15.3 million and \$24.2 million as of December 31, 2020 and 2019, respectively, representing our maximum exposures to loss.

The carrying value of our equity method securities typically exceeds the amount of the underlying equity in net assets of our equity method securities and the difference is primarily related to goodwill and the fair value of intangible assets. The basis difference attributable to amortizable intangible assets is amortized over their estimated useful lives. We record our proportionate share of the net income or loss from our equity method securities and the amortization of the basis difference related to intangible assets in Other expense, net in our consolidated statements of operations with corresponding adjustments to the carrying value of the asset. We review our securities individually for impairment by evaluating if events or circumstances have occurred that may indicate the fair value of the security is less than its carrying value. If such events or circumstances have occurred, we estimate the fair value of the security and recognize an impairment loss equal to the difference between the fair value of the security and its carrying value which is recorded in Other expense, net in our consolidated statements of operations.

Noncontrolling interests

Our wholly-owned subsidiary, Medici Ventures, conducts its primary business through its majority-owned subsidiary, tZERO, which includes a financial technology company, three related registered broker-dealers, an accredited investor verification company, and certain strategic interests in other entities which support or align with tZERO's objectives and strategies. Medici Ventures, tZERO, and their respective majority- and wholly-owned consolidated subsidiaries are included in our consolidated financial statements. Intercompany transactions have been eliminated and the amounts of contributions and gains or losses that are attributable to the noncontrolling interests are disclosed in our consolidated financial statements.

Leases

We determine if an arrangement is a lease at inception. We account for lease agreements as either operating or finance leases depending on certain defined criteria. Operating leases are recognized in Operating lease right-of-use ("ROU") assets, Operating lease liabilities, current, and Operating lease liabilities, non-current on our consolidated balance sheets. Finance

leases are included in Other long-term assets, net, Other current liabilities, and Other long-term liabilities on our consolidated balance sheets. Lease assets and liabilities are recognized based on the present value of the future minimum lease payments over the lease term at the commencement date. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at the commencement date in determining the present value of future payments. In certain of our lease agreements, we receive rent holidays and other incentives. We recognize lease costs on a straight-line basis over the lease term without regard to deferred payment terms, such as rent holidays, that defer the commencement date of required payments. Our lease terms may include options to extend or terminate the lease, and we adjust our measurement of the lease when it is reasonably certain that we will exercise that option. Lease payments used in measurement of the lease liability typically do not include executory costs, such as taxes, insurance, and maintenance, unless those costs can be reasonably estimated at lease commencement. Leasehold improvements are capitalized at cost and amortized over the lesser of their expected useful life or the life of the lease, without assuming renewal features, if any, are exercised. We do not separate lease and non-lease components for our leases.

Treasury stock

We account for treasury stock of our common shares under the cost method and include treasury stock as a component of stockholders' equity.

Goodwill

Goodwill represents the excess of the purchase price paid over the fair value of the net assets acquired in business combinations (See Note 4—Business Combinations). Goodwill is not amortized but is tested for impairment at least annually or when we deem that a triggering event has occurred. When evaluating whether goodwill is impaired, we make a qualitative assessment to determine if it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the qualitative assessment determines that it is more likely than not that its fair value is less than its carrying amount, we compare the fair value of the reporting unit to which the goodwill is assigned to its carrying amount. If the carrying amount exceeds its fair value, an impairment loss is recognized in an amount equal to the excess of the carrying amount over the fair value of the reporting unit, not to exceed the carrying amount of the goodwill. There were no impairments to goodwill recorded during the years ended December 31, 2020, 2019 and 2018.

Intangible assets other than goodwill

We capitalize and amortize intangible assets other than goodwill over their estimated useful lives unless such lives are indefinite. Intangible assets other than goodwill acquired separately from third-parties are capitalized at cost while such assets acquired as part of a business combination are capitalized at their acquisition-date fair value. Definite lived intangible assets are amortized using the straight-line method of amortization over their useful lives, with the exception of certain intangibles (such as acquired technology, customer relationships, and trade names) which are amortized using an accelerated method of amortization based on cash flows. These definite lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable as described below under *Impairment of long-lived assets*.

Impairment of long-lived assets

We review property and equipment, right-of-use assets, and other long-lived assets, including intangible assets other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by a comparison of the assets' carrying amount to future undiscounted net cash flows the asset group is expected to generate. Cash flow forecasts are based on trends of historical performance and management's estimate of future performance, giving consideration to existing and anticipated competitive and economic conditions. If such asset group is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair values.

There were no impairments to long-lived assets recorded during the year ended December 31, 2020. For the year ended December 31, 2019, we realized a \$1.4 million impairment loss included in General and administrative expense in our consolidated statements of operations related to certain patents held by our Medici Ventures segment. The estimated fair value of the patents were determined based on Level 3 inputs, which were unobservable (see the *Fair value of financial instruments* section above), including market participant assumptions for similar assets in an inactive market. For the year ended December 31, 2018, we realized a \$6.0 million impairment loss included in General and administrative expense in our consolidated statements of operations related to certain patents held by our Medici Ventures segment. The estimated fair value of the patents

were determined based on Level 3 inputs, which were unobservable (see the *Fair value of financial instruments* section above), including market participant assumptions for similar assets in an inactive market. In conjunction with our annual assessment, we concluded the remaining useful life of these licenses were zero based on current contractual arrangements.

Other long-term assets, net

Other long-term assets, net consist primarily of long-term prepaid expenses, deposits, and assets acquired under finance leases.

Revenue recognition

Revenue is recognized when, or as, control of a promised product or service transfers to a customer, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring those products or services. Revenue excludes taxes that have been assessed by governmental authorities and that are directly imposed on revenue-producing transactions between the Company and its customers, including sales and use taxes. Revenue recognition is evaluated through the following five-step process:

- 1) identification of the contract with a customer;
- 2) identification of the performance obligations in the contract;
- 3) determination of the transaction price;
- 4) allocation of the transaction price to the performance obligations in the contract; and
- 5) recognition of revenue when or as a performance obligation is satisfied.

Product Revenue

We derive our revenue primarily from our Retail business through our Website but may also derive revenue from sales of merchandise through offline and other channels. Our Retail revenue is derived primarily from merchandise sold at a point in time and shipped to customers. Merchandise sales are fulfilled with inventory sourced through our partners or from our owned inventory, depending on the most efficient means of fulfilling the customer contract. The majority of our sales, however, are fulfilled from inventory sourced through our partners.

Revenue is recognized when control of the product passes to the customer, typically at the date of delivery of the merchandise to the customer or the date a service is provided and is recognized in an amount that reflects the expected consideration to be received in exchange for such goods or services. As such, customer orders are recorded as unearned revenue prior to delivery of products or services ordered. As we ship high volumes of packages through multiple carriers, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the type of shipping carrier (as carriers have different in-transit times); (ii) the fulfillment source (either our warehouses, those warehouses we control, or those of our partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

Generally, we require authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal), or verification of receipt of payment, before we ship products to consumers or business purchasers. From time to time we grant credit to our business purchasers with normal credit terms (typically 30 days). We generally receive payments from our customers before our payments to our suppliers are due. We do not recognize assets associated with costs to obtain or fulfill a contract with a customer.

Shipping and handling is considered a fulfillment activity, as it takes place prior to the customer obtaining control of the merchandise, and fees charged to customers are included in net revenue upon completion of our performance obligation. We present revenue net of sales taxes, discounts, and expected refunds.

Our merchandise sales contracts include terms that could cause variability in the transaction price for items such as discounts, credits, or sales returns. Accordingly, the transaction price for product sales includes estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. At the time of sale, we estimate a sales return liability for the variable consideration based on historical experience, which is recorded within Accrued liabilities in the consolidated balance sheet. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance

of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

We evaluate the criteria outlined in ASC 606-10-55, *Principal versus Agent Considerations*, in determining whether it is appropriate to record the gross amount of merchandise sales and related costs or the net amount earned as commissions. When we are the principal in a transaction and control the specific good or service before it is transferred to the customer, revenue is recorded gross; otherwise, revenue is recorded on a net basis. Through contractual terms with our partners, we have the ability to control the promised goods or services and as a result record the majority of our Retail revenue on a gross basis.

Our Other revenue occurs primarily through our broker-dealer subsidiaries in our tZERO segment. We evaluate the revenue recognition criteria above for our broker-dealer subsidiaries and we recognize revenue based on the gross amount of consideration that we expect to receive on securities transactions (commission revenue) on a trade date basis.

Club O loyalty program

We have a customer loyalty program called Club O for which we sell annual memberships. For Club O memberships, we record membership fees as unearned revenue and we recognize revenue ratably over the membership period.

The Club O loyalty program allows members to earn Club O Reward dollars for qualifying purchases made on our Website. As such, the initial transaction price giving rise to the reward dollar is allocated to each separate performance obligation based upon its relative standalone selling price. In determining the stand-alone selling price, we incorporate assumptions about the redemption rates of loyalty points. We recognize revenue for Club O Reward dollars when customers redeem such rewards as part of a purchase on our Website.

We record the standalone value of reward dollars earned in unearned revenue at the time the reward dollars are earned. Club O Reward dollars expire 90 days after the customer's Club O membership expires. We recognize estimated reward dollar breakage, to which we expect to be entitled, over the expected redemption period in proportion to actual redemptions by customers. Upon adoption of Topic 606, *Revenue from Contracts with Customers*, on January 1, 2018, we began classifying the breakage income related to Club O Reward dollars and gift cards as a component of Retail revenue in our consolidated statements of operations rather than as a component of Other expense, net. In 2018 we also recognized a cumulative adjustment that reduced Accumulated deficit by approximately \$5.0 million upon adoption related to the unredeemed portion of our gift cards and loyalty program rewards.

Advertising Revenue

Advertising revenues are derived primarily from sponsored links and display advertisements that are placed on our Website, distributed via email, or sent out as direct mailers. Advertising revenue is recognized in Retail revenue when the advertising services are rendered. Advertising revenues were less than 2% of total net revenues for all periods presented.

Revenue Disaggregation

Disaggregation of revenue by major product line is included in Segment Information in Note 25—Business Segments.

Unearned Revenue

When the timing of our provision of goods or services is different from the timing of the payments made by our customers, we recognize a contract liability (customer payment precedes performance).

Customer orders are recorded as unearned revenue when payment is received prior to delivery of products or services ordered. We record amounts received for Club O membership fees as unearned revenue and we recognize it ratably over the membership period. We record Club O Reward dollars earned from purchases as unearned revenue at the time they are earned based upon the relative standalone selling price of the Club O Reward dollar and we recognize it as Retail revenue in proportion to the estimated pattern of rights exercised by the customer. If reward dollars are not redeemed, we recognize Retail revenue upon expiration. In addition, we sell gift cards and record related unearned revenue at the time of the sale. We sell gift cards without expiration dates and we recognize revenue from a gift card upon redemption of the gift card. The unredeemed portion of our gift cards are recognized in Retail revenue over the expected redemption period based upon the estimated pattern of rights exercised by the customer.

Sales returns allowance

We inspect returned items when they arrive at our processing facilities. We refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or we or our partners have made an error, such as shipping the wrong product. If the return is not a result of a product defect or a fulfillment error and the customer initiates a return of an unopened item within 30 days of delivery, for most products we refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, we reduce refunds for returns initiated more than 30 days after delivery or that are received at our returns processing facility more than 45 days after initial delivery. If our customer returns an item that has been opened or shows signs of wear, we issue a partial refund minus the original shipping charge and actual return shipping fees.

Revenue is recorded net of estimated returns. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

Cost of goods sold

Our Retail cost of goods sold includes product costs, warehousing costs, outbound shipping costs, handling and fulfillment costs, customer service costs, and merchant fees, and is recorded in the same period in which related revenues have been recorded. Our Other cost of goods sold primarily consists of exchange fees, clearing agent fees, and other exchange fees from our broker-dealer subsidiaries in our tZERO segment. These fees are primarily for executing, processing, and settling trades on exchanges and other venues. These fees fluctuate based on changes in trade and share volumes, rate of clearance fees charged by clearing brokers, and exchanges.

Advertising expense

We expense the costs of producing advertisements the first time the advertising takes place and expense the cost of communicating advertising in the period during which the advertising space or airtime is used. Internet advertising expenses are recognized as incurred based on the terms of the individual agreements, which are generally: 1) a commission for traffic driven to our Website that generates a sale or 2) a referral fee based on the number of clicks on keywords or links to our Website generated during a given period. Advertising expense is included in Sales and marketing expenses in our consolidated statements of operations. Prepaid advertising is included in Prepaids and other current assets in our consolidated balance sheets.

Stock-based compensation

We measure compensation expense for all outstanding unvested share-based awards at fair value on the date of grant and recognize compensation expense over the service period for awards at the greater of a straight-line basis or on an accelerated schedule when vesting of the share-based awards exceeds a straight-line basis. When an award is forfeited prior to the vesting date, we recognize an adjustment for the previously recognized expense in the period of the forfeiture. See Note 17—Stock-Based Awards.

Loss contingencies

In the normal course of business, we are involved in legal proceedings and other potential loss contingencies. We accrue a liability for such matters when it is probable that a loss has been incurred and the amount, or range of amounts, can be reasonably estimated. When only a range of probable loss can be estimated, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. We expense legal fees as incurred (See Note 14—Commitments and Contingencies).

Income taxes

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are determined on the basis of the differences between the financial statements and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

We recognize deferred tax assets to the extent that we believe these assets are more likely than not to be realized. In evaluating our ability to recover our deferred tax assets within the jurisdiction from which they arise, we consider all available positive and negative evidence, including projected future taxable income, scheduled reversals of our deferred tax liabilities, tax planning strategies, and results of recent operations. Our projections of future taxable income are subject to change due to economic, political, and other conditions, such as the COVID-19 pandemic, and significant judgment is required in determining our ability to use our deferred tax assets.

We record uncertain tax positions in accordance with ASC 740 on the basis of a two-step process whereby (1) we determine whether it is more likely than not that the tax positions will be sustained on the basis of the technical merits of the position and (2) for those tax positions that meet the more-likely-than-not recognition threshold, we recognize the largest amount of tax benefit that is more than 50 percent likely to be realized upon ultimate settlement with the related tax authority. We recognize interest and penalties related to unrecognized tax benefits within the income tax expense line in the accompanying consolidated income statements. Accrued interest and penalties are included within the related tax liability line in our consolidated balance sheets.

Net income (loss) per share

Our Blockchain Voting Series A Preferred Stock, par value \$0.0001 per share (the "Series A Preferred"), Digital Voting Series A-1 Preferred stock, par value \$0.0001 per share (the "Series A-1 Preferred"), and our Voting Series B Preferred stock, par value \$0.0001 per share (the "Series B Preferred" together with the Series A Preferred stock and the Series A-1 Preferred stock, collectively, the "Preferred Shares") are considered participating securities, and as a result, net income (loss) per share is calculated using the two-class method. Under this method, we give effect to preferred dividends and then allocate remaining net income (loss) attributable to our stockholders to both common shares and participating securities (based on the percentages outstanding) in determining net income (loss) per common share.

Basic net income (loss) per common share is computed by dividing net income (loss) attributable to common shares (after allocating between common shares and participating securities) by the weighted average number of common shares outstanding during the period.

Diluted net income (loss) per share is computed by dividing net income (loss) attributable to common shares (after allocating between common shares and participating securities) by the weighted average number of common and potential common shares outstanding during the period (after allocating total dilutive shares between our common shares outstanding and our preferred shares outstanding). Potential common shares, comprising incremental common shares issuable upon the exercise of stock options, warrants, and restricted stock awards are included in the calculation of diluted net income (loss) per common share to the extent such shares are dilutive. Net income (loss) attributable to common shares is adjusted for options and restricted stock awards issued by our subsidiaries when the effect of our subsidiary's diluted earnings per share is dilutive.

Recently adopted accounting standards

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to recognize leases on-balance sheet and disclose key information about leasing arrangements. Topic 842 was subsequently amended by ASU No. 2018-01, *Land Easement Practical Expedient for Transition to Topic 842*; ASU No. 2018-10, *Codification Improvements to Topic 842, Leases*; and ASU No. 2018-11, *Targeted Improvements*. The new standard establishes a right-of-use model (ROU) that requires a lessee to recognize an ROU asset and lease liability on the balance sheet for all leases with a term longer than 12 months. Leases are classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement.

A modified retrospective transition approach is required, applying the new standard to all leases existing at the date of initial application. An entity may choose to use either (1) its effective date or (2) the beginning of the earliest comparative period presented in the financial statements as its date of initial application. If an entity chooses the second option, the transition requirements for existing leases also apply to leases entered into between the date of initial application and the effective date. The entity must also recast its comparative period financial statements and provide the disclosures required by the new standard for the comparative periods. We adopted the new standard on January 1, 2019 and thus used the effective date as our date of initial application. Consequently, financial information has not been updated and the disclosures required under the new standard are not provided for dates and periods before January 1, 2019. Upon adoption we recognized cumulative opening lease liabilities of approximately \$35.1 million and operating right-of-use assets of approximately \$31.0 million which were reflected as non-cash items in the consolidated statements of cash flows. The difference of \$4.2 million represented deferred rent for leases that existed as of the date of adoption, which was an offset to the opening balance of right-of-use assets.

The new standard provides a number of optional practical expedients in transition. We elected the "package of practical expedients", which permits us to not reassess under the new standard our prior conclusions about lease identification, lease classification, and initial direct costs as well as the practical expedient pertaining to land easements. We did not elect the use-of-hindsight practical expedient. The new standard also provides practical expedients for an entity's ongoing accounting. We elected the short-term lease recognition exemption for all leases that qualify. This means, for those leases that qualify, we did not recognize ROU assets or lease liabilities, and this includes not recognizing ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also elected the practical expedient to not separate lease and non-lease components for all of our leases.

The standard had a material effect on our financial statements, primarily related to (1) the recognition of new ROU assets and lease liabilities on our balance sheet for our warehouse, office, data center, and equipment operating leases; and (2) providing significant new disclosures about our leasing activities. The additional operating liabilities on our consolidated balance sheets were recognized based on the present value of the remaining minimum rental payments under current leasing standards for our existing operating leases, discounted by our incremental borrowing rate for borrowings of a similar duration on a fully secured basis, with corresponding ROU assets of approximately the same amount.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which revises how entities account for credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. Topic 326 was subsequently amended by ASU 2019-04, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments* and ASU 2019-11, *Codification Improvements to Topic 326, Financial Instruments—Credit Losses*. Under the guidance, the measurement of credit losses is based on a current expected credit losses methodology. We adopted the changes under the new standard on January 1, 2020. We utilized a prospective transition approach for our debt securities for which other-than-temporary impairment had been recognized prior to January 1, 2020. As a result, the amortized cost basis remains the same before and after the effective date of ASU 2016-13. The implementation of ASU 2016-13 did not have a material impact on our consolidated financial statements and disclosures. We will continue to actively monitor the impact of the COVID-19 pandemic on expected credit losses.

Recently issued accounting standards

In December 2019, the FASB issued ASU 2019-12, *Income Taxes ("Topic 740")—Simplifying the Accounting for Income Taxes*, which removes certain exceptions to the general principles in Topic 740 and amends existing guidance to improve consistent application. For public entities, ASU 2019-12 is required to be adopted for annual periods beginning after December 15, 2020, including interim periods within those fiscal years. The Company has completed its analysis of the impact of this guidance and the adoption of this standard will not have a material impact on our consolidated financial statements and related disclosures.

In January 2020, the FASB issued ASU 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815*, which clarifies the interaction of the accounting for equity securities under Topic 321, the accounting for equity method investments in Topic 323, and the accounting for certain forward contracts and purchased options in Topic 815. For public entities, ASU 2020-01 is required to be adopted for annual periods beginning after December 15, 2020, including interim periods within those fiscal years. The Company has completed its analysis of the impact of this guidance and the adoption of this standard will not have a material impact on our consolidated financial statements and related disclosures.

In October 2020, the FASB issued ASU 2020-10, *Codification Improvements*, which amends and provides Codification improvements in order to either clarify the Codification or correct unintended application of guidance that are not expected to have a significant effect on current accounting practice or create a significant administrative cost to most entities. For public entities, ASU 2020-10 is required to be adopted for annual periods beginning after December 15, 2020. The Company has completed its analysis of the impact of this guidance and the adoption of this standard will not have a material impact on our consolidated financial statements and related disclosures.

3. FAIR VALUE MEASUREMENT

The following tables summarize our assets and liabilities measured at fair value on a recurring basis using the following levels of inputs as of December 31, 2020 and 2019, as indicated (in thousands):

	Fair Value Measurements at December 31, 2020			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents—Money market mutual funds	\$ 567	\$ 567	\$ —	\$ —
Equity securities, at fair value	1,127	1,127	—	—
Marketable securities, at fair value	1,762	1,762	—	—
Trading securities held in a "rabbi trust" (1)	139	139	—	—
Total assets	\$ 3,595	\$ 3,595	\$ —	\$ —
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	\$ 148	\$ 148	\$ —	\$ —
Total liabilities	\$ 148	\$ 148	\$ —	\$ —

	Fair Value Measurements at December 31, 2019			
	Total	Level 1	Level 2	Level 3
Assets:				
Cash equivalents—Money market mutual funds	\$ 2,799	\$ 2,799	\$ —	\$ —
Equity securities, at fair value	823	823	—	—
Marketable securities, at fair value	10,308	10,308	—	—
Trading securities held in a "rabbi trust" (1)	116	116	—	—
Total assets	\$ 14,046	\$ 14,046	\$ —	\$ —
Liabilities:				
Deferred compensation accrual "rabbi trust" (2)	\$ 116	\$ 116	\$ —	\$ —
Total liabilities	\$ 116	\$ 116	\$ —	\$ —

- (1) — Trading securities held in a rabbi trust are included in Prepaids and other current assets and Other long-term assets, net in the consolidated balance sheets.
- (2) — Non-qualified deferred compensation in a rabbi trust is included in Accrued liabilities and Other long-term liabilities in the consolidated balance sheets.

4. BUSINESS COMBINATIONS

Bitt, Inc.

In October 2020, Medici Ventures, entered into a Subscription Agreement (the "Agreement") with Bitt Inc. ("Bitt"), a privately-held Barbadian financial technology company that is developing a system whereby the value of the national Barbadian currency (a fiat currency) is directly linked to an equivalent crypto-currency, along with additional crypto-financial technologies. This resulted in an 84% interest in Bitt, and we consolidated the results of Bitt beginning from the acquisition date of October 27, 2020. The acquisition of Bitt fits into the overall business initiatives of Medici Ventures to enable its existing keiretsu companies to extend their operating runway to profitability.

At the time of entering into the Agreement, Medici Ventures held an 18% fully-diluted equity interest in Bitt. We recognized an impairment charge of \$813,000 as a result of remeasuring to fair value our 18% equity interest in Bitt held before the business combination which was determined based on the same price per share Medici Ventures provided for the purchase of the common stock, which is the same price per share used to determine the fair value of the noncontrolling interest in the acquiree at the acquisition date. The impairment is included in Other expense, net in our consolidated statement of operations for the year ended December 31, 2020. In consideration of \$8.0 million in cash and the conversion of outstanding principal and

accumulated interest of \$731,000 in senior secured promissory notes (issued during January, March, and July 2020), \$4.0 million in convertible promissory notes (issued during February and August 2019) and \$4.4 million in convertible receivables for development services (accumulated late 2018 through 2020), Medici acquired a majority equity interest in Bitt bringing our total equity ownership to 84% (on a fully diluted basis).

As of December 31, 2020, our determination and allocation of the purchase price to net tangible and intangible assets was based upon preliminary estimates including Level 3 inputs, which were unobservable (See Note 2—Accounting Policies and Supplemental Disclosures). These inputs included our preliminary estimate of future revenues, operating margins, discount rates, and assumptions about the relative competitive environment. These preliminary estimates include those related to the valuation of the acquired intangible assets, which is not finalized, and the tax effects of this transaction, which are still being evaluated. These preliminary estimates and assumptions could change significantly during the measurement period as we finalize the valuations of the intangible assets acquired and related tax impact. Any change could result in variances between our future financial results and the amounts recognized in the financial information presented below, including variances in fair values recorded, as well as expenses associated with these items.

The preliminary estimated fair values of the assets acquired and liabilities assumed at the acquisition date are as follows (in thousands):

Purchase Price	Fair Value	
Cash paid, net of cash acquired	\$	(11)
Fair value of equity interest in Bitt held before business combination		680
Fair value of conversion of notes and receivables		9,169
Total transaction consideration, net of cash acquired	\$	9,838
Allocation		
Receivables	\$	94
Prepays and other current assets		472
Property and equipment		38
Other long term assets		21
Intangible assets		6,100
Goodwill		7,830
Accrued liabilities		(1,036)
Other current liabilities		(361)
Total net assets		13,158
Fair value of the noncontrolling interest in the acquiree at the acquisition date		(3,320)
Total, net of cash acquired	\$	9,838

The following table details the identifiable intangible assets acquired at their fair value and their corresponding useful lives at the acquisition date (in thousands):

Intangible Assets	Fair Value	Weighted Average Useful Life (years)
Technology	\$ 6,100	5

Acquired intangible assets primarily include technology. The acquired assets, liabilities, and associated operating results of Bitt were consolidated into our financial statements at the acquisition date. The goodwill recognized arises from both Bitt's workforce and expected cash flow generation for the Bitt business that does not qualify for separate recognition as intangible assets and is assigned to the Bitt reporting unit. None of the goodwill recognized is expected to be deductible for tax purposes. Pro forma results of operations have not been presented because the effects of this acquisition were not material to our consolidated results of operations, nor were the revenue and earnings since the acquisition date noted above material to our consolidated results of operations.

Through a series of transactions in 2018, Medici Ventures acquired a 33% equity interest in tZERO Crypto, Inc. ("tZERO Crypto"), formerly Bitsy, Inc., a U.S.-based startup that built a regulatory-compliant bridge between traditional fiat currencies and cryptocurrencies, allowing customers the ability to store, purchase and sell cryptocurrencies. tZERO Crypto was founded by Steve Hopkins, Overstock's current Vice President of Government, who was Medici Ventures' chief operating officer and general counsel at the time of such transaction who held a significant equity interest in tZERO Crypto. On December 21, 2018, tZERO entered into a stock purchase agreement with the owners of tZERO Crypto to acquire the remaining 67% equity interest for \$8.0 million with effective control of tZERO Crypto transferring to tZERO effective January 1, 2019. In connection with the December 2018 stock purchase agreement, Medici Ventures transferred its 33% equity interest in tZERO Crypto to tZERO for a \$4.0 million convertible promissory note and an assignment of certain intellectual property to Medici Ventures.

tZERO has expanded the wallet's capabilities and launched it as the tZERO Crypto wallet and exchange service. tZERO plans to offer these services as part of a suite of products that includes a digital wallet and exchange service between traditional fiat currencies and cryptocurrencies.

We estimated the fair value of the acquired assets based on Level 3 inputs, which were unobservable (see Note 2—Accounting Policies and Supplemental Disclosures, *Fair value of financial instruments*). These inputs included our estimate of future revenues, operating margins, discount rates, and assumptions about the relative competitive environment. As of March 31, 2019, our determination and allocation of the purchase price to net tangible and intangible assets was based upon preliminary estimates. During the quarter ended June 30, 2019, we received the final valuation information and completed our determination and allocation of the purchase price and recognized adjustments to the provisional values as of June 30, 2019, which decreased Intangible assets by \$650,000, increased Deferred tax liabilities by \$943,000 and resulted in a corresponding increase to Goodwill of \$1.7 million. We recognized an impairment of \$1.3 million as a result of remeasuring to fair value our 33% equity interest in tZERO Crypto held before the business combination which was based on Level 3 inputs (see Note 2—Accounting Policies and Supplemental Disclosures). The impairment is included in Other expense, net in our consolidated statement of operations for the year ended December 31, 2019.

The fair values of the assets acquired and liabilities assumed at the acquisition date are as follows (in thousands):

Purchase Price	Fair Value
Cash paid, net of cash acquired	\$ 3,115
Fair value of equity interest in tZERO Crypto held before business combination	3,800
Less: Fair value of Overstock.com common stock held by tZERO Crypto at acquisition date	(643)
Less: Settlement of receivable due from tZERO at acquisition date	(10)
Total transaction consideration, net of cash acquired	\$ 6,262
Allocation	
Prepays and other current assets	\$ 71
Property and equipment	16
Intangible assets	6,093
Goodwill	1,685
Deferred tax liability	(943)
Other liabilities assumed	(660)
Total net assets, net of cash acquired	\$ 6,262

The following table details the identifiable intangible assets acquired at their fair value and their corresponding useful lives at the acquisition date (in thousands):

Intangible Assets	Fair Value	Weighted Average Useful Life (years)
Patents	\$ 4,293	20
Technology	1,500	5
Licenses	300	1
Total acquired intangible assets as of the acquisition date	<u>\$ 6,093</u>	

Acquired intangible assets primarily include patents, technology, and licenses. The acquired assets, liabilities, and associated operating results of tZERO Crypto were consolidated into our financial statements at the acquisition date. The goodwill recognized arises from expected synergies with our tZERO operations that do not qualify for separate recognition as intangible assets and also the deferred tax liabilities arising from the business combination. None of the goodwill recognized is expected to be deductible for tax purposes. Pro forma results of operations have not been presented because the effects of this acquisition were not material to our consolidated results of operations.

5. ACCOUNTS RECEIVABLE, NET

Accounts receivable, net consist of the following (in thousands):

	December 31,	
	2020	2019
Credit card receivables, trade	\$ 16,376	\$ 10,515
Accounts receivable, trade	12,418	10,553
Other receivables	2,869	6,134
	<u>31,663</u>	<u>27,202</u>
Less: allowance for credit losses	(1,538)	(2,474)
Total accounts receivable, net	<u>\$ 30,125</u>	<u>\$ 24,728</u>

6. PREPAIDS AND OTHER CURRENT ASSETS

Prepays and other current assets consist of the following (in thousands):

	December 31,	
	2020	2019
Prepaid maintenance	\$ 9,156	\$ 6,577
Other current assets	8,365	6,199
Prepaid insurance	4,274	4,241
Prepaid other	3,234	4,434
Prepaid inventories	245	—
Prepaid advertising	155	138
Total prepaids and other current assets	<u>\$ 25,429</u>	<u>\$ 21,589</u>

7. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consist of the following (in thousands):

	December 31,	
	2020	2019
Computer hardware and software, including internal-use software and website development	\$ 228,638	\$ 223,309
Building	69,245	69,266
Land	12,781	12,781
Furniture and equipment	12,660	17,739
Building machinery and equipment	9,793	9,796
Land improvements	7,010	7,003
Leasehold improvements	5,538	11,921
	<u>345,665</u>	<u>351,815</u>
Less: accumulated depreciation	<u>(223,115)</u>	<u>(221,787)</u>
Total property and equipment, net	<u>\$ 122,550</u>	<u>\$ 130,028</u>

Capitalized costs associated with internal-use software and website development, both developed internally and acquired externally, and depreciation of costs for the same periods associated with internal-use software and website development consist of the following (in thousands):

	Year ended December 31,		
	2020	2019	2018
Capitalized internal-use software and website development	\$ 14,216	\$ 12,961	\$ 19,319
Depreciation of internal-use software and website development	14,880	12,920	13,753

Depreciation expense is classified within the corresponding operating expense categories in the consolidated statements of operations as follows (in thousands):

	Year ended December 31,		
	2020	2019	2018
Cost of goods sold—Retail	\$ 680	\$ 687	\$ 354
Technology	20,661	20,798	21,894
General and administrative	5,610	4,777	4,163
Total depreciation	<u>\$ 26,951</u>	<u>\$ 26,262</u>	<u>\$ 26,411</u>

During the years ended December 31, 2020 and 2019, we retired \$25.1 million and \$8.2 million, respectively, of fully depreciated property and equipment that were removed from service in 2020 and 2019.

8. INTANGIBLE ASSETS AND GOODWILL

Intangible assets, net

Intangible assets, net consist of the following (in thousands):

	December 31,	
	2020	2019
Intangible assets subject to amortization, gross (1)	\$ 36,367	\$ 30,284
Less: accumulated amortization of intangible assets subject to amortization	(22,370)	(18,528)
Total intangible assets, net	\$ 13,997	\$ 11,756

(1) — At December 31, 2020, the weighted average remaining useful life for intangible assets subject to amortization was 4.93 years.

Amortization of intangible assets other than goodwill is classified within the corresponding operating expense categories in our consolidated statements of operations as follows (in thousands):

	Year ended December 31,		
	2020	2019	2018
Technology	\$ 3,589	\$ 3,726	\$ 3,424
Sales and marketing	40	64	460
General and administrative	236	(458)	1,402
Total amortization	\$ 3,865	\$ 3,332	\$ 5,286

General and administrative amortization above for 2019 was net of reversals of \$1.4 million due to adjustments to the purchase price allocation for Mac Warehouse.

Estimated amortization expense for the next five years is: \$4.5 million in 2021, \$3.3 million in 2022, \$2.8 million in 2023, \$2.0 million in 2024, \$1.2 million in 2025 and \$126,000 thereafter.

Goodwill

The following table provides information about changes in the carrying amount of goodwill for the periods presented (in thousands):

	Amount
Balances as of December 31, 2018 (1)	\$ 22,895
Goodwill acquired during year	1,685
Purchase price adjustment	2,540
Balances as of December 31, 2019 (2)	27,120
Goodwill acquired during year	7,830
Balances as of December 31, 2020 (3)	\$ 34,950

(1), (2), (3) — Goodwill is net of accumulated impairment loss and other adjustments of \$3.3 million.

9. EQUITY SECURITIES

Equity securities and marketable securities under ASC 321

The carrying amount of our equity securities without readily determinable fair values was approximately \$3.7 million and \$3.9 million at December 31, 2020 and 2019, respectively. Cumulative downward adjustments for price changes and impairments for our equity securities without readily determinable fair values held at December 31, 2020 were \$6.4 million, and the cumulative upward adjustments for price changes to equity securities were \$958,000 as of December 31, 2020. The

impairments and downward adjustments for the period related to equity securities without readily determinable fair values at December 31, 2020, 2019 and 2018 is as follows (in thousands):

	Year ended December 31,		
	2020	2019	2018
Impairments and downward adjustments of equity securities without readily determinable fair values	\$ (204)	\$ (5,708)	\$ (536)
Upward adjustments of equity securities without readily determinable fair values	—	—	958

Certain of these equity securities and our marketable securities, which had a carrying value of \$2.9 million and \$11.1 million at December 31, 2020 and 2019, respectively, are carried at fair value based on Level 1 inputs. See Note 2—Accounting Policies and Supplemental Disclosures, *Fair value of financial instruments* above. The portion of unrealized gains and losses for the period related to equity securities with readily determinable fair value still held at December 31, 2020, 2019 and 2018 is as calculated as follows (in thousands):

	Year ended December 31,		
	2020	2019	2018
Net (losses) gains recognized during the period on equity securities and marketable securities	\$ (2,189)	\$ 3,336	\$ 136
Less: Net gains recognized during the period on equity securities and marketable securities sold	2,161	848	—
Unrealized (losses) gains recognized during the reporting period on equity securities and marketable securities still held at the reporting period	<u>\$ (4,350)</u>	<u>\$ 2,488</u>	<u>\$ 136</u>

Equity securities accounted for under the equity method under ASC 323

Our equity method securities include equity securities in which we can exercise significant influence, but not control, over these entities through either holding more than a 20% voting interest in the entity or through our representation on the entity's board of directors. The following table includes our equity securities accounted for under the equity method and related ownership interest as of December 31, 2020:

	Ownership interest
Boston Security Token Exchange LLC	50%
Chainstone Labs, Inc.	29%
FinClusive Capital, Inc.	12%
GrainChain, Inc.	18%
Medici Land Governance, Inc.	35%
Minds, Inc.	23%
PeerNova, Inc.	11%
SettleMint NV	29%
Spera, Inc.	19%
VinX Network Ltd.	39%
Voatz, Inc.	20%

The carrying amount of our equity method securities was approximately \$42.5 million and \$37.3 million at December 31, 2020 and 2019, respectively.

The following table summarizes the net losses recognized on equity method securities recorded in Other expense, net in our consolidated statements of operations for the years ended December 31, 2020, 2019 and 2018 (in thousands):

	Year ended December 31,		
	2020	2019	2018
Net loss recognized on our proportionate share of the net losses of our equity method securities and amortization of the basis difference	\$ 14,459	\$ 7,734	\$ 3,869
Impairments on equity method securities	813	1,382	—
Net loss recognized during the period on equity method securities sold	—	524	—

For certain of these entities, we provide developer services. For the years ended December 31, 2020, 2019, and 2018, we recognized \$9.0 million, \$2.7 million, and \$2.4 million, respectively, of revenue in Other Revenue on our consolidated statements of operations for developer and other secondment services provided to certain of these entities that are accounted for under the equity method.

We are party to notes receivable agreements with certain of these equity method entities. The carrying amount of these notes receivables, including accrued interest, was \$1.6 million and \$4.6 million at December 31, 2020 and 2019, respectively, which are included in Other long-term assets, net in the consolidated balance sheets.

Regulation S-X Rule 4-08(g)

For the period ended December 31, 2020, certain investments subject to Regulation S-X Rule 4-08(g) held by the Company in aggregate have met the significance criteria as defined under SEC guidance. As such, the Company is required to present summarized financial information for these significant investees that qualified as equity method securities during the respective periods presented as practicable for the year ended December 31, 2020 and such information is as follows (in thousands):

Balance Sheet	December 31,	
	2020	
Assets	\$	45,926
Liabilities		(24,891)
Equity	\$	(21,035)

Results of Operations	Year ended December 31,	
	2020	
Revenues	\$	4,788
Net loss		(36,625)

10. ACCRUED LIABILITIES

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2020	2019
Accrued compensation and other related costs	\$ 43,066	\$ 13,012
Accrued marketing expenses	20,687	13,063
Accounts payable accruals	20,471	15,692
Allowance for returns	19,190	11,107
Sales and other taxes payable	11,647	10,105
Accrued freight	9,309	5,954
Other accrued expenses	8,649	9,714
Accrued loss contingencies	2,576	9,550
Total accrued liabilities	\$ 135,595	\$ 88,197

11. UNEARNED REVENUE

Unearned revenue consists of the following (in thousands):

	December 31,	
	2020	2019
Payments received prior to product delivery	\$ 46,439	\$ 21,951
Club O membership fees and reward points	14,860	11,363
In store credits	9,207	6,338
Unredeemed gift cards	1,143	955
Other	662	1,214
Total unearned revenue	\$ 72,311	\$ 41,821

12. BORROWINGS

2020 loan agreements

In March 2020, we entered into two loan agreements. The loan agreements provide a \$34.5 million Senior Note, carrying interest at an annual rate of 4.242%, and a \$13.0 million Mezzanine Note, carrying interest at an annual rate of 5.002%. The loans carry a blended annual interest rate of 4.45%. The Senior Note is for a 10-year term (stated maturity date is March 6, 2030) and requires interest only payments, with the principal amount and any then unpaid interest due and payable at the end of the 10-year term. The Mezzanine Note has a stated 10-year term, though the agreement requires principal and interest payments monthly over approximately a 46-month payment period. Our debt issuance costs and debt discount are amortized using the straight-line basis which approximates the effective interest method.

As of December 31, 2020, the total outstanding debt on these loans was \$44.2 million, net of \$600,000 in capitalized debt issuance costs, and the total amount of the current portion of these loans included in Other current liabilities on our consolidated balance sheets was \$2.9 million.

Further, the Company will serve as a guarantor under the Senior Note (the "Senior Note Guaranty") and the Mezzanine Note (the "Mezzanine Note Guaranty"). Both loans include certain financial and non-financial covenants and are secured by our corporate headquarters and the related land and rank senior to stockholders. Overstock has agreed under the Senior Note Guaranty to, among other things, maintain, until all of the obligations guaranteed by Overstock under the Senior Note Guaranty have been paid in full, (i) a net worth in excess of \$30 million and minimum liquid assets of \$3 million for so long as the Mezzanine Note is outstanding, and (ii) a net worth in excess of \$15 million and minimum liquid assets of \$1 million from and after the date the Mezzanine Note has been paid in full. Overstock has also agreed under the Mezzanine Note Guaranty to,

among other things, maintain a net worth in excess of \$30 million and minimum liquid assets of \$3 million until all obligations guaranteed by Overstock under the Mezzanine Note Guaranty have been paid in full.

We are in compliance with our debt covenants and continue to monitor the most recent developments regarding the COVID-19 pandemic and potential impact to our ongoing compliance with our debt covenants.

Future principal payments on our total debt as of December 31, 2020, are as follows (in thousands):

Payments due by period	
2021	\$ 3,030
2022	3,447
2023	3,606
2024	282
2025	—
Thereafter	34,500
	<u>\$ 44,865</u>

13. LEASES

We have operating and finance leases for warehouses, office space, data centers, and certain equipment. Our leases have remaining lease terms of 1 year to 10 years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within 1 year. We note our finance leases are immaterial to our financial statements as a whole and thus are not discussed below. Variable lease costs include executory costs, such as taxes, insurance, and maintenance.

The following table provides a summary of leases by balance sheet location (in thousands):

	December 31, 2020	December 31, 2019
Operating right-of-use assets	\$ 24,523	\$ 25,384
Operating lease liabilities, current	6,630	6,603
Operating lease liabilities, non-current	20,305	21,554

The components of lease expense were as follows (in thousands):

	Years ended December 31,	
	2020	2019
Operating lease cost	\$ 7,852	\$ 9,765
Short-term lease cost	29	96
Variable lease cost	1,576	1,848

The following tables provides a summary of other information related to leases (in thousands):

	Years ended December 31,	
	2020	2019
Cash payments included in operating cash flows from lease arrangements	\$ 8,067	\$ 10,925
Right-of-use assets obtained in exchange for new operating lease liabilities	5,683	17,947
Derecognition of right-of-use assets due to reassessment of lease term	701	16,855

The following table provides a summary of balance sheet information related to leases:

	December 31,	
	2020	2019
Weighted-average remaining lease term—operating leases	5.46 years	5.86 years
Weighted-average discount rate—operating leases	7 %	8 %

Maturity of lease liabilities under our non-cancellable operating leases as of December 31, 2020, are as follows (in thousands):

Payments due by period		
2021	\$	8,412
2022		7,110
2023		5,724
2024		3,902
2025		1,795
Thereafter		5,853
Total lease payments		32,796
Less interest		(5,861)
Present value of lease liabilities	\$	26,935

14. COMMITMENTS AND CONTINGENCIES

Legal proceedings and contingencies

From time to time, we are involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we have been in the past and we may be in the future subject to significant damages. In some instances, other parties may have contractual indemnification obligations to us. However, such contractual obligations may prove unenforceable or non-collectible, and if we cannot enforce or collect on indemnification obligations, we may bear the full responsibility for damages, fees, and costs resulting from such litigation. We may also be subject to penalties and equitable remedies that could force us to alter important business practices. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. The nature of the loss contingencies relating to claims that have been asserted against us are described below.

In September 2009, SpeedTrack, Inc. sued us along with 27 other defendants in the United States District Court in the Northern District of California, alleging that we infringed a patent covering search and categorization software. We believe that certain third-party vendors of products and services sold to us are contractually obligated to indemnify us, and we have tendered defense of the case to an indemnitor who accepted the defense. In April 2016, the court entered an order partially dismissing the claims against us. In May 2016, the plaintiff filed an amended complaint, and we filed our answer. In March 2020, the court entered a judgment of non-infringement in our favor and against the plaintiff. In June 2020, the plaintiff filed an appeal to the United States District Court of Appeals for the Federal Circuit. No estimate of the possible loss or range of loss can be made. We intend to vigorously defend this appeal.

As previously disclosed, in February 2018, the Division of Enforcement of the SEC informed tZERO and subsequently informed us that it is conducting an investigation and requested that we and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering in connection with its investigation. In December 2018, we received a follow-up request from the SEC relating to its investigation and relating to GSR Capital Ltd., a Cayman Islands exempted company ("GSR"). On October 7, 2019, we received a subpoena from the SEC requesting documents and other information related to the Series A-1 Preferred stock dividend we announced to stockholders in June 2019 (the "Dividend") (discussed below in Note 16—Stockholders' Equity) and requesting 10b5-1 plans entered into by certain officers and directors that were in effect during the period of January 1, 2018 through October 7, 2019. In December 2019, we received a subpoena from the SEC requesting documents related to the GSR transaction and the alternative trading system run by tZERO ATS, LLC. We received another subpoena from the SEC in December 2019 requesting our insider trading policies as well as certain

employment and consulting agreements. We have also previously received requests from the SEC regarding GSR and our communications with our former Chief Executive Officer and Director, Patrick Byrne, and the matters referenced in the December 2019 subpoenas. In May 2020, we received a subpoena from the SEC requesting additional information related to the ATS. In January 2021, we received a subpoena from the SEC requesting information regarding our Retail guidance in 2019 and certain communications with current and former executives, board members, and investors. We are cooperating with the SEC's investigation, have provided documents requested in voluntary requests and the 2019 and 2020 subpoenas, and continue to provide documents requested in the 2021 subpoena.

tZERO's broker-dealer subsidiaries are subject to extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules. Each of SpeedRoute LLC ("SpeedRoute"), tZERO Markets, LLC ("tZERO Markets"), and tZERO ATS, LLC is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and in the states in which it conducts securities business and is a member of FINRA and other SROs (as applicable). In addition, tZERO ATS, LLC owns and operates an alternative trading system. Each of SpeedRoute, tZERO Markets and tZERO ATS, LLC is subject to regulation, examination, investigation, and disciplinary action by the SEC, FINRA, and state securities regulators, as well as other governmental authorities and SROs with which it is registered or licensed or of which it is a member. Moreover, as a result of tZERO's projects seeking to apply distributed ledger technologies to the capital markets, tZERO's subsidiaries have been, and remain involved in, ongoing oral and written communications with regulatory authorities. As previously disclosed, tZERO's broker-dealer subsidiaries are currently undergoing various examinations, inquiries, and/or investigations undertaken by various regulatory authorities, which may result in financial and other settlements or penalties.

tZERO's subsidiary, tZERO Crypto, Inc., is registered as or is applying to become a money transmitter (or its equivalent) in many states and is subject to extensive regulatory requirements applicable to money services businesses, including the requirements of the Financial Crimes Enforcement Network of the U.S. Department of the Treasury ("FinCEN"), anti-money laundering requirements, know-your-customer requirements, record-keeping, reporting and capital and bonding requirements, and inspection by state and federal regulatory agencies. Compliance with these requirements requires the dedication of significant resources and any material failure by tZERO Crypto, Inc. to remain in compliance with the applicable regulatory requirements could subject it to liability or limit the services it may offer.

On September 27, 2019, a purported securities class action lawsuit was filed against us and our former chief executive officer and former chief financial officer in the United States District Court of Utah, alleging violations under Section 10(b), Rule 10b-5, Section 20(a), Section 20(A) of the Exchange Act. On October 8, 2019, October 17, 2019, October 31, 2019, and November 20, 2019, four similar lawsuits were filed in the same court also naming the Company and the above referenced former executives as defendants, bringing similar claims under the Exchange Act, and seeking similar relief. These cases were consolidated into a single lawsuit in December 2019. The Court appointed The Mangrove Partners Master Fund Ltd. as lead plaintiff in January 2020. In March 2020, an amended consolidated complaint was filed against us, our president of Retail, our former chief executive officer, and our former chief financial officer. We filed a motion to dismiss and on September 28, 2020, the court granted our motion and entered a judgment in our favor. The plaintiffs filed a motion to amend their complaint on October 23, 2020 and filed a notice of appeal on October 26, 2020. The United States District Court of Utah granted the plaintiffs' motion to amend their complaint on January 6, 2021 and the Tenth Circuit Court dismissed the plaintiffs' appeal on January 8, 2021. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend this consolidated action.

On November 22, 2019, a shareholder derivative suit was filed against us and certain past and present directors and officers of the Company in the United States District Court for the District of Delaware, with allegations that include: (i) breach of fiduciary duties, (ii) unjust enrichment, (iii) insider selling and misappropriation of the company's information, and (iv) contribution under Sections 10(b) and 21D of the Exchange Act. On December 17, 2019, a similar lawsuit was filed in the same court, naming the same defendants, bringing similar claims, and seeking similar relief. These cases were consolidated into a single lawsuit in January 2020. In March 2020, the court entered a stay on litigation, pending the outcome of the securities class action motion to dismiss. No estimates of the possible losses or range of losses can be made at this time. We intend to vigorously defend these actions.

On April 23, 2020, a putative class action lawsuit was filed against us in the Circuit Court of the County of St. Louis, State of Missouri, alleging that we over-collected taxes on products sold into the state of Missouri. We removed the case to United States District Court, Eastern District of Missouri on May 22, 2020, and on February 9, 2021, the case against us was dismissed.

We establish liabilities when a particular contingency is probable and estimable. At December 31, 2020 and 2019, we have accrued \$2.6 million and \$9.6 million, respectively, which are included in Accrued liabilities in our consolidated balance sheets. The decrease in our estimated liability for these amounts included in Accrued liabilities at December 31, 2019 was primarily attributable to the reversal of an \$8.6 million legal settlement accrual due to a ruling in our favor during the second quarter of 2020. The expense associated with this litigation charge was included in General and administrative expense in our consolidated statement of operations for the year ended December 31, 2018 and the subsequent reversal gain is included in the same as of December 31, 2020. It is reasonably possible that the actual losses may exceed our accrued liabilities.

15. INDEMNIFICATIONS AND GUARANTEES

During our normal course of business, we have made certain indemnities, commitments, and guarantees under which we may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities we entered into in favor of Loan Core Capital Funding Corporation LLC under our loan agreements, various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity we entered into in favor of the lenders under our prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments we could be obligated to make. As such, we are unable to estimate with any reasonableness our potential exposure under these items. We have not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. We do, however, accrue for losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

16. STOCKHOLDERS' EQUITY

Common Stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

On May 19, 2020, we completed the distribution of our previously announced digital dividend (the "Dividend") payable in shares of our Series A-1 preferred stock. The Dividend was paid out at a ratio of 1:10, so that one share of Series A-1 preferred stock was issued for every ten shares of OSTK common stock, for every ten shares of Series A-1 preferred stock, and for every ten shares of Series B preferred stock held by all holders of such shares as of April 27, 2020, the record date for the Dividend. We recognized 4,085,445 shares of Series A-1 preferred stock declared but not yet distributed as of December 31, 2019. On May 19, 2020, 4,079,030 shares of Series A-1 preferred stock were distributed based on the shares outstanding and holders at the record date.

Preferred Stock

On May 1, 2019, we informed holders of our Series A Preferred stock of an opportunity to exchange (the "Exchange") outstanding Series A Preferred stock for newly-issued shares of the Company's Series A-1 Preferred stock. On June 26, 2019, the Exchange was completed for participating stockholders. In connection with the Exchange, 122,526 shares of Series A Preferred stock were validly tendered and accepted for exchange by the Company and the Company issued 122,526 shares of Series A-1 Preferred stock in exchange.

On June 26, 2019, in connection with the completion of the Exchange, 1,144 shares of Series A Preferred stock were converted into shares of Series B Preferred stock (such transaction, the "Conversion"). Following the Conversion, 2,895 shares of Series A Preferred stock remained outstanding as of June 30, 2019 and in July 2019, 2,020 of those remaining shares were exchanged for shares of Series A-1 Preferred stock and 875 of those remaining shares were converted into shares of Series B Preferred stock. Following that time, the Company eliminated the Series A Preferred stock by filing a Certificate of Elimination with the Delaware Secretary of State.

Except as required by law, the preferred shares are intended to have voting and dividend rights similar to those of one share of common stock. Preferred shares rank senior to common stock with respect to dividends. Holders of the preferred shares are entitled to an annual cash dividend of \$0.16 per share, in preference to any dividend payment to the holders of the common

stock, out of funds of the Company legally available for payment of dividends and subject to declaration by our Board of Directors. Holders of the preferred shares are also entitled to participate in any cash dividends we pay to the holders of the common stock and are also entitled to participate in non-cash dividends we pay to holders of the common stock, subject to potentially different treatment if we effect a stock dividend, stock split or combination of the common stock. There are no arrearages in cumulative preferred dividends. We declared and paid a cash dividend of \$0.16 per share on our preferred stock during 2019 and 2020.

Neither the Series A-1 Preferred stock nor Series B Preferred stock is required to be converted into or exchanged for shares of our common stock or any other entity; however, at our sole discretion, we may convert the Series A-1 Preferred stock into Series B Preferred stock at any time on a one-to-one basis. In the event of any liquidation, any amount available for distribution to stockholders after payment of all liabilities will be distributed proportionately, with each share of Series A-1 Preferred stock and each share of Series B Preferred stock being treated as though it were a share of our common stock. If we are party to any merger or consolidation in which our common stock is changed into or exchanged for stock or other securities of any other person (or the Company) or cash or any other property (or a right to receive the foregoing), we will use all commercially reasonable efforts to cause each outstanding share of the Preferred Stock to be treated as if such share were an additional outstanding share of common stock in connection with any such transaction. Neither the Series A-1 Preferred stock nor the Series B Preferred stock is registered under the Exchange Act.

JonesTrading Sales Agreement

We entered into an Amended and Restated Capital on DemandTM Sales agreement dated June 26, 2020 with JonesTrading Institutional Services LLC ("JonesTrading") and D.A. Davidson & Co. ("D.A. Davidson"), under which we may conduct "at the market" public offerings of our common stock. Under the sales agreement, JonesTrading and D.A. Davidson, acting as our agents, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. We have no obligation to sell additional shares under the sales agreement, but we may do so from time to time. For the year ended December 31, 2020, we did not sell any shares of our common stock pursuant to the sales agreement but have received \$2.8 million of proceeds that was included in Accounts receivable, net on our consolidated balance sheet at December 31, 2019 for the sale of an aggregate 415,904 shares of our common stock under the prior iteration of the agreement that were executed in late December 2019. For the year ended December 31, 2019, we sold 7,590,498 shares of our common stock pursuant to the sales agreement and received \$85.8 million in proceeds, including \$2.8 million of proceeds included in Accounts receivable, net on our consolidated balance sheet, net of \$2.0 million of offering costs, including commissions paid to JonesTrading. As of December 31, 2020, we had \$150.0 million available under our "at the market" sales program.

Common Stock Offering

We completed a public offering of our common stock on August 14, 2020 and issued 2,415,000 shares of our common stock pursuant to an underwriting agreement, dated August 11, 2020, for proceeds totaling \$192.7 million, net of \$11.4 million in offering costs.

TZROP

On December 18, 2017, tZERO launched an offering (the "TZROP offering") of the right to acquire tZERO's Preferred Equity Tokens, Series A ("TZROP") through a Simple Agreement for Future Equity ("SAFE"). The TZROP offering closed on August 6, 2018, and on October 12, 2018 tZERO issued the TZROP in settlement of the SAFEs. TZROP holders have the right to, prior to distributing earnings to tZERO common shareholders, a noncumulative dividend equal to 10% of tZERO's consolidated Adjusted Gross Revenue (as defined by the TZROP offering documents) for the most recently completed fiscal quarter, if declared by tZERO's Board of Directors, to be paid out of funds lawfully available on a quarterly basis. TZROP holders are not entitled to participate in any dividends paid to the holders of tZERO's common stock, have no rights to vote, and have no rights to the undistributed earnings of tZERO and are not entitled to any utility functionality as part of the TZROP. Any remaining undistributed earnings or losses of tZERO for a period shall be allocated to the noncontrolling interest held by the TZROP holders based on the contractual participation rights of the security to share in those earnings as if all the earnings for the period had been distributed. In the event of any liquidation, dissolution or winding up of tZERO, the TZROP holders will be entitled to the limited preferential liquidation rights equal to USD \$0.10 per token to the extent funds are available.

At December 31, 2018, cumulative proceeds since December 18, 2017 from the TZROP offering totaling \$104.8 million, net of \$22.0 million of withdrawals, were classified as a component of noncontrolling interest within our consolidated financial statements. As of December 31, 2018, tZERO incurred \$21.5 million of offering costs associated with the TZROP offering that are classified as a reduction in proceeds within noncontrolling interest in our consolidated financial statements.

GSR Agreement

On April 1, 2020, tZERO issued 508,710 shares of tZERO common stock, representing approximately 0.5% of the issued and outstanding common stock of tZERO, to GSR Capital Ltd., a Cayman Islands exempted company ("GSR") in exchange for \$5.0 million in consideration in full satisfaction of the Investment Agreement dated May 8, 2019. GSR's installment payments towards the Investment Agreement were included in Accrued liabilities on our consolidated balance sheet prior to the closing of the transaction.

Warrants

On November 8, 2017, we issued warrants to purchase up to a combined aggregate of 3,722,188 shares of our common stock to two purchasers in privately negotiated transactions, for an aggregate warrant purchase price of \$6.5 million, net of issuance costs. The exercise price for the warrants was \$40.45 per share of common stock. On December 29, 2017, one of the warrant holders exercised its warrant in full and purchased a total of 2,472,188 shares of common stock for \$100.0 million. On January 17, 2018, the other warrant holder exercised its warrant in full and purchased 1,250,000 shares of common stock for \$50.6 million.

17. STOCK-BASED AWARDS

We have equity incentive plans that provide for the grant to employees and board members of stock-based awards, including stock options and restricted stock. Employee accounting applies to awards granted by the Company or subsidiary in the company or subsidiary's shares only to its own employees, respectively. No sibling or upstream awards have been granted. Stock-based compensation expense was as follows (in thousands):

	Years ended December 31,		
	2020	2019	2018
Cost of goods sold — Retail	\$ 169	\$ 212	\$ 201
Sales and marketing	799	1,941	1,728
Technology	2,296	5,796	2,066
General and administrative	9,666	10,280	10,361
Total stock-based compensation expense	\$ 12,930	\$ 18,229	\$ 14,356

Overstock restricted stock awards

The Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan (the "Plan") provides for the grant of incentive stock options to employees and directors of the Company and non-qualified stock options to consultants, as well as restricted stock units and other types of equity awards of the Company. For the years ended December 31, 2020, 2019 and 2018, the Compensation Committee of the Board of Directors approved grants of 484,000, 982,000 and 387,000 restricted stock awards, respectively, to our officers, board members and employees. These restricted stock awards vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.3% at the end of the third year; subject to the recipient's continuing service to us. In addition to our traditional equity awards, during the quarter ended March 31, 2019, we granted 502,765 restricted stock awards with a cumulative grant date fair value of \$8.6 million which vested over a one-year period, which awards are included in the 982,000 total grants above. At December 31, 2020, there were 639,000 unvested restricted stock awards that remained outstanding. At December 31, 2020, 2.0 million shares of stock remained available for future grants under the Plan.

The cost of restricted stock units is determined using the fair value of our common stock on the date of the grant and compensation expense is either recognized on a straight-line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date. The weighted average grant date fair value of restricted stock awards granted during the years ended December 31, 2020, 2019 and 2018 was \$10.39, \$17.80 and \$65.42, respectively.

The following table summarizes restricted stock award activity (in thousands, except fair value data):

	2020		2019		2018	
	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	1,051	\$ 26.22	559	\$ 44.08	540	\$ 17.05
Granted at fair value	484	10.39	982	17.80	387	65.42
Vested	(710)	23.58	(270)	34.92	(234)	17.68
Forfeited	(186)	23.43	(220)	23.36	(134)	42.85
Outstanding—end of year	639	\$ 17.98	1,051	\$ 26.22	559	\$ 44.08

Medici Ventures stock options

The Medici Ventures, Inc. 2017 Stock Option Plan, as amended, provides for the grant of options to employees and directors of and consultants to Medici Ventures to acquire up to 9% of the authorized shares of Medici Ventures' common stock. Medici Ventures authorized 1.5 million shares, 900,000 of which are issued and outstanding to Overstock, and 130,000 of which are subject to the 2017 Stock Option Plan. The remaining 470,000 are authorized but unissued. Options vested under this plan expire at the end of ten years. During the year ended December 31, 2020, Medici Ventures granted 13,650 stock options with a cumulative grant date fair value of \$282,000 which vest over a three-year period. During the year ended December 31, 2019, Medici Ventures granted 27,550 stock options with a cumulative grant date fair value of \$2.4 million which vest over a three-year period.

tZERO equity awards

The tZERO Group, Inc. 2017 Equity Incentive Plan, as amended, provides for grant of options and restricted stock to employees and directors of and consultants to tZERO to acquire up to 5% of the authorized shares of tZERO's common stock. In January 2018, tZERO granted 2,000,000 restricted stock awards (post-stock split) with a cumulative grant date fair value of \$4.0 million under the equity incentive plan, all of which vested on January 23, 2018. Accordingly, there is no expense to be recognized in future periods related to these awards. As a result of these vested awards, our indirect ownership interest in tZERO was reduced from 81% to approximately 80%.

During the year ended December 31, 2020, tZERO granted 60,000 stock option awards with a cumulative grant date fair value of \$46,000. In June 2020, tZERO restructured its outstanding equity awards through the amendment and cancellation of each of its outstanding stock option awards in favor of the issuance of restricted stock unit awards, with each participant under its plan receiving one restricted stock unit for each stock option canceled. In addition to the original service-based vesting condition (generally three years), the restricted stock unit awards include an added performance-based vesting condition that a liquidity event must occur in order for the restricted stock unit awards to vest. The exchange was accounted for as a Type II modification with an incremental fair value of \$6.9 million for the modified awards which will be expensed for the fully vested portion of the grant once the performance-based vesting condition becomes probable and the remaining fair value of the grant will be expensed on a straight-lined basis over the remaining vesting period. As such, no incremental compensation cost was recognized on the modification date. The original grant date fair value of the stock option awards exchanged for restricted stock unit awards will continue to be expensed on a straight-line basis over their remaining vesting period. During the year ended December 31, 2020, tZERO granted 11,528,016 restricted stock unit awards, including 7,851,016 restricted stock unit awards related to the exchange of stock option unit awards for restricted stock unit awards. The incremental restricted stock unit awards granted that were not part of the exchange totaled 3,677,000 and had a cumulative grant date fair value of \$3.5 million which will be expensed for the fully service-based vested portion of the grant once the performance-based vesting condition becomes probable and the remaining fair value of the grant will be expensed on a straight-line basis over the remaining service-based vesting period. During the year ended December 31, 2019, tZERO granted options to acquire 3,477,760 shares (post-stock split) of its stock with a cumulative grant date fair value of \$521,000 which are expensed on a straight-line basis over the vesting period of three years. Options vested under this plan expire at the end of ten years. Additionally, during the year ended December 31, 2019, tZERO granted 260,500 restricted stock awards with a cumulative grant date fair value of \$795,000 which are expensed on a straight-line basis over a cliff vesting period of two years.

18. EMPLOYEE RETIREMENT PLAN

We have a 401(k) defined contribution plan which permits participating employees to defer a portion of their compensation, subject to limitations established by the Internal Revenue Code. During the years ended December 31, 2020, 2019 and 2018, employees who completed 3 months of service and are 21 years of age or older are qualified to participate in the plan which matches 100% of the first 6% of each participant's contributions to the plan subject to IRS limits. Matching contributions vest immediately. Participant contributions also vest immediately. Our matching contribution totaled \$6.1 million, \$5.8 million and \$5.5 million for the years ended December 31, 2020, 2019 and 2018, respectively. We made no discretionary contributions to eligible participants for the years ended December 31, 2020, 2019 and 2018, respectively.

19. REVENUE AND CONTRACT LIABILITY

Unearned revenue

The following table provides information about unearned revenue from contracts with customers, including significant changes in unearned revenue balances during the period (in thousands):

	Amount
Unearned revenue at December 31, 2018	\$ 50,578
Increase due to deferral of revenue at period end	36,622
Decrease due to beginning contract liabilities recognized as revenue	(45,379)
Unearned revenue at December 31, 2019	41,821
Increase due to deferral of revenue at period end	65,828
Decrease due to beginning contract liabilities recognized as revenue	(35,338)
Unearned revenue at December 31, 2020	\$ 72,311

Our total unearned revenue related to outstanding Club O Reward dollars was \$8.6 million and \$6.7 million at December 31, 2020 and 2019, respectively. Breakage income related to Club O Reward dollars and gift cards are recognized as a component of Retail revenue in our consolidated statements of operations. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations.

Breakage included in revenue was \$5.4 million, \$4.2 million, and \$5.6 million for the years ended December 31, 2020, 2019, and 2018, respectively.

Sales returns allowance

The following table provides additions to and deduction from the sales returns allowance (in thousands):

	Amount
Allowance for returns at December 31, 2017	\$ 17,391
Additions to the allowance	174,864
Deductions from the allowance	(176,994)
Allowance for returns at December 31, 2018	15,261
Additions to the allowance	117,040
Deductions from the allowance	(121,194)
Allowance for returns at December 31, 2019	11,107
Additions to the allowance	204,810
Deductions from the allowance	(196,727)
Allowance for returns at December 31, 2020	\$ 19,190

20. OTHER EXPENSE, NET

Other expense, net consisted of the following (in thousands):

	Years ended December 31,		
	2020	2019	2018
Gain on deconsolidation of net assets of Medici Land Governance, Inc.	\$ 10,741	\$ —	\$ —
Gain/(loss) on equity securities and marketable securities	(2,188)	2,358	1,084
Equity method losses	(14,459)	(7,734)	(3,869)
Impairment of equity securities	(1,017)	(7,090)	(536)
Other	2,095	(35)	(167)
Total other expense, net	<u>\$ (4,828)</u>	<u>\$ (12,501)</u>	<u>\$ (3,488)</u>

21. INCOME TAXES

For financial reporting purposes, income (loss) before income taxes includes the following components (in thousands):

	Years ended December 31,		
	2020	2019	2018
United States income (loss)	\$ 46,621	\$ (134,934)	\$ (219,585)
Foreign income (loss)	539	399	(369)
Total income (loss) before income taxes	<u>\$ 47,160</u>	<u>\$ (134,535)</u>	<u>\$ (219,954)</u>

The provision (benefit) for income taxes for 2020, 2019 and 2018 consists of the following (in thousands):

	Years ended December 31,		
	2020	2019	2018
Current:			
Federal	\$ —	\$ (49)	\$ (57)
State	890	195	(141)
Foreign	74	158	44
Total current	<u>964</u>	<u>304</u>	<u>(154)</u>
Deferred:			
Federal	36	(99)	(1,583)
State	7	(18)	(645)
Foreign	(18)	(2)	(2)
Total deferred	<u>25</u>	<u>(119)</u>	<u>(2,230)</u>
Total provision (benefit) for income taxes	<u>\$ 989</u>	<u>\$ 185</u>	<u>\$ (2,384)</u>

The provision (benefit) for income taxes for 2020, 2019 and 2018 differ from the amounts computed by applying the U.S. federal income tax rate of 21% to income (loss) before income taxes for the following reasons (in thousands):

	Year ended December 31,		
	2020	2019	2018
U.S. federal income tax provision (benefit) at statutory rate	\$ 9,904	\$ (28,252)	\$ (46,190)
Stock based compensation expense	1,827	1,440	(1,260)
Remeasurement of equity securities due to MLG deconsolidation	1,745	—	—
State income tax expense, net of federal benefit	1,382	(4,952)	(8,289)
Remeasurement of equity securities due to Bitt consolidation	1,009	—	—
Gain on subsidiary stock	360	193	2,192
Delaware gift card litigation charge and reversal	(1,022)	—	1,022
Research and development credit	(1,772)	(2,014)	(1,734)
Change in valuation allowance	(13,066)	32,333	51,245
Other, net	622	1,437	630
Total provision (benefit) for income taxes	\$ 989	\$ 185	\$ (2,384)

The components of our deferred tax assets and liabilities as of December 31, 2020 and 2019 are as follows (in thousands):

	December 31,	
	2020	2019
Deferred tax assets:		
Net operating loss carryforwards	\$ 88,990	\$ 104,153
Research and development tax credits	20,067	17,922
Accrued expenses	11,915	9,893
Basis difference in equity securities	8,079	7,075
Operating lease liabilities	6,604	6,970
Intangible assets	2,897	4,130
Reserves and other	3,877	4,018
Interest expense carryforward	1,799	677
Fixed assets	—	608
Other tax credits and carryforwards	253	300
Gross deferred tax assets	144,481	155,746
Valuation allowance	(134,305)	(146,856)
Total deferred tax assets	10,176	8,890
Deferred tax liabilities:		
Operating lease right-of-use assets	(6,152)	(6,263)
Fixed assets	(2,236)	—
Goodwill	(934)	(677)
Prepaid expenses	(777)	(810)
Marketable securities	(218)	(1,068)
Total deferred tax liabilities	(10,317)	(8,818)
Total deferred tax assets (liabilities), net	\$ (141)	\$ 72

At December 31, 2020, we have federal net operating loss carryforwards with no expiration date of approximately \$289.6 million; the utilization of these net operating loss carryforwards is limited to 80% of taxable income in any given year. We also have federal net operating loss carryforwards of approximately \$56.7 million which expire between 2027 and 2037. We have state net operating loss carryforwards with no expiration date of approximately \$119.5 million; the utilization of these

net operating loss carryforwards is limited to 80% of taxable income in most states in any given year. We also have state net operating loss carryforwards of approximately \$70.4 million which expire in 2021, \$16.2 million which expire in 2022, and \$130.0 million that expire between 2024 and 2039.

At December 31, 2020, we have federal research credit carryforwards of approximately \$21.7 million that expire between 2027 and 2040. We also have state research credit carryforwards of approximately \$8.6 million that expire between 2021 and 2034. Ownership changes under Internal Revenue Code Section 382 could limit the amount of net operating losses or credit carryforwards that can be used in the future.

Each quarter we assess the recoverability of our deferred tax assets under ASC Topic 740. We assess the available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. We have no carryback ability and do not have significant taxable temporary differences to recover our existing deferred tax assets, therefore we must rely on future taxable income, including tax planning strategies, to support their realizability. We have established a valuation allowance for our deferred tax assets not supported by taxable temporary differences, primarily due to uncertainty regarding our future taxable income. We have considered, among other things, the cumulative loss incurred over the three-year period ended December 31, 2020, as a significant piece of objective negative evidence. However, we have seen a reduction in our cumulative loss year over year as we generated income in the current year. We utilized significant deferred tax assets in the form of federal net operating losses in the current year, resulting in an overall reduction in the amount of valuation allowance recorded against our net deferred tax assets.

We have also considered the magnitude and duration of past losses and the magnitude and duration of current profitability as well as changes in the factors that drove losses in the past and those currently driving profitability. As a result of the COVID-19 pandemic and resulting state and local government mandates of home confinement and closure of many brick-and-mortar stores, we have seen strong trends to online sales as consumers migrate to online shopping. We saw our Retail product sales accelerate at the end of March through December 31, 2020, returning the Retail segment to profitability after generating substantial operating losses for the years ended December 31, 2019, 2018 and 2017. We continue to monitor, evaluate, and manage our operating plans and forecasts in light of the most recent developments driven by the COVID-19 pandemic.

We intend to continue maintaining a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. The amount of the deferred tax asset considered realizable could be adjusted if objective negative evidence in the form of cumulative losses is no longer present and additional weight may be given to our more recent operating results, utilization of net operating losses, and subjective evidence such as long-term projections for growth. We will continue to monitor the need for a valuation allowance against our remaining deferred tax assets on a quarterly basis.

A reconciliation of the beginning and ending unrecognized tax benefits, excluding interest and penalties, as of December 31, 2020, 2019 and 2018 is as follows (in thousands):

	Year ended December 31,		
	2020	2019	2018
Beginning balance	\$ 9,058	\$ 7,974	\$ 6,964
Additions for tax positions related to the current year	971	1,064	1,013
Additions (reductions) for tax positions taken in prior years	(35)	20	332
Reduction for tax positions settled by utilizing tax attributes	—	—	(335)
Reduction due to settlements	(301)	—	—
Reduction due to cash payments	(55)	—	—
Ending balance	<u>\$ 9,638</u>	<u>\$ 9,058</u>	<u>\$ 7,974</u>

Included in the balance of unrecognized tax benefits as of December 31, 2020, 2019 and 2018, are approximately \$9.6 million, \$9.1 million, and \$8.0 million, respectively, of tax benefits that, if recognized and the valuation allowance against our net deferred tax assets were released, would affect the effective tax rate. We believe it is reasonably possible that these unrecognized tax benefits will continue to increase in the future.

Accrued interest and penalties on unrecognized tax benefits as of December 31, 2020 and 2019 were \$340,000 and \$567,000, respectively.

We are subject to taxation in the United States and various state and foreign jurisdictions. Tax years beginning in 2016 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used.

We have indefinitely reinvested foreign earnings of \$3.8 million at December 31, 2020. We would need to accrue and pay various taxes on this amount if repatriated. We do not intend to repatriate these earnings.

22. NET INCOME (LOSS) PER SHARE

The following table sets forth the computation of basic and diluted net income (loss) per common share for the periods indicated (in thousands, except per share data):

	Year ended December 31,		
	2020	2019	2018
Numerator:			
Net income (loss) attributable to stockholders of Overstock.com, Inc.	\$ 56,001	\$ (121,841)	\$ (206,070)
Less: Preferred stock converted to common stock	—	—	3,098
Less: Preferred stock TZROP repurchase loss	—	(425)	—
Less: Preferred stock dividends—declared and accumulated	731	894	77
Undistributed income (loss)	55,270	(122,310)	(209,245)
Less: Undistributed income (loss) allocated to participating securities	3,763	(1,665)	(4,368)
Net income (loss) attributable to common stockholders	<u>\$ 51,507</u>	<u>\$ (120,645)</u>	<u>\$ (204,877)</u>
Denominator:			
Weighted average shares of common shares outstanding—basic	41,217	34,865	29,976
Effect of dilutive securities:			
Stock options and restricted stock awards	390	—	—
Weighted average shares of common shares outstanding—diluted	<u>41,607</u>	<u>34,865</u>	<u>29,976</u>
Net income (loss) per share of common stock:			
Basic	<u>\$ 1.25</u>	<u>\$ (3.46)</u>	<u>\$ (6.83)</u>
Diluted	<u>\$ 1.24</u>	<u>\$ (3.46)</u>	<u>\$ (6.83)</u>

The 2019 basic and diluted net loss per common share computations reflect the Dividend declared on July 30, 2019 that was payable in shares of our Series A-1 preferred stock and subsequently distributed on May 19, 2020.

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Year ended December 31,		
	2020	2019	2018
Stock options and restricted stock units	228	1,051	543
Common shares issuable under stock warrant	—	—	21

23. RELATED PARTY TRANSACTIONS

PCL L.L.C. term loan repayment

On November 6, 2017, we entered into a loan agreement with PCL L.L.C., an entity directly or indirectly wholly-owned by the mother and brother of our former President and Chief Executive Officer and former member of our Board of Directors, Dr. Patrick M. Byrne ("Dr. Byrne"). The agreement provides for a \$40.0 million term loan (the "PCL Loan") which carries an annual interest rate of 8.0%. On May 8, 2018, our Board of Directors approved a repayment of the PCL Loan and we repaid the entire outstanding balance under the loan plus accrued interest.

SiteHelix

On June 28, 2018, we entered into and concurrently closed a stock purchase agreement with the stockholders of SiteHelix, Inc., a Delaware corporation ("SiteHelix") pursuant to which we purchased all of the common stock of SiteHelix for \$500,000 plus 100,000 shares of Overstock common stock with a transaction date fair value of \$2.9 million for an aggregate purchase price of \$3.4 million. The transaction was accounted for as an asset purchase consisting primarily of internal-use software designed to provide a customized user experience for visitors to our Website. Saum Noursalehi, who owned approximately 62% of the SiteHelix common stock, was a member of our Board of Directors and served as President of Overstock until May 8, 2018, when he became Chief Executive Officer of tZERO.

tZERO Crypto Agreement

In July 2018, Medici Ventures entered into a stock purchase agreement with tZERO Crypto, Inc. ("tZERO Crypto"), formerly Bitsy, Inc. tZERO Crypto was founded by Steve Hopkins, Overstock's current Vice President of Government, who was Medici Ventures' chief operating officer and general counsel at the time of such transaction, and who held a significant equity interest in tZERO Crypto. On December 21, 2018, tZERO entered into a stock purchase agreement with the owners of tZERO Crypto to acquire the remaining 67% equity interest for \$8.0 million with effective control of tZERO Crypto transferring to tZERO effective January 1, 2019. In connection with the December 2018 stock purchase agreement, Medici Ventures transferred its 33% equity interest in tZERO Crypto to tZERO for a \$4.0 million convertible promissory note due December 31, 2020 and an assignment of certain intellectual property to Medici Ventures.

Chainstone Labs

In September 2018, Medici Ventures entered into a stock purchase agreement with Chainstone Labs, Inc. ("Chainstone") to acquire a 29% equity interest in Chainstone for \$3.6 million. Chainstone is a U.S.-based startup company founded and 71% owned by a former Board member of Medici Ventures, Bruce Fenton. Chainstone is focused on blockchain, tokenization of securities, and decentralized asset management. Our equity interest is included in our equity securities on our consolidated balance sheets.

Medici Land Governance

During 2018 Medici Land Governance Inc., a Delaware public benefit corporation ("MLG"), was formed by Medici Ventures with Dr. Byrne. Medici Ventures contributed certain of its assets, including intellectual property relating to technologies regarding land governance and property rights and at the same time Dr. Byrne personally contributed \$6.7 million in cash to MLG. As a result of the transactions described above, Medici Ventures held approximately 57% of the outstanding capital stock of MLG, and Dr. Byrne held approximately 43% of the outstanding capital stock of MLG. In February 2020, MLG consummated the sale of shares of its capital stock to an unrelated third party. Upon completion of the transaction, our indirect ownership in MLG was reduced from 57% to 35% of MLG's outstanding shares capital stock.

24. BROKER-DEALERS

tZERO wholly owns three broker-dealers, SpeedRoute and tZERO ATS, LLC, which were acquired in January 2016 and tZERO Markets, LLC, whose broker-dealer registration with the SEC became effective in September 2020.

SpeedRoute is an electronic, agency-only, FINRA-member broker-dealer that provides connectivity for its clients to U.S. equity exchanges as well as off-exchange sources of liquidity such as alternate trading systems. All of SpeedRoute's clients are registered broker-dealers. SpeedRoute does not hold, own, or sell securities.

tZERO ATS, LLC is a FINRA-member broker-dealer that owns and operates an alternative trading system (the "tZERO ATS") and is a wholly-owned subsidiary of tZERO. The tZERO ATS is a closed system available only to its broker-dealer subscribers. The tZERO ATS does not accept orders from non-broker-dealers, nor does it hold, own, or sell securities. The tZERO ATS currently supports the trading of three digital securities, the Series A-1 preferred stock, TZROP, and Aspen Digital, Inc.'s depository receipts for its common stock ("ASPD") and, in the future, is expected to support digital securities from other issuers.

tZERO Markets, LLC is a FINRA-member broker-dealer that provides online brokerage services, supporting the trading of digital securities on the tZERO ATS. It launched its web application and began opening individual retail accounts in October 2020.

Each of tZERO's broker-dealers are subject to the SEC's Uniform Net Capital Rule (SEC Rule 15c3-1), which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 15 to 1 and that equity capital may not be withdrawn or cash dividends paid if the resulting net capital ratio would exceed 10 to 1. The following table summarizes the net capital ratio (in thousands, apart from the net capital ratio):

	December 31,	
	2020	2019
SpeedRoute		
Net capital	\$ 2,360	\$ 850
Required net capital	319	145
Net capital, in excess of required	\$ 2,041	\$ 705
Net capital ratio	2.03	2.56
tZERO ATS, LLC		
Net capital	\$ 822	\$ 110
Required net capital	5	5
Net capital, in excess of required	\$ 817	\$ 105
Net capital ratio	0.04	0.27
tZERO Markets, LLC		
Net capital	\$ 1,576	\$ —
Required net capital	50	—
Net capital, in excess of required	\$ 1,526	\$ —
Net capital ratio	0.07	—

Each of tZERO's broker-dealers did not have any securities owned or securities sold, not yet purchased at December 31, 2020 and 2019.

25. BUSINESS SEGMENTS

Segment information has been prepared in accordance with ASC Topic 280 *Segment Reporting*. We determined our segments based on how we manage our business. Beginning in the first quarter of 2019, we began allocating corporate support costs (administrative functions such as finance, human resources, and legal) to our operating segments based on their estimated usage and based on how we manage our business. Comparative prior year information has not been recast and as a result our corporate support costs for those comparative prior periods remain allocated to our Retail segment. We use income (loss) before income taxes as the measure to determine our reportable segments.

Our Retail segment primarily consists of amounts earned through e-commerce sales through our Website, excluding intercompany transactions eliminated in consolidation.

Our tZERO segment primarily consists of amounts earned through securities transaction through our broker-dealers and costs incurred to execute our tZERO business initiatives, excluding intercompany transactions eliminated in consolidation.

Our MVI segment primarily consists of costs incurred to create or foster a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control through our Medici Ventures initiatives, excluding intercompany transactions eliminated in consolidation. MVI was identified as a reportable segment separate from Other during 2019. We have recast prior period segment information to conform with current year presentation.

Other consists of our unallocated corporate support costs, Bitt, and Medici Land Governance. We deconsolidated Medici Land Governance consolidated net assets and noncontrolling interest from our consolidated financial statements beginning on February 22, 2020, the date that control ceased.

We do not allocate assets between our segments for our internal management purposes, and as such, they are not presented here. There were no significant inter-segment sales or transfers during the years ended December 31, 2020, 2019 and 2018.

The following table summarizes information about reportable segments and a reconciliation to consolidated net income (loss) for the years ended December 31, 2020, 2019 and 2018 (in thousands):

	<u>Retail</u>	<u>tZERO</u>	<u>MVI</u>	<u>Other</u>	<u>Total</u>
2020					
Net revenue	\$ 2,493,915	\$ 45,792	\$ 9,664	\$ 412	\$ 2,549,783
Cost of goods sold	1,922,559	38,033	9,656	2	1,970,250
Gross profit	571,356	7,759	8	410	579,533
Operating expenses (1)	457,110	47,084	11,540	11,573	527,307
Interest and other income (expense), net (2)	(225)	(6,348)	1,509	(2)	(5,066)
Income (loss) before income taxes	<u>\$ 114,021</u>	<u>\$ (45,673)</u>	<u>\$ (10,023)</u>	<u>\$ (11,165)</u>	<u>47,160</u>
Provision for income taxes					989
Net income (3)					<u>\$ 46,171</u>
2019					
Net revenue	\$ 1,434,974	\$ 21,582	\$ 2,749	\$ 113	\$ 1,459,418
Cost of goods sold	1,147,025	16,551	2,749	—	1,166,325
Gross profit	287,949	5,031	—	113	293,093
Operating expenses (1)	332,372	54,911	14,778	14,521	416,582
Interest and other income (expense), net (2)	559	2,442	(14,039)	(8)	(11,046)
Loss before income taxes	<u>\$ (43,864)</u>	<u>\$ (47,438)</u>	<u>\$ (28,817)</u>	<u>\$ (14,416)</u>	<u>(134,535)</u>
Provision for income taxes					185
Net loss (3)					<u>\$ (134,720)</u>
2018					
Net revenue	\$ 1,800,187	\$ 19,043	\$ 2,362	\$ —	\$ 1,821,592
Cost of goods sold	1,452,195	13,127	2,362	—	1,467,684
Gross profit	347,992	5,916	—	—	353,908
Operating expenses	506,113	47,006	8,316	9,679	571,114
Interest and other income (expense), net (2)	(476)	233	(2,498)	(7)	(2,748)
Loss before income taxes	<u>\$ (158,597)</u>	<u>\$ (40,857)</u>	<u>\$ (10,814)</u>	<u>\$ (9,686)</u>	<u>(219,954)</u>
Benefit for income taxes					(2,384)
Net loss (3)					<u>\$ (217,570)</u>

- (1) — Corporate support costs for the year ended December 31, 2020 have been allocated \$39.8 million, \$3.8 million, \$4.7 million, and \$9.1 million, to Retail, tZERO, MVI, and Other, respectively. Unallocated corporate support costs of \$8.9 million are included in Other. Corporate support costs for the year ended December 31, 2019 have been allocated \$42.0 million, \$6.0 million, \$4.2 million, and \$7.8 million, to Retail, tZERO, MVI, and Other, respectively. Unallocated corporate support costs of \$6.0 million are included in Other.
- (2) — Excludes intercompany transactions eliminated in consolidation, which consist primarily of service fees and interest. The gross amounts of these intercompany transactions were \$5.1 million, \$2.7 million, and \$3.5 million for the years ended December 31, 2020, 2019 and 2018, respectively.
- (3) — Net income (loss) presented for segment reporting purposes is before any adjustments attributable to noncontrolling interests.

Upon deconsolidation of MLG, we recognized our retained equity interest in MLG as an equity method security held by our MVI segment which resulted in a \$10.7 million gain included in Interest and other income (expense), net in the table above for our MVI segment for the year ended December 31, 2020. See Note 2—Accounting Policies and Supplemental Disclosures, *Principles of consolidation*, for additional details on the gain recognized.

For the years ended December 31, 2020, 2019 and 2018, substantially all our sales revenues were attributable to customers in the United States. At December 31, 2020 and 2019, substantially all our property and equipment were located in the United States.

26. QUARTERLY RESULTS OF OPERATIONS (UNAUDITED)

The following tables set forth our unaudited quarterly results of operations data for the eight most recent quarters for the period ended December 31, 2020. We have prepared this information on the same basis as the consolidated statements of operations and the information includes all adjustments that we consider necessary for a fair statement of its financial position and operating results for the quarters presented.

	Three Months Ended			
	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020
(in thousands, except per share data)				
Consolidated Statement of Operations Data:				
Revenue, net				
Retail	\$ 339,598	\$ 766,956	\$ 717,695	\$ 669,666
Other	11,975	15,588	13,956	14,349
Total net revenue	<u>351,573</u>	<u>782,544</u>	<u>731,651</u>	<u>684,015</u>
Cost of goods sold				
Retail	265,392	589,044	548,982	519,141
Other	10,341	13,618	11,901	11,831
Total cost of goods sold	<u>275,733</u>	<u>602,662</u>	<u>560,883</u>	<u>530,972</u>
Gross profit	<u>75,840</u>	<u>179,882</u>	<u>170,768</u>	<u>153,043</u>
Operating expenses:				
Sales and marketing	36,762	79,790	72,010	74,484
Technology	32,796	33,678	34,984	35,540
General and administrative	32,426	27,371	34,225	33,241
Total operating expenses	<u>101,984</u>	<u>140,839</u>	<u>141,219</u>	<u>143,265</u>
Operating income (loss)	<u>(26,144)</u>	<u>39,043</u>	<u>29,549</u>	<u>9,778</u>
Interest income	272	614	402	445
Interest expense	(200)	(588)	(579)	(604)
Other income (expense), net	6,683	(4,171)	(7,526)	186
Income (loss) before income taxes	<u>(19,389)</u>	<u>34,898</u>	<u>21,846</u>	<u>9,805</u>
Provision (benefit) for income taxes	176	517	620	(324)
Net income (loss)	<u>(19,565)</u>	<u>34,381</u>	<u>21,226</u>	<u>10,129</u>
Less: Net loss attributable to noncontrolling interests	<u>(3,232)</u>	<u>(1,975)</u>	<u>(2,165)</u>	<u>(2,458)</u>
Net income (loss) attributable to stockholders of Overstock.com, Inc.	<u>\$ (16,333)</u>	<u>\$ 36,356</u>	<u>\$ 23,391</u>	<u>\$ 12,587</u>
Net income (loss) per share of common stock:				
Net income (loss) attributable to common shares—basic	\$ (0.40)	\$ 0.85	\$ 0.50	\$ 0.26
Net income (loss) attributable to common shares—diluted	\$ (0.40)	\$ 0.84	\$ 0.50	\$ 0.26
Weighted average shares of common stock outstanding:				
Basic	40,158	40,329	41,595	42,765
Diluted	40,158	40,590	42,202	43,326

	Three Months Ended			
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019
(in thousands, except per share data)				
Consolidated Statement of Operations Data:				
Revenue, net				
Retail	\$ 362,625	\$ 367,475	\$ 340,798	\$ 364,076
Other	5,104	6,234	6,301	6,805
Total net revenue	<u>367,729</u>	<u>373,709</u>	<u>347,099</u>	<u>370,881</u>
Cost of goods sold				
Retail	290,640	294,984	272,545	288,856
Other	3,965	4,826	5,006	5,503
Total cost of goods sold	<u>294,605</u>	<u>299,810</u>	<u>277,551</u>	<u>294,359</u>
Gross profit	<u>73,124</u>	<u>73,899</u>	<u>69,548</u>	<u>76,522</u>
Operating expenses:				
Sales and marketing	33,477	34,560	34,215	40,868
Technology	35,433	33,153	32,782	33,970
General and administrative	40,232	31,964	32,681	33,247
Total operating expenses	<u>109,142</u>	<u>99,677</u>	<u>99,678</u>	<u>108,085</u>
Operating loss	<u>(36,018)</u>	<u>(25,778)</u>	<u>(30,130)</u>	<u>(31,563)</u>
Interest income	403	630	449	315
Interest expense	(127)	(105)	(57)	(53)
Other income (expense), net	<u>(6,272)</u>	<u>(2,995)</u>	<u>(4,781)</u>	<u>1,547</u>
Loss before income taxes	<u>(42,014)</u>	<u>(28,248)</u>	<u>(34,519)</u>	<u>(29,754)</u>
Provision (benefit) for income taxes	<u>878</u>	<u>(622)</u>	<u>23</u>	<u>(94)</u>
Net loss	<u>(42,892)</u>	<u>(27,626)</u>	<u>(34,542)</u>	<u>(29,660)</u>
Less: Net loss attributable to noncontrolling interests	<u>(3,648)</u>	<u>(2,945)</u>	<u>(3,604)</u>	<u>(2,682)</u>
Net loss attributable to stockholders of Overstock.com, Inc.	<u>\$ (39,244)</u>	<u>\$ (24,681)</u>	<u>\$ (30,938)</u>	<u>\$ (26,978)</u>
Net loss per share of common stock:				
Net loss attributable to common shares—basic	\$ (1.18)	\$ (0.69)	\$ (0.89)	\$ (0.73)
Net loss attributable to common shares—diluted	\$ (1.18)	\$ (0.69)	\$ (0.89)	\$ (0.73)
Weighted average shares of common stock outstanding:				
Basic	32,370	35,225	35,241	36,573
Diluted	32,370	35,225	35,241	36,573

27. SUBSEQUENT EVENTS

Pelion Transaction Agreement

On January 25, 2021, we entered into a Transaction Agreement (the "Transaction Agreement") with Medici Ventures, Pelion, and Pelion, Inc., pursuant to which the parties have agreed, among other things, that: (i) Medici Ventures will become a Delaware limited partnership (the "Medici Closing"), (ii) pursuant to the terms and subject to the conditions of a limited partnership agreement to be entered into on the date of the Medici Closing (the "Limited Partnership Agreement"), Pelion will become the sole general partner of the Partnership, and we (along with any other stockholders of Medici Ventures at the time of the Medici Closing), will become the limited partners of the Partnership, (iii) prior to the Medici Closing, the Company will convert the outstanding intercompany debt owed to us by Medici Ventures into shares of common stock of Medici Ventures; and (iv) prior to the Medici Closing, we will convert our intercompany debt from tZERO, into tZERO outstanding common stock, leaving Medici Ventures with not more than 48% of tZERO outstanding common stock, in each case, on the terms and subject to the conditions set forth in the Transaction Agreement and the relevant definitive agreements to be entered into in connection therewith. The debt conversion outlined in (iii) and (iv) above was subsequently completed leaving Medici Ventures with 44% of tZERO's outstanding common stock and Overstock with 43%.

After closing, the Pelion entity will have sole authority and responsibility regarding investing decisions, appointing board members of the portfolio companies, and exercising all shareholder rights for assets Medici Ventures currently holds. Pursuant to the terms of the Limited Partnership Agreement, we and any other limited partners agree to make a capital commitment of \$44.6 million to the Partnership in proportion to our equity interest in the Partnership. The capital commitments may be called in one or more cash installments as specified by the general partner upon 10 business days' prior written notice.

In addition, Medici Ventures has commenced a tender offer (the "Tender Offer") to all the holders of the outstanding vested or unvested options to acquire shares of Medici Ventures. Subject to applicable law, Medici Ventures will purchase for cancellation any and all properly and validly tendered options. Medici Ventures has the option to extend the tender offer should it choose to do so.

Consummation of the Medici Closing is subject to applicable regulatory approvals and other closing requirements, including money transmitter licenses, and other customary closing conditions.

Schedule II
Valuation and Qualifying Accounts
(in thousands)

	Balance at Beginning of Year	Charged to Expense	Deductions / (Other Additions)	Balance at End of Year
Year ended December 31, 2020				
Deferred tax valuation allowance	\$ 146,856	\$ (13,066)	\$ (515)	\$ 134,305
Allowance for sales returns	11,107	204,810	196,727	19,190
Allowance for doubtful accounts	2,474	1,098	2,034	1,538
Year ended December 31, 2019				
Deferred tax valuation allowance	\$ 114,523	\$ 32,333	\$ —	\$ 146,856
Allowance for sales returns	15,261	117,040	121,194	11,107
Allowance for doubtful accounts	2,116	659	301	2,474
Year ended December 31, 2018				
Deferred tax valuation allowance	\$ 63,278	\$ 51,245	\$ —	\$ 114,523
Allowance for sales returns	17,391	174,864	176,994	15,261
Allowance for doubtful accounts	1,253	883	20	2,116

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Limitations on Disclosure Controls and Procedures

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Disclosure Controls and Procedures and Internal Control over Financing Reporting

There were no changes in either our disclosure controls and procedures or our internal control over financial reporting that occurred during the quarter ended December 31, 2020, that have materially affected, or are reasonably likely to materially affect, our disclosure controls and procedures or our internal control over financial reporting. We have not experienced any material impact to our disclosure controls and procedures or our internal controls over financial reporting despite the fact that most of our corporate employees are working remotely due to the COVID-19 pandemic. We are continually monitoring and assessing the COVID-19 situation on our internal controls to minimize the impact on their design and operating effectiveness.

Management's Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act.

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. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness of internal control over financial reporting 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.

Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2020. In making our assessment of the effectiveness of internal control over financial reporting, management used the criteria set forth in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on this assessment, management has concluded that, as of December 31, 2020, our internal control over financial reporting was effective.

Our internal control over financial reporting is designed to provide reasonable assurance of achieving its objectives as specified above. Management does not expect, however, that our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

The effectiveness of our internal control over financial reporting as of December 31, 2020 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included below.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Overstock.com, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Overstock.com, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes and financial statement schedule II (collectively, the consolidated financial statements), and our report dated February 26, 2021 expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

The Company's 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 Management's Report 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 are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. 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 of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

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.

/s/ KPMG LLP

Salt Lake City, Utah
February 26, 2021

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our Executive Officers required by Item 10 of Part III is set forth in Item 1 of Part I under "Business—Executive Officers of the Registrant." Information required by Item 10 of Part III regarding our Board of Directors and any material changes to the process by which security holders may recommend nominees to the Board of Directors will be included in our definitive proxy statement for our 2021 annual meeting of stockholders and is incorporated herein by reference. Information relating to compliance with Section 16(a) of the 1934 Act will be set forth in our definitive proxy statement for our 2021 annual meeting of stockholders and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics ("Code"), which applies to all employees of the Company, including our principal executive officer, principal financial officer, and principal accounting officer. We intend to disclose any amendments to the Code and any waivers granted to our principal executive officer, principal financial officer or principal accounting officer or other persons to the extent required by applicable rules or regulations in the Investor Relations section of our Website, www.overstock.com. We will provide a copy of the Code to any person without any charge upon request in writing addressed to Overstock.com. Attn: Investor Relations, 799 West Coliseum Way, Midvale, UT 84047.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2021 annual meeting of stockholders.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Except as set forth herein, the information required by this Item is incorporated by reference to our definitive proxy statement for the 2021 annual meeting of stockholders.

Securities authorized for issuance under equity compensation plans

Our Board of Directors adopted the 2005 Equity Incentive Plan, which was most recently amended and restated and re-approved by the stockholders on May 9, 2017 (as so amended and restated, the "Plan"). Under the Plan, the Board of Directors may issue incentive stock options to our employees and directors and non-qualified stock options to consultants, as well as restricted stock units and other types of equity awards of the Company.

Options granted under the Plan generally expire at the end of ten years and vest in accordance with a vesting schedule determined by our Board of Directors, usually over four years from the grant date. We have not granted compensatory stock options since 2008, and at December 31, 2020, no options were outstanding under the Plan.

Restricted stock units granted in 2020, 2019, and 2018 vest over three years at 33.3% at the end of each of the first, second and third year. In addition to our traditional equity awards, during the year ended December 31, 2019, we granted 502,765 restricted stock awards which vest over a one-year period. Each restricted stock unit represents the right to one share of common stock upon vesting.

The following is a summary of restricted stock unit activity (amounts in thousands, except per share data):

	2020		2019		2018	
	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	1,051	\$ 26.22	559	\$ 44.08	540	\$ 17.05
Granted at fair value	484	10.39	982	17.80	387	65.42
Vested	(710)	23.58	(270)	34.92	(234)	17.68
Forfeited	(186)	23.43	(220)	23.36	(134)	42.85
Outstanding—end of year	<u>639</u>	<u>\$ 17.98</u>	<u>1,051</u>	<u>\$ 26.22</u>	<u>559</u>	<u>\$ 44.08</u>

At December 31, 2020, 2.0 million shares of stock remained available for future grants under the Plan.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2021 annual meeting of stockholders.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2021 annual meeting of stockholders.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements:

The financial statements are filed as part of this Annual Report on Form 10-K under "Item 8. Financial Statements and Supplementary Data."

(2) Financial Statement Schedules:

Schedule II Valuation and Qualifying Accounts is provided in "Item 8. Financial Statements and Supplementary Data." Other schedules have been omitted as they are either not required, not applicable, or the information has otherwise been shown in the consolidated financial statements or notes thereto under "Item 8. Financial Statements and Supplementary Data."

(3) Exhibits:

See exhibits listed under Part (b) below.

(b) Exhibits

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>Filed Herewith</u>
3.1	Amended and Restated Certificate of Incorporation	10-Q	000-49799	3.1	July 29, 2014	
3.2	Amended and Restated Bylaws	10-Q	000-49799	3.1	May 4, 2017	
3.3	Certificate of Elimination for Blockchain Voting Series A Preferred Stock of Overstock.com, Inc.	8-K	000-49799	3.2	July 30, 2019	
3.4	Amended and Restated Certificate of Designation of Digital Voting Series A-1 Preferred Stock of Overstock.com, Inc.	10-Q	000-49799	3.1	May 7, 2020	
3.5	Amended and Restated Certificate of Designation for the Voting Series B Preferred Stock of Overstock.com, Inc.	10-Q	000-49799	3.2	May 7, 2020	
4.1	Form of specimen common stock certificate	S-1/A	333-83728	4.1	May 6, 2002	
4.2	Form of Stock Certificate for Voting Series B Preferred Stock	8-K	000-49799	4.2	November 14, 2016	
4.3	Certificate of Designation of Digital Voting Series A-1 Preferred Stock of Overstock.com, Inc. (see Exhibit 3.4)					
4.4	Certificate of Designation for the Voting Series B Preferred Stock of Overstock.com, Inc. (see Exhibit 3.5)					
4.5	Description of Securities Registered Under Section 12 of the Securities Exchange Act of 1934					X

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>Filed Herewith</u>
4.6 ^(a)	Registration Rights Agreement dated December 15, 2016 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and as representative of each of the Participating Affiliates (as defined therein)	8-K	000-49799	4.1	December 15, 2016	
4.7	Form of Participating Affiliate Agreement (included in Exhibit 4.3)					
4.8 ^(a)	Amendment No. 1 to Registration Rights Agreement effective March 10, 2017 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and in his representative capacity	10-Q	000-49799	4.2	May 4, 2017	
4.9 ^(a)	Amendment No. 2 to Registration Rights Agreement effective June 10, 2017 by and among Overstock.com, Inc. and Patrick M. Byrne, individually and in his representative capacity	10-Q	000-49799	4.1	August 3, 2017	
10.1 ^(a)	Form of Indemnification Agreement between Overstock.com, Inc. and each of its directors and officers	10-K	000-49799	10.1	March 18, 2019	
10.2 ^(a)	Overstock.com, Inc. Amended and Restated 2005 Equity Incentive Plan					X
10.3 ^(a)	Form of Restricted Stock Unit Grant Notice and Restricted Stock Agreement under the 2005 Equity Incentive Plan	10-K	000-49799	10.12	February 21, 2013	
10.4 ^(a)	tZERO Group, Inc. 2017 Equity Incentive Plan, as amended through June 1, 2020	10-Q	000-49799	10.5	August 6, 2020	
10.5 ^(a)	Form of Notice Grant under tZERO 2017 Equity Incentive Plan	10-K	000-49799	10.5	March 13, 2020	
10.6 ^(a)	Form of RSU Award Agreement for tZERO Group, Inc.	10-Q	000-49799	10.4	August 6, 2020	
10.7 ^(a)	Notice of Amendment to Stock Option Grant and Notice of Restricted Stock Unit Grant of tZERO Group, Inc.	10-Q	000-49799	10.6	August 6, 2020	
10.8 ^(a)	Medici Ventures, Inc. 2017 Stock Option Plan	8-K	000-49799	10.1	August 1, 2017	
10.9 ^(a)	Amendment No. 1 to the Medici Ventures, Inc. 2017 Stock Option Plan	8-K	000-49799	10.1	April 22, 2019	
10.10 ^(a)	Form of Notice of Grant under Medici Ventures 2017 Stock Option Plan	10-K	000-49799	10.36	March 18, 2019	

Exhibit Number	Exhibit Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.11 ^(a)	Medici Land Governance, Inc. 2019 Stock Option Plan	8-K	000-49799	10.1	May 6, 2019	
10.12 ^(a)	Summary of unwritten compensation arrangements with Non-Employee Directors	10-K	000-49799	10.16	March 18, 2019	
10.13	Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	May 7, 2014	
10.14	First Amendment dated July 29, 2014 to Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	August 6, 2014	
10.15	Second Amendment dated September 3, 2014 to Purchase and Sale Agreement dated May 5, 2014 between O.Com Land LLC, Gardner Bingham Junction Holdings, L.C. and Arbor Bingham Junction Holdings, L.C.	8-K	000-49799	10.1	September 8, 2014	
10.16	Project Management Agreement dated May 5, 2014 between O.Com Land LLC and Gardner CMS, L.C.	8-K	000-49799	10.2	May 7, 2014	
10.17	Purchase and Sale Agreement dated September 17, 2014 by and between the Redevelopment Agency of Midvale City and O.com Land LLC	8-K	000-49799	10.1	September 23, 2014	
10.18	Lease Agreement dated October 24, 2014 between O.com Land, LLC and Overstock.com Inc.	8-K	000-49799	10.19	October 28, 2014	
10.19 ^(a)	Summary of Unwritten Compensation Arrangements Applicable to Non-Employee Directors of Overstock.com, Inc.	10-K	000-49799	10.16	March 13, 2020	
10.20	Amended and Restated Capital on Demand™ Sales Agreement with JonesTrading Institutional Services LLC, as agent, dated June 26, 2020	8-K	000-49799	1.1	June 29, 2020	
10.21 ^(a)	Stockholders Agreement dated September 21, 2018 by and among Medici Land Governance, Inc., Medici Ventures, Inc. and Patrick M. Byrne	8-K	000-49799	10.1	September 26, 2018	
10.22 ^(a)	Notice of Stock Option Grant effective May 21, 2018 dated June 6, 2018 between t0.com, Inc. and Saum Noursalehi	10-Q	000-49799	10.2	August 9, 2018	

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>Filed Herewith</u>
10.23 ^(a)	Summary of unwritten compensation arrangement with Saum Noursalehi	10-Q	000-49799	10.4	August 9, 2018	
10.24 ^(a)	Offer letter dated April 1, 2018 from Overstock.com, Inc. to Gregory J. Iverson	10-Q	000-49799	10.5	August 9, 2018	
10.25 ^(a)	Omnibus Amendment to Option Grant Agreements under tZERO 2017 Equity Incentive Plan, dated November 25, 2019	10-K	000-49799	10.24	March 13, 2020	
10.26	Loan Agreement by and between Peace Coliseum, LLC, as Borrower, and LoanCore Capital Markets LLC, as Lender, dated as of March 6, 2020	8-K	000-49799	10.1	March 12, 2020	
10.27	Mezzanine Loan Agreement by and between Peace Coliseum Mezzanine, LLC, as Borrower, and LoanCore Capital Markets LLC, as Lender, dated as of March 6, 2020	8-K	000-49799	10.2	March 12, 2020	
10.28	Guaranty of Recourse Obligations made by Overstock.com, Inc., as Guarantor, in favor of LoanCore Capital Markets LLC, dated as of March 6, 2020	8-K	000-49799	10.3	March 12, 2020	
10.29	Mezzanine Guaranty of Recourse Obligations made by Overstock.com, Inc., as Guarantor, in favor of LoanCore Capital Markets LLC, dated as of March 6, 2020	8-K	000-49799	10.4	March 12, 2020	
10.30 ^(a)	Form of Executive Retention Agreement	8-K	000-49799	10.1	April 17, 2020	
21	Subsidiaries of the Registrant					X
23	Consent of Independent Registered Public Accounting Firm					X
24	Powers of Attorney (see signature page)					
31.1	Certification of Principal Executive Officer					X
31.2	Certification of Principal Financial Officer					X
32.1	Section 1350 Certification of Principal Executive Officer					X
32.2	Section 1350 Certification of Principal Financial Officer					X

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>Filed Herewith</u>
101	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2020 formatted in Inline XBRL: (i) Consolidated Balance Sheets at December 31, 2020 and 2019; (ii) Consolidated Statements of Operations for the years ended December 31, 2020, 2019, and 2018; (iii) Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2020, 2019, and 2018; (iv) Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2020, 2019, and 2018; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2020, 2019, and 2018; and (vi) Notes to Consolidated Financial Statements					
104	The cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2020, formatted in Inline XBRL (included as Exhibit 101)					

(a) Management contract or compensatory plan or arrangement.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, on February 26, 2021.

OVERSTOCK.COM, INC.

By: /s/ JONATHAN E. JOHNSON III
Jonathan E. Johnson III
Chief Executive Officer
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Jonathan E. Johnson III and Adrienne B. Lee, his or her attorneys-in-fact, each with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and conforming all that said attorney-in-fact, or his or their substitute or substitutes, may do or cause to be done by virtue hereof.

Signature	Title	Date
<u>/s/ JONATHAN E. JOHNSON III</u> Jonathan E. Johnson III	Chief Executive Officer, President, Medici Ventures, and Director (Principal Executive Officer)	2/26/2021
<u>/s/ ALLISON H. ABRAHAM</u> Allison H. Abraham	Chairwoman of the Board	2/26/2021
<u>/s/ ADRIANNE B. LEE</u> Adrienne B. Lee	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	2/26/2021
<u>/s/ BARCLAY F. CORBUS</u> Barclay F. Corbus	Director	2/26/2021
<u>/s/ JOSEPH J. TABACCO, JR.</u> Joseph J. Tabacco, Jr.	Director	2/26/2021
<u>/s/ ROBERT J. SHAPIRO</u> Robert J. Shapiro	Director	2/26/2021
<u>/s/ BARBARA MESSING</u> Barbara Messing	Director	2/26/2021
<u>/s/ WILLIAM B. NETTLES, JR.</u> William B. Nettles, Jr.	Director	2/26/2021

DESCRIPTION OF SECURITIES REGISTERED UNDER SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following information describes our common stock, par value \$0.0001 per share, which is the only class of our securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, as well as certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws. This description is only a summary. For a complete statement of the terms and rights of the common stock, you should also refer to our amended and restated certificate of incorporation and amended and restated bylaws which are filed as exhibits to our annual reports on Form 10-K filed with the SEC, as well as the General Corporation Law of the State of Delaware (“DGCL”), including Section 203.

Capital Stock

Our authorized capital stock consists of 100,000,000 shares of common stock, par value \$0.0001 per share, and 5,000,000 shares of preferred stock, par value \$0.0001 per share (4,630,000 shares of which have been designated as Digital Voting Series A-1 Preferred Stock and 370,000 shares of which have been designated as Voting Series B Preferred Stock). Our board of directors may establish the rights, powers and preferences of undesignated preferred stock from time to time. Our board of directors is authorized, without stockholder approval except as required by the listing standards of the Nasdaq Global Market, to issue additional shares of our authorized capital stock.

Common Stock*Voting Rights*

The holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. Our amended and restated certificate of incorporation prohibits cumulative voting. Rather, the election of directors shall be decided by a plurality vote of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. With respect to matters other than the election of directors, if a quorum is present, the affirmative vote of a majority of the shares represented and voting at a duly held meeting (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the stockholders, unless the vote of a greater number or a vote by classes is required by law, by our amended and restated certificate of incorporation or by our amended and restated bylaws. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Our amended and restated certificate of incorporation prohibits stockholders from taking action by written consent in lieu of a meeting.

Dividend Rights

Subject to any preferential rights of holders of any outstanding shares of preferred stock, holders of our common stock are entitled to receive ratably any dividends or other distributions that may be declared from time to time by the board of directors out of funds legally available therefor. We have never declared or paid any cash dividends on our common stock. We currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the board deems relevant.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, holders of our common stock would be entitled to share ratably in our assets remaining after the payment of liabilities, subject to prior distribution rights of holders of any shares of preferred stock then outstanding.

Preemption, Conversion, and Redemption Rights

Holders of our common stock have no preemptive or conversion rights or other subscription rights, and there are no redemption provisions applicable to the common stock. The outstanding shares of common stock are fully paid and non-assessable. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of our outstanding preferred stock and of any series of preferred stock that we may designate and/or issue in the future.

Board of Directors

The board of directors is divided into three classes designated as Class I, Class II and Class III, respectively, with staggered three-year terms. As a result, only one class of directors is elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective three-year terms. Directors are assigned to each class in accordance with a resolution or resolutions adopted by the board of directors. Each class consists, as nearly as may be possible, of one-third of the total number of directors constituting the entire board of directors. At each annual meeting of stockholders, the class of directors to be elected at such annual meeting is elected for a full term of three years. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. No stockholder will be permitted to cumulate votes at any election of directors. Directors may be removed by the affirmative vote of the holders of the outstanding shares of common stock only for cause.

Anti-Takeover Effects of Certain Provisions of Delaware Law

Provisions of Delaware law and of our amended and restated certificate of incorporation and amended and restated bylaws could make the acquisition of the company through a tender offer, a proxy contest or other means more difficult and could make the removal of incumbent officers and directors more difficult. These provisions to discourage inadequate takeover bids and to encourage persons seeking to acquire control of the company to first negotiate with our board of directors. We believe that the benefits provided by our ability to negotiate with the proponent of an unsolicited proposal would outweigh the disadvantages of discouraging these proposals. We believe the negotiation of an unsolicited proposal could result in terms more favorable to our stockholders.

We are subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless:

- prior to such time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to such time, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, an "interested stockholder" is a person who owns or, in certain circumstances, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting securities. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance.

This summary of the provisions of Section 203 of the DGCL does not purport to be complete and is qualified in its entirety by reference to our amended and restated certificate of incorporation, our amended and restated bylaws, and the DGCL.

Anti-Takeover Provisions of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Certain provisions in our amended and restated certificate of incorporation and amended and restated bylaws summarized below could discourage, delay or prevent a change in control of our company or changes in our management that the stockholders of our company may deem advantageous.

Preferred Stock

Under our amended and restated certificate of incorporation, the board of directors may issue, without further stockholder approval, shares of preferred stock in one or more series and may also set forth the voting powers, full or limited or none, of each such series of preferred stock, which the board could use to implement a stockholder rights plan (also known as a "poison pill"). The board of directors shall fix the designations, preferences and relative, participating, optional or other special rights of each such series of preferred stock and the qualifications, limitations or restrictions of such powers, designations, preferences or rights.

No Action by Written Consent

Under our amended and restated certificate of incorporation and amended and restated bylaws, stockholders of the company may not take action by written consent in lieu of a meeting.

Special Meetings of Stockholders

Under our amended and restated bylaws, special meetings of our stockholders may be called only by the board of directors, the chairman of the board, the chief executive officer, or the president of the company.

Advance Notice Requirements for Stockholders Proposals and Director Nominations

Under our amended and restated bylaws, for nominations for election to our board or for proposing matters that can be properly acted upon by stockholders at annual stockholder meetings, the stockholder must (i) provide timely notice thereof in writing and in proper form to the secretary of the corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by the amended and restated bylaws. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made.

Board of Directors and Vacancies

The authorized number of directors on the board of directors will be established from time to time by resolution of the board of directors. Vacancies arising through death, resignation, removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director.

Amendment of Our Amended and Restated Certificate of Incorporation

Our amended and restated certificate of incorporation provides that it may be amended only with the affirmative vote of a majority of the outstanding stock entitled to vote thereon.

Amendment of Our Amended and Restated Bylaws

The board of directors is expressly authorized to make, alter or repeal our amended and restated bylaws. Our amended and restated bylaws provide that stockholders are permitted to amend the amended and restated bylaws only with the approval of the holders of sixty-six and two-thirds percent (66²/3%) of the voting power of outstanding capital stock entitled to vote at an election of directors.

Forum Selection Clause

Under the amended and restated certificate of incorporation and the amended and restated bylaws, unless the company consents in writing to the selection of an alternative forum, the sole and exclusive forum for making certain types of claims will be a state or federal court located within the State of Delaware. This provision applies to (i) any derivative action or proceeding brought on behalf of the company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the company to the company or its stockholders, (iii) any action asserting a claim against the company or any director or officer or other employee of the company arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation and the amended and restated bylaws, or (iv) any action asserting a claim against the company or any director or officer or other employee of the company governed by the internal affairs doctrine.

Transfer Agent and Registrar

Our transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Listing

Our common stock is listed on the Nasdaq Global Market under the trading symbol "OSTK."

OVERSTOCK.COM, INC.

AMENDED AND RESTATED 2005 EQUITY INCENTIVE PLAN

1. *Purposes of the Plan and Limitation on Awards to Non-Employee Directors.*

a. *Purpose.* The purposes of this Plan are:

- i. to attract and retain the best available personnel for positions of substantial responsibility,
- ii. to provide additional incentive to Service Providers, and
- iii. to promote the success of the Company's business.

b. *Types of Awards.* Awards granted under the Plan may be Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights, Performance Shares, Performance Units or Deferred Stock Units, as determined by the Administrator at the time of grant.

c. *Limitation on Awards to Non-Employee Directors.* Awards to any non-employee Director during any Fiscal Year plus the cash fees payable to such Director during such Fiscal Year for service as a non-employee Director shall not exceed \$400,000 in total value (calculating the value of any such Awards based on the grant date fair value for financial reporting purposes of such Awards), plus up to an additional \$200,000 for service on any special committee of the Board. Consulting fees or other compensation the Company may pay or provide to any non-employee Director for services in addition to the services normally performed by a non-employee Director shall not be included in calculating such limits.

2. *Definitions.* As used herein, the following definitions shall apply:

a. "*Administrator*" means the Board or any of its Committees that shall be administering the Plan, in accordance with Section 4 of the Plan.

b. "*Applicable Laws*" means the requirements relating to the administration of equity compensation plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are granted under the Plan.

c. "*Award*" means, individually or collectively, a grant under the Plan of Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights, Performance Shares, Performance Units or Deferred Stock Units.

d. "*Award Agreement*" means the written or electronic agreement setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms and conditions of the Plan.

e. "*Award Exchange Program*" means a program whereby outstanding Awards are surrendered or cancelled in exchange for Awards (of the same or different type), which may have a lower exercise or purchase price, or in exchange for cash or a combination of cash and Awards.

f. "*Awarded Stock*" means the Common Stock subject to an Award.

g. "*Board*" means the Board of Directors of the Company.

h. "*Cause*" means (i) an act of personal dishonesty taken by a Participant in connection with his or her responsibilities as a Service Provider and intended to result in personal enrichment of the Participant, (ii) a Participant being convicted of a felony, (iii) a willful act by a Participant which constitutes gross misconduct and which is injurious to the Company, or (iv) following delivery to a Participant of a written demand for performance from the Company which describes the basis for the Company's reasonable belief that the Participant has not substantially performed his duties, continued violations by the Participant of his or her obligations to the Company which are demonstrably willful and deliberate on the Participant's part.

i. “*Change of Control*” means the occurrence of any of the following events:

- i. Any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than Patrick M. Byrne or Dorothy M. Byrne or an individual or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with Patrick M. Byrne and/or Dorothy M. Byrne, becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities; or
- ii. The consummation of the sale or disposition by the Company of all or substantially all of the Company’s assets;
- iii. A change in the composition of the Board occurring within a one-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. “Incumbent Directors” means directors who either (A) are Directors as of the effective date of this Plan, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or
- iv. The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

Notwithstanding anything herein to the contrary, and only to the extent that an Award is subject to Section 409A of the Code and payment of the Award pursuant to the application of the definition of “Change of Control” above would cause such Award not to otherwise comply with Section 409A of the Code, payment of an Award may occur upon a “Change of Control” only to the extent that the event constitutes a “change in the ownership or effective control” of the Company or a “change in the ownership of a substantial portion of the assets” of the Company under Section 409A of the Code and the applicable Internal Revenue Service and Treasury Department regulations thereunder.

j. “*Change of Control Value*” means, with respect to a Change of Control, (i) the per share price offered to stockholders of the Company in any merger, consolidation, reorganization, sale of assets or dissolution transaction, (ii) the price per share offered to stockholders of the Company in any tender offer, exchange offer or sale or other disposition of outstanding voting stock of the Company, or (iii) if such Change of Control occurs other than as described in clause (i) or clause (ii), the Fair Market Value per share of the Shares into which Awards are exercisable, as determined by the Administrator, whichever is applicable. In the event that the consideration offered to stockholders of the Company consists of anything other than cash, the Administrator shall determine the fair cash equivalent of the portion of the consideration offered which is other than cash.

k. “*Code*” means the Internal Revenue Code of 1986, as amended.

l. “*Committee*” means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.

m. “*Common Stock*” means the common stock of the Company.

n. “*Company*” means Overstock.com, Inc.

o. “*Consultant*” means any natural person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

p. “*Deferred Stock Unit*” means a deferred stock unit Award granted to a Participant pursuant to Section 13.

q. “*Director*” means a member of the Board.

r. “*Disability*” means total and permanent disability as defined in Section 22(e)(3) of the Code.

s. “*Employee*” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three (3) months following the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

t. “*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

u. “*Fair Market Value*” means, as of any date, the value of Common Stock determined as follows:

i. If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

ii. If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

iii. In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

Notwithstanding the foregoing, for purposes of establishing the exercise price of Options and SARs, the determination of Fair Market Value in all cases shall be in accordance with Section 409A of the Code and the regulations thereunder, with the intent that Options and SARs granted under this Plan shall not constitute deferred compensation subject to Section 409A of the Code.

v. “*Fiscal Year*” means a fiscal year of the Company.

w. “*Incentive Stock Option*” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

x. “*Nonstatutory Stock Option*” means an Option not intended to qualify as an Incentive Stock Option.

y. “*Notice of Grant*” means a written or electronic notice evidencing certain terms and conditions of an individual Award. The Notice of Grant is part of the Option Agreement or Award Agreement.

z. “*Officer*” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

aa. “*Option*” means a stock option granted pursuant to the Plan.

bb. “*Option Agreement*” means a written or electronic agreement between the Company and a Participant evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

cc. “*Parent*” means a “parent corporation”, whether now or hereafter existing, as defined in Section 424(e) of the Code.

dd. “*Participant*” means the holder of an outstanding Award granted under the Plan.

ee. “*Performance Share*” means a performance share Award granted to a Participant pursuant to Section 11.

ff. “*Performance Unit*” means a performance unit Award granted to a Participant pursuant to Section 12.

gg. “*Plan*” means this Amended and Restated 2005 Equity Incentive Plan, as amended from time to time.

hh. “*Restricted Award*” means an Award granted pursuant to Section 10 of the Plan.

ii. “*Rule 16b-3*” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

jj. “*Section 16(b)*” means Section 16(b) of the Exchange Act.

kk. “*Securities Act*” means the Securities Act of 1933, as amended.

ll. “*Service Provider*” means an Employee, Director or Consultant.

mm. “*Share*” means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

nn. “*Stock Appreciation Right*” or “*SAR*” means an Award granted pursuant to Section 9 hereof.

oo. “*Subsidiary*” means a “subsidiary corporation”, whether now or hereafter existing, as defined in Section 424(f) of the Code.

pp. “*Voluntary Termination for Good Reason*” means a Participant voluntarily resigns within ninety (90) days after the occurrence of any of the following, provided the Participant gives notice to the Company of such occurrence within sixty (60) days after such occurrence and the Company does not remedy the condition within thirty (30) days after the Company’s receipt of such notice: (i) without the Participant’s express written consent, a material reduction of the Participant’s duties, title, authority or responsibilities, relative to the Participant’s duties, title, authority or responsibilities as in effect immediately prior to such reduction, or the assignment to Participant of such reduced duties, title, authority or responsibilities; provided, however, that a reduction in duties, title, authority or responsibilities solely by virtue of the Company being acquired and made part of a larger entity (as, for example, when the Chief Executive Officer of the Company remains as such following a Change of Control and is not made the Chief Executive Officer of the acquiring corporation) shall not by itself constitute grounds for a “Voluntary Termination for Good Reason;” (ii) a reduction by the Company in the base salary of the Participant as in effect immediately prior to such reduction; (iii) the relocation of the Participant to a facility or a location outside of a 35 mile radius from the present facility or location, without the Participant’s express written consent; or (iv) any act or set of facts or circumstances which would, under applicable case law or statute constitute a constructive termination of the Participant.

3. *Stock Subject to the Plan.*

a. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares which will be available for grant under the Plan after approval by the stockholders at the 2017 annual meeting of stockholders is 3,278,307 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock. All shares reserved for issuance under this Plan may be used for Incentive Stock Options.

b. To the extent that Shares subject to an Award are not issued to a Participant because the Award terminates, expires, lapses or becomes unexercisable without having been exercised in full for any reason, or an Award is settled in cash, or is surrendered pursuant to an Award Exchange Program, or, with respect to Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units or Deferred Stock Units, is forfeited to or repurchased by the Company, the unissued Shares (or for Awards other than Options and SARs, the forfeited or repurchased shares) which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). However, the full number of Stock Appreciation Rights granted that are to be settled by the issuance of Shares shall be counted against the number of Shares available for award under the Plan, regardless of the number of Shares actually issued upon settlement of such Stock Appreciation Rights. Shares that have actually been issued under the Plan under any Award shall not be returned to the Plan and shall not become available for future distribution under the Plan. Shares surrendered or withheld in payment of the exercise price of an Option and Shares withheld by the Company to satisfy any minimum tax withholding obligation shall count against the aggregate plan limit described above. To the extent an Award under the Plan is paid out in cash rather than Shares, such cash payment shall not result in a reduction to the number of Shares available for issuance under the Plan. Shares repurchased by the Company on

the open market with the proceeds of an Option exercise shall not be added to the number of Shares available for grant under the Plan. No fractional shares of Stock may be issued hereunder.

4. Administration of the Plan.

a. Procedure.

- i. *Multiple Administrative Bodies.* The Plan may be administered by different Committees with respect to different groups of Service Providers.
- ii. *Rule 16b-3.* To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3, including the composition of the Committee that grants any related Awards.
- iii. *Other Administration.* Other than as provided above, the Plan shall be administered by (A) the Board or (B) a Committee, which committee shall be constituted to satisfy Applicable Laws.

b. *Powers of the Administrator.* Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

- i. to determine the Fair Market Value;
- ii. to select the Service Providers to whom Awards may be granted hereunder;
- iii. to determine whether and to what extent Awards or any combination thereof, are granted hereunder;
- iv. to determine the number of shares of Common Stock or equivalent units to be covered by each Award granted hereunder;
- v. to approve forms of agreement for use under the Plan;
- vi. to reduce the exercise price of an Award to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Award shall have declined since the date the Award was granted, provided that such action shall first have been approved by a vote of the stockholders of the Company;
- vii. to institute an Award Exchange Program, provided that no exchange shall cause the exercise price of an Option or SAR to be reduced unless such action shall first have been approved by a vote of the stockholders of the Company;
- viii. to determine or modify the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder, provided that no such modification may cause an Option or SAR to become deferred compensation subject to Section 409A of the Code. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or SARs may be exercised or other Awards vest (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
- ix. to construe and interpret the terms of the Plan and Awards and to reconcile any inconsistency, correct any defect and/or supply any omission in the Plan or Award Agreement;
- x. to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
- xi. to modify or amend each Award (subject to Section 17.c of the Plan), including the discretionary authority to extend the post-service-termination exercisability period of Options and SARs longer than is otherwise provided for in the Plan, provided that no such modification or extension may cause an Option or SAR to become deferred compensation subject to Section 409A of the Code;

xii. to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

xiii. to allow Participants to satisfy minimum withholding tax obligations by tendering cash or unencumbered Shares owned by the Participant having a Fair Market Value equal to the amount required to be withheld, or electing to have the Company withhold from the Shares or cash to be issued upon exercise or vesting of an Award (or distribution of a Deferred Stock Unit) that number of Shares or cash having a Fair Market Value equal to the minimum amount required to be withheld (but no more). The Fair Market Value of any Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by a Participant to have Shares or cash withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

xiv. to determine the terms and restrictions applicable to Awards; and

xv. to make all other determinations deemed necessary or advisable for administering the Plan.

c. *Effect of Administrator's Decision.* The Administrator's decisions, determinations and interpretations shall be final and binding on all Participants and any other holders of Awards.

5. *Eligibility.* Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units, Stock Appreciation Rights, Deferred Stock Units and Nonstatutory Stock Options may be granted to Service Providers. Incentive Stock Options may be granted only to Employees. A Consultant shall not be eligible for the grant of an Award if, at the time of grant, a Form S-8 Registration Statement ("Form S-8") under the Securities Act, is not available to register either the offer or the sale of the Company's securities to such Consultant because of the nature of the services that the Consultant is providing to the Company (i.e., capital raising), or because the Consultant is not a natural person, or as otherwise provided by the rules governing the use of Form S-8, unless the Company determines both (i) that such grant (A) shall be registered in another manner under the Securities Act (e.g., on a Form S-3 Registration Statement) or (B) does not require registration under the Securities Act in order to comply with the requirements of the Securities Act, if applicable, and (ii) that such grant complies with the securities laws of all other relevant jurisdictions.

6. *No Employment Rights.* Neither the Plan nor any Award shall confer upon a Participant any right with respect to continuing the Participant's employment with the Company or its Subsidiaries, nor shall they interfere in any way with the Participant's right or the Company's or Subsidiary's right, as the case may be, to terminate such employment at any time, with or without cause.

7. *Effective Date; Term of Plan.* The Plan's effective date is the date on which it is adopted by the Board, so long as it is approved by the Company's stockholders at any time within 12 months of such adoption. The Plan will have no fixed expiration date; provided, however, that no Incentive Stock Options may be granted more than 10 years after the later of (a) the Plan's adoption by the Board, or (b) the adoption by the Board of any amendment to the Plan that constitutes the adoption of a new plan for purposes of Section 422 of the Code.

8. *Stock Options.*

a. The term of each Option shall be stated in the Notice of Grant; provided, however, that the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Notice of Grant. Moreover, in the case of an Incentive Stock Option granted to a Participant who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Notice of Grant.

b. *Option Exercise Price.* The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

i. In the case of an Incentive Stock Option:

(1) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company

or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(2) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

ii. In the case of a Nonstatutory Stock Option, the per Share exercise price shall be determined by the Administrator and shall be no less than 100% of the Fair Market Value per Share on the date of grant.

iii. Notwithstanding the foregoing, an Option may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Sections 409A and 424(a) of the Code and the regulations thereunder. No Option shall include any feature for the deferral of compensation other than the deferral of recognition of income until the exercise of the Option.

c. *Waiting Period and Exercise Dates.* At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In so doing, the Administrator may specify that an Option may not be exercised until the completion of a service period or until performance milestones are satisfied.

d. *Form of Consideration.* The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Subject to Applicable Laws, such consideration may consist entirely of:

i. cash;

ii. check;

iii. other Shares which are owned by the Participant and have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

iv. delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale proceeds required to pay the exercise price;

v. such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws, including, to the extent permitted by Applicable Laws and approved by the Administrator, delivery of a promissory note, consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan, or a reduction in the amount of any Company liability to the Participant; or

vi. any combination of the foregoing methods of payment.

e. *Exercise of Option; Rights as a Stockholder.* Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. An Option may not be exercised for a fraction of a Share. An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the optioned stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as

provided in Section 15 of the Plan. Exercising an Option in any manner shall decrease the number of Shares thereafter available for sale under the Option, by the number of Shares as to which the Option is exercised.

f. *Termination of Relationship as a Service Provider.* If a Participant ceases to be a Service Provider, other than upon the Participant's death or Disability, the Participant may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three months following the Participant's termination. If, on the date of termination, the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Participant does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

g. *Disability.* If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Participant's termination. If, on the date of termination, the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Participant does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

h. *Death of Participant.* If a Participant dies while a Service Provider, the Option may be exercised following the Participant's death within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of death (but in no event may the option be exercised later than the expiration of the term of such Option as set forth in the Option Agreement), by the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following Participant's death. If, at the time of death, the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

i. *ISO \$100,000 Rule.* Each Option shall be designated in the Notice of Grant as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares subject to a Participant's Incentive Stock Options (determined without regard to this paragraph) granted by the Company, any Parent or Subsidiary, which become exercisable for the first time during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds \$100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 8.i, Incentive Stock Options shall be taken into account in the order in which they were granted (or as otherwise provided under applicable regulations), and the Fair Market Value of the Shares shall be determined as of the time of grant.

j. *Section 409A of the Code.* Notwithstanding anything herein to the contrary, if an Option is granted to a Service Provider with respect to whom Common Stock does not constitute "service recipient stock" (as defined in Treasury Regulation Section 1.409A-1(b)(5)(iii)), the Option shall comply with Section 409A of the Code to the extent applicable.

9. *Stock Appreciation Rights.*

a. *Grant of SARs.* Subject to the terms and conditions of the Plan, SARs may be granted to Participants at any time and from time to time as shall be determined by the Administrator, in its sole discretion. The Administrator shall have complete discretion to determine the number of SARs granted to any Participant. SARs may be granted either alone ("Free Standing Rights") or in conjunction with all or part of any Option granted under the Plan ("Related SARs"). Free Standing Rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator. Related SARs shall be exercisable only at such time or times and to the extent that the Options to which they relate shall be exercisable. No Related SAR may be granted for more shares of Common Stock than are subject to the Option to which it relates. The number of shares of Common Stock subject to an SAR

must be fixed on the date of grant of the SAR, and the SAR must not include any feature for the deferral of compensation other than the deferral of recognition of income until the exercise of the SAR. The provisions of SARs need not be the same with respect to each Participant.

b. *Exercise Price and other Terms.* The Administrator, subject to the provisions of the Plan, shall have complete discretion to determine the terms and conditions of SARs granted under the Plan; provided, however, that no SAR may have a term of more than ten (10) years from the date of grant. An SAR must be granted with an exercise price per Share not less than the Fair Market Value per Share on the date of grant. The exercise price for the Shares or cash to be issued pursuant to an already granted SAR may not be changed without the consent of the Company's stockholders. This shall include, without limitation, a repricing of the SAR as well as an SAR exchange program whereby the Participant agrees to cancel an existing SAR in exchange for an Option, SAR or other Award. Upon any exercise of a Related SAR, the number of Shares for which the related Option shall be exercisable shall be reduced by the number of Shares for which the SAR shall have been exercised. The number of Shares for which a Related SAR shall be exercisable shall be reduced upon any exercise of the related Option by the number of Shares for which such Option shall have been exercised.

c. *Payment of SAR Amount.* Upon exercise of a SAR, a Participant shall be entitled to receive payment from the Company in an amount determined by multiplying:

- i. The difference between the Fair Market Value of a Share on the date of exercise over the exercise price; times
- ii. the number of Shares with respect to which the SAR is exercised.

d. *Payment upon Exercise of SAR.* At the discretion of the Administrator, payment for a SAR may be in cash, Shares or a combination thereof.

e. *SAR Agreement.* Each SAR grant shall be evidenced by an Award Agreement that shall specify the exercise price, the term of the SAR, the conditions of exercise, and such other terms and conditions as the Administrator, in its sole discretion, shall determine.

f. *Expiration of SARs.* A SAR granted under the Plan shall expire upon the date determined by the Administrator, in its sole discretion, and set forth in the Award Agreement.

g. *Termination of Relationship as a Service Provider.* If a Participant ceases to be a Service Provider, other than upon the Participant's death or Disability termination, the Participant may exercise his or her SAR within such period of time as is specified in the Award Agreement to the extent that the SAR is vested on the date of termination (but in no event later than the expiration of the term of such SAR as set forth in the SAR Agreement). In the absence of a specified time in the Award Agreement, the SAR shall remain exercisable for three months following the Participant's termination. If, on the date of termination, the Participant is not vested as to his or her entire SAR, the Shares covered by the unvested portion of the SAR shall revert to the Plan. If, after termination, the Participant does not exercise his or her SAR within the time specified by the Administrator, the SAR shall terminate, and the Shares covered by such SAR shall revert to the Plan.

h. *Disability.* If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her SAR within such period of time as is specified in the Award Agreement to the extent the SAR is vested on the date of termination (but in no event later than the expiration of the term of such SAR as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the SAR shall remain exercisable for twelve (12) months following the Participant's termination. If, on the date of termination, the Participant is not vested as to his or her entire SAR, the Shares covered by the unvested portion of the SAR shall revert to the Plan. If, after termination, the Participant does not exercise his or her SAR within the time specified herein, the SAR shall terminate, and the Shares covered by such SAR shall revert to the Plan.

i. *Death of Participant.* If a Participant dies while a Service Provider, the SAR may be exercised following the Participant's death within such period of time as is specified in the Award Agreement (but in no event may the SAR be exercised later than the expiration of the term of such SAR as set forth in the Award Agreement), by the Participant's designated beneficiary, provided such beneficiary has been designated prior to Participant's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Participant, then such SAR may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the SAR is transferred pursuant

to the Participant's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the SAR Agreement, the SAR shall remain exercisable for twelve (12) months following Participant's death. If the SAR is not so exercised within the time specified herein, the SAR shall terminate, and the Shares covered by such SAR shall revert to the Plan.

j. *Section 409A of the Code.* An SAR that is subject to Section 409A of the Code shall satisfy the requirements of this Section 9.j and the additional conditions applicable to nonqualified deferred compensation under Section 409A of the Code. The requirements herein shall apply in the event any SAR under this Plan is granted with an exercise price less than the Fair Market Value per Share on the date the SAR is granted, is granted to a Service Provider with respect to whom Common Stock does not constitute "service recipient stock" (as defined in Treasury Regulation Section 1.409A-1(b)(5)(iii)), or is otherwise determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code. Any such SAR may provide that it is exercisable at any time permitted under the governing Award Agreement, but such exercise shall be limited to fixing the measurement of the amount, if any, by which the Fair Market Value of a Share on the date of exercise exceeds the exercise price (the "SAR Amount"). However, once the SAR is exercised, the SAR Amount may be paid only on the fixed time, payment schedule or other event specified in the governing Award Agreement.

10. *Restricted Awards.*

a. *Grant of Restricted Awards.* Subject to the terms and conditions of the Plan, Restricted Awards may be granted to Participants at any time as shall be determined by the Administrator, in its sole discretion. A Restricted Award is an Award of Common Stock ("Restricted Stock") or hypothetical shares of Common Stock ("Restricted Stock Units") having a value equal to the Fair Market Value of an identical number of shares of Common Stock, which may, but need not, provide that such Restricted Award will be subject to forfeiture and may not be sold, assigned, transferred or otherwise disposed of, pledged or hypothecated as collateral for a loan or as security for the performance of any obligation or for any other purpose for such period as the Administrator shall determine. The Administrator shall have complete discretion to determine (i) the number of Shares subject to a Restricted Award granted to any Participant, and (ii) the conditions that must be satisfied, which may include a performance-based component, upon which is conditioned the grant, vesting or issuance of a Restricted Award.

b. *Restricted Stock.*

i. Each Participant granted Restricted Stock shall execute and deliver to the Company an Award Agreement with respect to the Restricted Stock setting forth the restrictions and other terms and conditions applicable to such Restricted Stock. If the Administrator determines that the Restricted Stock shall be held by the Company or in escrow rather than delivered to the Participant pending the release of the applicable restrictions, the Administrator may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Administrator, if applicable and (ii) the appropriate blank stock power with respect to the Restricted Stock covered by such agreement.

ii. Subject to the restrictions set forth in the Award Agreement, the Participant generally shall have the rights and privileges of a holder of Common Stock as to such Restricted Stock, including the right to vote such Restricted Stock. At the discretion of the Administrator, cash dividends and stock dividends with respect to the Restricted Stock may be either currently paid to the Participant on the day on which the corresponding dividend on shares of Common Stock is paid to stockholders, or withheld by the Company for the Participant's account, and interest may be credited on the amount of the cash dividends withheld at a rate and subject to such terms as determined by the Administrator. Any cash dividends or stock dividends so withheld by the Administrator and attributable to any particular Share (and earnings thereon, if applicable) shall be distributed to the Participant in cash or, at the discretion of the Administrator, in Shares having a Fair Market Value equal to the amount of such dividends, if applicable, upon the release of restrictions on such Shares and, if such Shares are forfeited, the Participant shall have no right to such dividends. Restricted Stock awarded to a Participant shall be subject to the following restrictions until the expiration of such restrictions, and to such other terms and conditions as may be set forth in the applicable Award Agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the stock certificate; (B) the Shares shall be subject to the restrictions on transferability set forth in the Award Agreement; (C) the Shares shall be subject to forfeiture to the extent provided in the Award Agreement; and (D) to the extent such Shares are forfeited, the stock certificates shall be returned to the Company, and all rights of the Participant to such shares and as a stockholder with respect to such Shares shall terminate without further obligation on the part of the Company.

iii. Upon the expiration of the restrictions with respect to any Restricted Stock, the restrictions set forth in this Section 10 and the applicable Award Agreement shall be of no further force or effect with respect to such Shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the stock certificate evidencing the Restricted Stock which has not then been forfeited and with respect to which the restrictions have expired (to the nearest full Share) and any cash distributions or stock dividends credited to the Participant's account with respect to such Restricted Stock and the interest thereon, if any.

c. Restricted Stock Units.

i. The terms and conditions of a grant of Restricted Stock Units shall be reflected in a written Award Agreement. Each Restricted Stock Unit shall be the equivalent of one Share for purposes of determining the number of Shares subject to an Award. No Shares shall be issued at the time a Restricted Stock Unit is granted, and the Company will not be required to set aside a fund for the payment of any such Award. Until the Shares are issued, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Restricted Stock Units. At the discretion of the Administrator, and only to the extent set forth in the applicable Award Agreement, each Restricted Stock Unit may be credited with cash distributions and stock dividends paid by the Company in respect of one share of Stock ("Dividend Equivalents"). At the discretion of the Administrator, Dividend Equivalents may be either currently paid to the Participant on the day on which the corresponding dividend on shares of Common Stock is paid to stockholders, or withheld by the Company for the Participant's account, and interest may be credited on the amount of cash Dividend Equivalents withheld at a rate and subject to such terms as determined by the Administrator. Dividend Equivalents credited to a Participant's account and attributable to any particular Restricted Stock Unit (and earnings thereon, if applicable) shall be distributed in cash or, at the discretion of the Administrator, in Shares having a Fair Market Value equal to the amount of such Dividend Equivalents and earnings, if applicable, to the Participant upon settlement of such Restricted Stock Unit and, if such Restricted Stock Unit is forfeited, the Participant shall have no right to such Dividend Equivalents.

ii. Restricted Stock Units awarded to any Participant shall be subject to (A) forfeiture until the expiration of the restrictions applicable to such Award, and satisfaction of any applicable performance goals established in the discretion of the Administrator during such period, to the extent provided in the applicable Award Agreement, and to the extent such Restricted Stock Units are forfeited, all rights of the Participant to such Restricted Stock Units shall terminate without further obligation on the part of the Company and (B) such other terms and conditions as may be set forth in the applicable Award Agreement.

iii. Except as otherwise provided in the Plan or an Award Agreement, upon the expiration of the restrictions with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one Share for each such outstanding Restricted Stock Unit ("Vested Unit") and cash equal to any Dividend Equivalents credited with respect to each such Vested Unit and the interest thereon or, at the discretion of the Administrator, in Shares having a Fair Market Value equal to such Dividend Equivalents' interest thereon, if any; provided, however, that, if explicitly provided in the applicable Award Agreement, the Administrator may, in its sole discretion, elect to pay cash or part cash and part Shares in lieu of delivering only Shares for Vested Units. If a cash payment is made in lieu of delivering Shares, the amount of such payment shall be equal to the aggregate Fair Market Value of the Shares as of the date on which the restrictions lapsed with respect to such Vested Unit.

d. Other Terms. The Administrator, subject to the provisions of the Plan, shall have complete discretion to determine the terms and conditions of Restricted Awards granted under the Plan. Restricted Award grants shall be subject to the terms, conditions, and restrictions determined by the Administrator at the time the Restricted Stock or the Restricted Stock Unit is awarded. Any certificates representing the Shares of stock awarded shall bear such legends as shall be determined by the Administrator.

e. Restricted Award Agreement. Each Restricted Award grant shall be evidenced by an Award Agreement that shall specify the purchase price (if any) and such other terms and conditions as the Administrator, in its sole discretion, shall determine; provided; however, that if the Restricted Award grant has a purchase price, such purchase price must be paid no more than ten (10) years following the date of grant.

11. *Performance Shares.*

a. *Grant of Performance Shares.* Subject to the terms and conditions of the Plan, Performance Shares may be granted to Participants at any time as shall be determined by the Administrator, in its sole discretion. The Administrator shall have complete discretion to determine (i) the number of Shares subject to a Performance Share award granted to any Participant, and (ii) the conditions that must be satisfied, which typically will be based principally or solely on achievement of performance milestones but may include a service-based component, upon which is conditioned the grant or vesting of Performance Shares. Performance Shares shall be granted in the form of units to acquire Shares. Each such unit shall be the equivalent of one Share for purposes of determining the number of Shares subject to an Award. Until the Shares are issued, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the units to acquire Shares.

b. *Other Terms.* The Administrator, subject to the provisions of the Plan, shall have complete discretion to determine the terms and conditions of Performance Shares granted under the Plan. Performance Share grants shall be subject to the terms, conditions, and restrictions determined by the Administrator at the time the stock is awarded, which may include such performance-based milestones as are determined appropriate by the Administrator. The Administrator may require the recipient to sign an Award Agreement as a condition of the award. Any certificates representing the Shares of stock awarded shall bear such legends as shall be determined by the Administrator.

c. *Performance Share Award Agreement.* Each Performance Share grant shall be evidenced by an Award Agreement that shall specify such other terms and conditions as the Administrator, in its sole discretion, shall determine.

12. *Performance Units.*

a. *Grant of Performance Units.* Performance Units are similar to Performance Shares, except that they shall be settled in a cash equivalent to the Fair Market Value of the underlying Shares, determined as of the vesting date. Subject to the terms and conditions of the Plan, Performance Units may be granted to Participants at any time and from time to time as shall be determined by the Administrator, in its sole discretion. The Administrator shall have complete discretion to determine the conditions that must be satisfied, which typically will be based principally or solely on achievement of performance milestones but may include a service-based component, upon which is conditioned the grant or vesting of Performance Units. Performance Units shall be granted in the form of units to acquire Shares. Each such unit shall be the cash equivalent of one Share of Common Stock. No right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Performance Units or the cash payable thereunder.

b. *Number of Performance Units.* The Administrator will have complete discretion in determining the number of Performance Units granted to any Participant.

c. *Other Terms.* The Administrator, subject to the provisions of the Plan, shall have complete discretion to determine the terms and conditions of Performance Units granted under the Plan. Performance Unit grants shall be subject to the terms, conditions, and restrictions determined by the Administrator at the time the grant is awarded, which may include such performance-based milestones as are determined appropriate by the Administrator. The Administrator may require the recipient to sign an Award Agreement as a condition of the award. Any certificates representing the units awarded shall bear such legends as shall be determined by the Administrator.

d. *Performance Unit Award Agreement.* Each Performance Unit grant shall be evidenced by an Award Agreement that shall specify such terms and conditions as the Administrator, in its sole discretion, shall determine.

13. *Deferred Stock Units.*

a. *Description.* Deferred Stock Units shall consist of a Restricted Stock, Restricted Stock Unit, Performance Share or Performance Unit Award that the Administrator, in its sole discretion permits to be paid out in installments or on a deferred basis, in accordance with rules and procedures established by the Administrator. Deferred Stock Units shall remain subject to the claims of the Company's general creditors until distributed to the Participant.

b. *Code Section 409A Limitations.* If any Deferred Stock Units are considered to be deferred compensation under Section 409A of the Code, then the terms of such Deferred Stock Units shall comply with Section 409A of the Code.

14. *Non-Transferability of Awards.* Unless determined otherwise by the Administrator, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the recipient, only by the recipient. If the Administrator makes an Award transferable, such Award shall contain such additional terms and conditions as the Administrator deems appropriate.

15. *Adjustments Upon Changes in Capitalization, Dissolution or Liquidation or Change of Control.*

a. *Changes in Capitalization.* In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares, then the Administrator shall, in an equitable manner and to the extent necessary to preserve the economic intent of Awards, adjust the number and class of Shares which may be delivered under the Plan, the number, class, and exercise price of Shares covered by each outstanding Award. Unless the Committee specifically determines that such adjustment is in the best interests of the Company, any adjustments under this Section 15.a shall be made in a manner which does not result in a violation of Section 409A of the Code or the modification, extension or renewal of any Incentive Stock Option. Any adjustments under this Section 15.a shall be made in a manner which does not adversely affect the exemption provided pursuant to Rule 16b-3.

b. *Dissolution or Liquidation.* In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Participant as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for a Participant to have the right to exercise his or her Option or SAR until ten (10) days prior to such transaction as to all of the Awarded Stock covered thereby, including Shares as to which the Award would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option or forfeiture rights applicable to any Award shall lapse 100%, and that any Award vesting shall accelerate 100%, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised (with respect to Options and SARs) or vested (with respect to other Awards), an Award will terminate immediately prior to the consummation of such proposed action.

c. *Change of Control.*

i. *Stock Options and SARs.* In the event of a Change of Control, each outstanding Option and SAR shall be assumed or an equivalent option or SAR substituted by the successor entity or a Parent or Subsidiary of the successor entity. Notwithstanding the foregoing, in the event that the successor entity refuses to assume or substitute for the Option or SAR, or if the successor entity does not have outstanding common equity securities required to be registered under Section 12 of the Exchange Act, the Participant shall fully vest in and have the right to exercise the Option or SAR as to all of the Awarded Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option or SAR becomes fully vested and exercisable in lieu of assumption or substitution in the event of a Change of Control, the Administrator may take one or more actions with respect to such Option or SAR including, but not limited to, the following: (i) notifying the Participant in writing or electronically that such Option or SAR may be exercised in full for a limited period of time on or before a specified date (before or after the Change of Control) fixed by the Administrator, after which specified date the unexercised portion of such Option or SAR and all rights of the Participant thereunder shall terminate, (ii) requiring the mandatory surrender to the Company by the Participant of some or all of the outstanding Options or SARs held by such Participant as of a date, before or after such Change of Control, specified by the Administrator, in which event the Administrator shall thereupon cancel such Options and SARs and the Company shall pay to such Participant an amount of cash per share equal to the excess, if any, of the Change of Control Value of the Shares subject to such Options and SARs over the exercise price(s) under such Options and SARs for such Shares, or (iii) making such adjustments to Options and SARs then outstanding as the Administrator deems appropriate to reflect such Change of Control. For the purposes of this paragraph, the Option or SAR shall be considered assumed if, following the Change of Control, the option or stock appreciation right confers the right to purchase or receive, for each Share of Awarded Stock subject to the Option or SAR immediately prior to the Change of Control, the consideration (whether stock, cash, or other securities or property) received in the Change of Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change of Control is not solely common stock of the successor entity or its Parent, the Administrator may, with the consent of the successor entity, provide for the consideration to be received upon the exercise of the Option or SAR, for each Share of

Awarded Stock subject to the Option or SAR, to be solely common stock of the successor entity or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change of Control.

ii. *Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units and Deferred Stock Units.* In the event of a Change of Control, each outstanding Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit and Deferred Stock Unit Award shall be assumed or an equivalent Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit or Deferred Stock Unit Award substituted by the successor entity or a Parent or Subsidiary of the successor entity. Notwithstanding the foregoing, in the event that the successor entity refuses to assume or substitute for the Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit or Deferred Stock Unit Award, or if the successor entity does not have outstanding common equity securities required to be registered under Section 12 of the Exchange Act, the Participant shall fully vest in the Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit or Deferred Stock Unit Award, including as to Shares (or with respect to Performance Units, the cash equivalent thereof) which would not otherwise be vested. For the purposes of this paragraph, a Restricted Stock, Restricted Stock Unit, Performance Share, Performance Unit and Deferred Stock Unit Award shall be considered assumed if, following the Change of Control, the award confers the right to purchase or receive, for each Share (or with respect to Performance Units, the cash equivalent thereof) subject to the Award immediately prior to the Change of Control, the consideration (whether stock, cash, or other securities or property) received in the Change of Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change of Control is not solely common stock of the successor entity or its Parent, the Administrator may, with the consent of the successor entity, provide for the consideration to be received, for each Share and each unit/right to acquire a Share subject to the Award, to be solely common stock of the successor entity or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change of Control.

d. *Involuntary Termination other than for Cause, Death or Disability or a Voluntary Termination for Good Reason, Following a Change of Control.* If, within eighteen (18) months following a Change of Control, a Participant's employment is terminated involuntarily by the Company or successor entity other than (A) for Cause, or (B) on account of death or Disability, or (ii) by the Participant by a Voluntary Termination for Good Reason, then the Participant shall fully vest in and receive payment of or have the right to exercise his Award, as applicable, as to all of the Shares subject to each such Award including Shares as to which such Award would not otherwise be vested or exercisable. Notwithstanding the foregoing or anything in an Award Agreement to the contrary, (i) if an Award is subject to Section 409A of the Code and payment of the Award at the time of termination of employment under this paragraph would cause the Award not to comply with Section 409A of the Code, the Award shall be paid only at such time and in such form as will comply with Section 409A of the Code.

16. *Date of Grant.* The date of grant of an Award shall be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Participant within a reasonable time after the date of such grant.

17. *Amendment and Termination of the Plan.*

a. *Amendment and Termination.* The Board may at any time amend, alter, suspend or terminate the Plan; provided, however, that the Board may not materially amend the Plan without obtaining stockholder approval.

b. *Stockholder Approval.* The Company shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Law.

c. *Effect of Amendment or Termination.* No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing (or electronic format) and signed by the Participant and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

18. *Conditions Upon Issuance of Shares.*

a. *Legal Compliance.* Shares shall not be issued pursuant to the exercise of an Award unless the exercise of the Award or the issuance and delivery of such Shares (or with respect to Performance Units, the cash equivalent thereof) shall comply with Applicable Laws.

b. *Investment Representations.* As a condition to the exercise or receipt of an Award, the Company may require the person exercising or receiving such Award to represent and warrant at the time of any such exercise or receipt that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

19. *Liability of Company.*

a. *Inability to Obtain Authority.* The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

b. *Grants Exceeding Allotted Shares.* If the Awarded Stock covered by an Award exceeds, as of the date of grant, the number of Shares which may be issued under the Plan without additional stockholder approval, such Award shall be void with respect to such excess Awarded Stock, unless stockholder approval of an amendment sufficiently increasing the number of Shares subject to the Plan is timely obtained in accordance with Section 17 of the Plan.

20. *General Provisions.*

a. *Section 409A of the Code.* The Plan is intended to comply with Section 409A of the Code to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A of the Code shall not be treated as deferred compensation unless Applicable Laws require otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required to avoid accelerated taxation and tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following a Participant's "separation from service" within the meaning of Section 409A of the Code shall instead be paid on the first payroll date after the six-month anniversary of the Participant's separation from service.

b. *Section 16.* It is the intent of the Company that the Plan satisfy, and be interpreted in a manner that satisfies, the applicable requirements of Rule 16b-3 so that Participants will be entitled to the benefit of Rule 16b-3, or any other rule promulgated under Section 16 of the Exchange Act, and will not be subject to short-swing liability under Section 16 of the Exchange Act. Accordingly, if the operation of any provision of the Plan would conflict with the intent expressed in this Section 20.b, such provision to the extent possible shall be interpreted and/or deemed amended so as to avoid such conflict.

c. *Clawbacks.* Notwithstanding any other provisions in this Plan, any Award which is subject to recovery under any law, government regulation or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

21. *Reservation of Shares.* The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

Subsidiaries of the Registrant

<u>Name</u>	<u>Jurisdiction of Formation</u>	<u>Trade Names</u>
Overstock.com Services, Inc.	Utah	Overstock.com Services
Supplier Oasis Fulfillment Services, Inc.	Utah	SOFS
Overstock Ireland Limited	Ireland	O.co Ireland.ie
O Agency Group, Inc.	Utah	Overstock.com Insurance
O.com Land, LLC	Utah	
O.com Ventures, Inc.	Utah	
tZERO Group, Inc. (fka TØ.com, Inc. & fka Medici, Inc.)	Delaware	
tZERO Technologies, LLC (fka Cirrus Services, LLC)	Delaware	
SpeedRoute, LLC	Delaware	
DeSoto, Inc.	Delaware	
O.com Gift Cards, Inc.	Utah	
Medici Ventures, Inc.	Delaware	
O.co HK Limited (HK)	Hong Kong	
Mac Warehouse, LLC	Utah	
SiteHelix, Inc.	Delaware	
Blue Ocean Technologies, LLC	New York	
Verify Investor, LLC	California	
Bitsy Crypto UK Limited	England and Whales	
tZERO Crypto, Inc.	Utah	
tZERO IP, LLC	Delaware	
tZERO Broker Services, LLC	Delaware	
tZERO ATS, LLC	Delaware	
tZERO Markets, LLC	Delaware	
Peace Coliseum Mezzanine, LLC	Utah	
Peace Coliseum, LLC	Utah	
Bitt, Inc.	Barbados	
tZERO Crypto Trust	Delaware	

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Overstock.com, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-181422, 333-184344, 333-162674, 333-160512, 333-124441, 333-123540, 333-203175, and 333-203176) on Form S-8 and (Nos. 333-207141, 333-226729, 333-233913, and 333-239498) on Form S-3 of Overstock.com, Inc. of our reports dated February 26, 2021, with respect to the consolidated balance sheets of Overstock.com, Inc. as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes and financial statement schedule II (collectively, the consolidated financial statements), and the effectiveness of internal control over financial reporting as of December 31, 2020, which reports appear in the December 31, 2020 annual report on Form 10-K of Overstock.com, Inc.

Our report dated February 26, 2021 on the consolidated financial statements refers to a change in the method of accounting for leases as of January 1, 2019 due to the adoption of Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)*, and related amendments.

/s/ KPMG LLP
Salt Lake City, Utah
February 26, 2021

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Jonathan E. Johnson III, certify that:

1. I have reviewed this Annual Report on Form 10-K of Overstock.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2021

/s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Adrienne B. Lee, certify that:

1. I have reviewed this Annual Report on Form 10-K of Overstock.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 26, 2021

/s/ ADRIANNE B. LEE

Adrienne B. Lee

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Jonathan E. Johnson III, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Overstock.com, Inc. on Form 10-K for the year ended December 31, 2020 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: February 26, 2021

/s/ JONATHAN E. JOHNSON III

Jonathan E. Johnson III
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Adrienne B. Lee, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Overstock.com, Inc. on Form 10-K for the year ended December 31, 2020 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as applicable, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Overstock.com, Inc.

Date: February 26, 2021

/s/ ADRIANNE B. LEE

Adrienne B. Lee

Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)