OVERSTOCK COM INC
Form 10-Q/A
August 09, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

(Mark One)

ý	**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
	For the quarterly period ended June 30, 2004
	Or
o	**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)	**87-0634302** (I.R.S. Employer Identification Number)

6322 South 3000 East, Suite 100
Salt Lake City, Utah 84121
(Address, including zip code, of
Registrant s principal executive offices)

Registrant s telephone number, including area code: (801) 947-3100

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), (2) has been subject to such filing requirements for the past 90 days.

Yes ý No o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2).

Yes ý No o

There were 18,269,209 shares of the Registrant s common stock, par value $0.0001, outstanding on August 6, 2004.

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PART 1. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

Overstock.com, Inc.

Consolidated Balance Sheets

(in thousands)

	December 31, 2003	June 30, 2004 (unaudited)
Assets		
Current assets:		
Cash and cash equivalents	$ 28,846	$ 45,648
Marketable securities	11,500	21,206
Accounts receivable, net	10,183	6,579
Inventories, net	29,926	30,848
Prepaid expenses and other assets	4,583	7,013
Total current assets	85,038	111,294
Restricted cash		1,875
Property and equipment, net	9,483	11,303
Goodwill	2,784	2,784
Other long-term assets, net	427	1,765
Total assets	$ 97,732	$ 129,021
Liabilities, Redeemable Securities and Stockholders Equity		
Current liabilities:		
Accounts payable	$ 30,363	$ 21,522
Accrued liabilities	9,316	9,911
Short-term borrowings		1,000
Capital lease obligations, current	75	698
Total current liabilities	39,754	33,131
Capital lease obligations, non-current	86	944
Total liabilities	39,840	34,075
Commitments and contingencies (Notes 9 and 10)		
Redeemable common stock, $0.0001 par value, 460 shares issued and outstanding as of December 31, 2003 and June 30, 2004	2,978	3,072
Stockholders equity:		
Common stock, $0.0001 par value, 100,000 shares authorized, 16,060 shares and 17,826 shares issued as of December 31, 2003 and June 30, 2004, respectively	2	2

Additional paid-in capital		123,934		165,904
Accumulated deficit		(67,815)		(72,441)
Unearned stock-based compensation		(1,094)		(1,421)
Treasury stock, 35 shares at cost		(100)		(100)
Accumulated other comprehensive loss		(13)		(70)
Total stockholders equity		54,914		91,874
Total liabilities, redeemable securities and stockholders equity	$	97,732	$	129,021

The accompanying notes are an integral part of these consolidated financial statements.

Overstock.com, Inc.

Consolidated Statements of Operations (unaudited)

(in thousands, except per share data)

	Three months ended June 30, 2003	Three months ended June 30, 2004	Six months ended June 30, 2003	Six months ended June 30, 2004
Revenue				
Direct	$ 25,402	$ 41,113	$ 50,600	$ 79,693
Fulfillment partner	3,431	46,679	7,397	90,177
Total revenue	28,833	87,792	57,997	169,870
Cost of goods sold				
Direct	23,014	36,786	46,498	71,602
Fulfillment partner	1,016	41,114	2,071	79,907
Total cost of goods sold	24,030	77,900	48,569	151,509
Gross profit	4,803	9,892	9,428	18,361
Operating expenses:				
Sales and marketing expenses	2,572	6,605	6,420	10,982
General and administrative expenses	3,367	5,567	7,912	11,818
Amortization of stock-based compensation	112	123	440	258
Total operating expenses	6,051	12,295	14,772	23,058
Operating loss	(1,248)	(2,403)	(5,344)	(4,697)
Interest income	142	127	294	225
Interest expense	(55)	(46)	(62)	(62)
Other income, net	25		35	2
Net loss	(1,136)	(2,322)	(5,077)	(4,532)
Deemed dividend related to redeemable common stock	(78)	(46)	(155)	(94)
Net loss attributable to common shares	$ (1,214)	$ (2,368)	$ (5,232)	$ (4,626)
Net loss per common share basic and diluted	$ (0.07)	$ (0.13)	$ (0.33)	$ (0.27)
Weighted average common shares outstanding basic and diluted	16,384	17,577	15,938	17,128

The accompanying notes are an integral part of these consolidated financial statements.

Overstock.com, Inc.

Consolidated Statements of Cash Flows (unaudited)

(in thousands)

	Three months ended June 30, 2003	Three months ended June 30, 2004	Six months ended June 30, 2003	Six months ended June 30, 2004
Cash flows from operating activities:				
Net loss	$ (1,136)	$ (2,322)	$ (5,077)	$ (4,532)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities				
Depreciation and amortization	535	890	1,018	1,646
Amortization of unearned stock-based compensation	125	123	492	258
Realized gain from marketable securities	(7)		(11)	
Stock options issued to consultants for services	126	289	151	569
Stock options issued to consultants for services	1		21	
Changes in operating assets and liabilities:				
Accounts receivable, net	(1,184)	4,620	(1,226)	3,604
Inventories, net	(5,045)	1,708	(5,521)	(922)
Prepaid expenses and other assets	(2,222)	(2,340)	(5,167)	(2,430)
Other long-term assets, net	43	16	(126)	(1,370)
Accounts payable	7	6,937	(6,229)	(8,841)
Accrued liabilities	(835)	443	(2,293)	595
Net cash provided by (used in) operating activities	(9,592)	10,364	(23,968)	(11,423)
Cash flows from investing activities:				
Increase in restricted cash		(1,875)		(1,875)
Investments in marketable securities	(14,807)	(9,684)	(27,016)	(12,242)
Sales of marketable securities	20,172	1,283	30,125	2,474
Expenditures for property and equipment	(1,331)	(1,199)	(1,700)	(1,599)
Net cash provided by (used in) investing activities	4,034	(11,475)	1,409	(13,242)
Cash flows from financing activities:				
Payments on capital lease obligations	4	(334)	(37)	(354)
Borrowings on line of credit		1,000		1,000
Issuance of common stock, net of issuance costs		37,857	23,968	37,857
Exercise of stock options and warrants	149	792	785	2,959
Net cash provided by financing activities	153	39,315	24,716	41,462
Effect of exchange rate changes on cash		6		5
Net increase (decrease) in cash and cash equivalents	(5,405)	38,210	2,157	16,802
Cash and cash equivalents, beginning of period	18,621	7,438	11,059	28,846
Cash and cash equivalents, end of period	$ 13,216	$ 45,648	$ 13,216	$ 45,648

Capital leases for property and equipment	$		$		$	41	$	1,835
Interest paid	$	30	$	46	$	37	$	62
Deemed dividend on redeemable common stock	$	78	$	46	$	55	$	94
Unearned stock-based compensation (forfeitures)	$	287	$	31	$	299	$	87
Lapse of rescission rights on redeemable common stock	$	1,038	$		$	1,038	$	

The accompanying notes are an integral part of these consolidated financial statements.

Overstock.com, Inc.

Notes to Unaudited Consolidated Financial Statements

(amounts in thousands, except per share data)

1. BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared by Overstock.com, Inc. (the Company) pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations and the audited annual consolidated financial statements and related notes thereto included in the Annual Report on Form 10-K for the year ended December 31, 2003. The accompanying unaudited consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of results for the interim periods presented. Preparing financial statements requires management 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 management s best knowledge of current events and actions that the Company may undertake in the future, actual results may be different from the estimates. The results of operations for the three and six months ended June 30, 2004 are not necessarily indicative of the results to be expected for any future period or the full fiscal year.

2. ADVERTISING EXPENSE

The Company recognizes advertising expenses in accordance with SOP 93-7 *Reporting on Advertising Costs*. As such, the Company expenses the costs of producing advertisements at the time production occurs or the first time the advertising takes place, and expenses 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 is generally: 1) during the period customers are acquired; or 2) based on the number of clicks generated during a given period over the term of the contract. Advertising expense included in sales and marketing expenses totaled $2,182 and $6,391 during the three months ended June 30, 2003 and 2004, respectively, and $5,691 and $10,502 during the six months ended June 30, 2003 and 2004, respectively.

3. MARKETABLE SECURITIES

The Company s marketable securities consist of funds deposited into a capital management account managed by two financial institutions. The financial institutions invested these funds at June 30, 2004, as follows:

	Cost Basis	Unrealized Gains	Unrealized Losses	Fair Value
U.S. government and government agency securities	$ 20,202	$ 11	$ (67)	$ 20,146
Corporate securities	297		(10)	287

Mortgage based securities	788		(15)	773
Total	$ 21,287	$ 11	$ (92)	$ 21,206

All marketable securities mature between 2004 and 2009 and are classified as available-for-sale securities.

4. OTHER COMPREHENSIVE LOSS

The Company follows SFAS 130, *Reporting Comprehensive Income.* This Statement establishes requirements for reporting comprehensive income and its components which includes the Company s unrealized gain on marketable securities. The Company s comprehensive loss for the three and six months ended June 30, 2003 and 2004 is as follows:

	Three months ended June 30, 2003	Three months ended June 30, 2004	Six months ended June 30, 2003	Six months ended June 30, 2004
Net loss	$ (1,136)	$ (2,322)	$ (5,077)	$ (4,532)
Realized gain on marketable securities	(7)		(11)	
Unrealized loss on marketable securities	(19)	(81)	(46)	(62)
Foreign currency translation adjustment		6		5
Comprehensive loss	$ (1,162)	$ (2,397)	$ (5,134)	$ (4,589)

5. NET LOSS PER SHARE

Basic earnings (loss) per share is computed by dividing net income (loss) attributable to common shares for the period by the weighted average number of common shares outstanding during the period. Diluted earnings (loss) per share assumes the exercise of all options and warrants which are dilutive, whether exercisable or not and is computed by dividing net income (loss) attributable to common shares for the period by the weighted average number of common and potential common shares outstanding during the period. Potential common shares, composed of incremental common shares issuable upon the exercise of stock options and warrants, are included in the calculation of diluted net loss per share to the extent such shares are dilutive. During the three and six month periods ended June 30, 2003 and 2004, the effects of outstanding stock options were antidilutive and, accordingly, have been excluded from diluted loss per share. There were 1,826 options and 924 warrants outstanding at June 30, 2004.

6. BUSINESS SEGMENTS

Segment information has been prepared in accordance with Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards (SFAS) No. 131, Disclosures about Segments of an Enterprise and Related Information. There were no inter-segment sales or transfers during the three or six-month periods ended June 30, 2003 or 2004. The Company evaluates the performance of its segments and allocates resources to them based primarily on gross profit. The table below summarizes information about reportable segments for the three and six months ended June 30, 2003 and 2004:

	Three months ended June 30,			Six months ended June 30,		
	Direct operations	Fulfillment partner operations	Consolidated	Direct operations	Fulfillment partner operations	Consolidated
2003						
Revenue	$ 25,402	$ 3,431	$ 28,833	$ 50,600	$ 7,397	$ 57,997
Cost of goods sold	23,014	1,016	24,030	46,498	2,071	48,569

Gross profit	$	2,388	$	2,415		4,803	$	4,102	$	5,326		9,428
Operating expenses						(6,051)						(14,772)
Other income (expense), net						112						267
Net loss					$	(1,136)					$	(5,077)
2004												
Revenue	$	41,113	$	46,679	$	87,792	$	79,693	$	90,177	$	169,870
Cost of goods sold		36,786		41,114		77,900		71,602		79,907		151,509
Gross profit	$	4,327	$	5,565		9,892	$	8,091	$	10,270		18,361
Operating expenses						(12,295)						(23,058)
Other income (expense), net						81						165
Net loss					$	(2,322)					$	(4,532)

The direct segment includes revenues, direct costs, and allocations associated with sales fulfilled from our warehouse, including the sales from our warehouse store that closed in January 2004. Costs for this segment include product costs, inbound freight, warehousing and fulfillment costs, credit card fees and customer service costs.

The fulfillment partner segment includes revenues, direct costs and cost allocations associated with the Company s third party fulfillment partner sales and are earned from selling the merchandise of third parties over the Company s Websites. Prior to July 1, 2003, this was reported as the commission revenue segment, as only the commission portion of the sales transactions were recorded as revenue (i.e., recorded net). The costs for the previous commission segment only included credit card fees and customer service costs. From July 1, 2003 forward, due to a change in the company s business practices (i.e., the partner sales return process), the majority of these sales transactions are now recorded gross. As a result, this segment s name has been changed to the fulfillment partner segment, and the costs for this segment include product costs, warehousing and fulfillment costs, credit card fees and customer service costs.

Assets have not been allocated between the segments for management purposes, and as such, they are not presented here.

During the three and six-month periods ended June 30, 2003 and 2004, no significant sales were made to customers outside the United States of America. At June 30, 2003 and 2004, all of the Company s fixed assets were located in the United States of America.

7. PUBLIC OFFERINGS

On June 4, 2002, the Company closed its initial public offering, pursuant to which it sold 2,155 shares of common stock, and a selling shareholder sold 845 shares of common stock in an initial public offering, with proceeds to the Company of approximately $24,880, net of $2,014 of issuance costs. As part of the offering, the Company granted the underwriter the right to purchase up to 450 additional shares within thirty days after the offering to cover any over-allotments. On June 27, 2002, the underwriter exercised its right and purchased an additional 101 shares of stock for $1,260.

In February 2003, the Company closed a follow-on public offering, pursuant to which it sold 1,725 shares of common stock, with proceeds to the Company of approximately $23,968, net of $613 of issuance costs. The number of shares issued includes 225 additional shares which the Company granted the underwriter the right to purchase to cover any over-allotments.

In May 2004, the Company closed a second follow-on public offering, pursuant to which it sold 1,300 shares of common stock, with proceeds to the Company of approximately $37,857, net of $405 of issuance costs. The number of shares issued includes 100 additional shares which the Company granted the underwriter the right to purchase to cover any over-allotments.

8. STOCK-BASED COMPENSATION

The Company measures compensation expense to employees for its equity incentive plan using the intrinsic value method prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees,* and provides pro forma disclosures of net income as if the fair value based method prescribed by Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* had been applied. The following table provides a reconciliation of net loss to pro forma net loss as if the fair value method had been applied to all awards.

	Three months ended June 30,		Six months ended June 30,	
	2003	**2004**	**2003**	**2004**
Net loss, as reported	$ (1,136)	$ (2,322)	$ (5,077)	$ (4,532)
Add: Stock-based employee compensation expense included in reported net income	125	123	513	258
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(536)	(835)	(1,342)	(1,944)
Pro forma net loss	$ (1,547)	$ (3,034)	$ (5,906)	$ (6,218)
Net loss per common share				
Basic and diluted - as reported	$ (0.07)	$ (0.13)	$ (0.33)	$ (0.27)
Basic and diluted - pro forma	$ (0.10)	$ (0.17)	$ (0.38)	$ (0.36)

9. COMMITMENTS AND CONTINGENCIES

In October 2003, Tiffany (NJ) Inc. and Tiffany and Company filed a complaint against us in the United States District Court for the Southern District of New York alleging that we have distributed counterfeit and otherwise unauthorized Tiffany product in violation of federal copyright and trademark law and related state laws. The complaint seeks statutory and other damages in an unspecified amount and injunctive relief. Although we have filed an answer and believe we have defenses to the allegations and intend to pursue them vigorously, the Tiffany lawsuit is in the early stages of discovery, and we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

In July 2004, Printmaker International, Ltd. filed a complaint against us in the United States District Court for the Southern District of New York alleging that we have distributed counterfeit and otherwise unauthorized product in violation of federal copyright and trademark law and related state laws. The complaint seeks statutory and other damages in an unspecified amount and injunctive relief. While we are still in the process of investigating the claim and have not yet filed an answer, we believe we have defenses to the allegations and intend to pursue them vigorously. At this point in time, we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

In May 2004, we filed a complaint against TLMT Holdings, Inc (f/k/a LastMinuteTravel.com, Inc.) in the Superior Court of the State of Delaware alleging that it breached its contract with us. In July 2004, TLMT Holdings filed a counterclaim against us alleging that we have breached the contract. The counterclaim seeks damages in an unspecified amount. While we are still in the process of investigating the counterclaim and have not yet filed an answer, we believe we have defenses to the allegations and intend to pursue them vigorously. At this point in time, we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

10. INDEMNIFICATIONS AND GUARANTEES

During its normal course of business, the Company has made certain indemnities, commitments, and guarantees under which it may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, and indemnities to directors and officers of the Company 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 the Company could be obligated to make. As such, the Company is unable to estimate with any reasonableness its potential exposure under these items. The Company has not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. The Company does, 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. The Company has not recorded any liabilities relating to these indemnities, commitments or guarantees. The Company carries specific and general liability insurance policies that the Company believes would, in most circumstances, provide some, if not total recourse to any claims arising from these indemnifications.

11. CREDIT FACILITY

In May 2004, the Company entered into a senior secured credit facility for a revolving line of credit of up to the lesser of (i) $20,000, (ii) 60% of eligible inventory, or (iii) 80% times the net liquidation percentage minus the sum of (i) the bank product reserve, and (ii) the aggregate amount of reserves, if any, all as defined in the agreement. The borrowings under this credit facility are collateralized by the assets of the Company and bear interest at a minimum of 3.5% using the Wells Fargo base rate as defined in the agreement, or, at the option of the Company, based on the LIBOR rate (4.37% at June 30, 2004), which may vary from time to time. At June 30, 2004, the applicable interest rate on the borrowings was prime plus 0.50%, or 4.75%. The credit facility will mature on May 6, 2006, although the Company has an option to extend it for an additional year. The facility also provides the Company the ability to issue letters of credit for 2.75% per annum of the face amount issued. Any outstanding letters of credit reduce the amount available to borrow under the facility. If a triggering event occurs (if the Company falls below $15 million in cash, marketable securities and availability on the line of credit), the Company must comply with certain financial covenants. No triggering event has occurred through June 30, 2004. As of June 30, 2004, the Company had $1,000 in borrowings and $0 in letters of credit outstanding under this credit facility.

ITEM 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

In addition to historical information, this Quarterly Report on Form 10 Q contains forward-looking statements. These statements relate to our, and in some cases our customers or other third parties , future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements. These forward-looking statements include, but are not limited to, statements regarding the following: our beliefs and expectations regarding the seasonality of our direct and fulfillment partner revenue; our beliefs regarding the sufficiency of our capital resources; planned distribution and order fulfillment capabilities; our beliefs, intentions and expectations regarding improvements of our order processing systems and capabilities; our intentions regarding the development of enhanced technologies and features; our intentions regarding the expansion of our customer service capabilities; our belief and intentions regarding improvements to our general and administrative functions; our beliefs and intentions regarding enhancements to our sales and marketing activities; our beliefs regarding the potential for growth in our customer base; our beliefs and intentions regarding our expansion into new markets and other markets, including international markets; our beliefs and intentions about entering into agreements to provide products and services to retail chains and other businesses; our belief regarding potential development of new Websites; our beliefs, intentions and expectations regarding promotion of new or complimentary product and sales formats; our belief, intentions and expectations regarding the expansion of our product and service offerings; our beliefs and intentions regarding expansion of our market presence through relationships with third parties; our beliefs regarding the pursuit of complimentary businesses and technologies; our beliefs regarding the adequacy of our insurance coverage; our beliefs, intentions and expectations regarding litigation matters and legal proceedings, our defenses to matters in which we are a defendant and our contesting of such matters; our beliefs and expectations regarding our existing cash and cash equivalents, cash requirements and sufficiency of capital; and our beliefs and expectations regarding interest rate risk, our investment activities and the effect of changes in interest rates.

These forward-looking statements are subject to risks and uncertainties that could cause actual results and events to differ materially. For a detailed discussion of these risks and uncertainties please see the Factors That May Affect Future Results section of this report. These forward-looking statements speak only as of the date that 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.

Overview

We are an online closeout retailer offering discount brand name merchandise, including bed-and-bath goods, kitchenware, watches, jewelry, electronics, sporting goods, designer accessories and travel. We also sell books, magazines, CD s, DVD s, videocassettes and video games (BMV). Our company, based in Salt Lake City, Utah, was founded in 1997, and we launched our first Website through which customers could purchase products in March 1999.

Our revenue is comprised of direct revenue and fulfillment partner revenue. During 2003, Safeway, Inc., accounted for approximately 9% of our total revenue. However, our relationship with Safeway terminated in February 2004. During the first and second quarters of 2004, no single customer accounted for more than 2% of our total revenue. Direct revenue includes sales made to individual consumers and businesses, which are fulfilled from our warehouse in Salt Lake City, Utah, and sales from our warehouse store which we closed in January 2004. We generate business-to-business (B2B) sales when retailers are contacted over the internet, by phone and/or e-mail and offer them our merchandise below wholesale prices, allowing them an opportunity to be more price-competitive in their local markets. After we establish a relationship with a B2B client, the client sometimes places subsequent orders directly through our Websites. Although we have historically operated a separate B2B Website, our historical direct revenue has predominantly been based on purchases made directly through our consumer Website. As a result, we recently integrated the B2B Website into our consumer Website.

Our fulfillment partner revenue is derived from two sources, consumer fulfillment partner revenue and B2B fulfillment partner revenue. Consumer fulfillment partner revenue is generated when we sell merchandise of other retailers, cataloguers or manufacturers (fulfillment partners) through our consumer Websites. Prior to July 1, 2003, we did not own or physically handle the merchandise we sold in these transactions, as the merchandise was shipped directly by a third party vendor, which also handled all customer returns related to those sales. Beginning July 1, 2003, we took responsibility for all returned items relating to these sales and we now handle the resale of any returned items. As a result, beginning July 1, 2003, we are considered to be the primary obligor for the majority of these sales transactions, and we assume the risk of loss on the returned items. As a consequence, we now record revenue from the majority of these sales transactions involving our fulfillment partners (excluding travel products) on a gross basis, rather than recording a commission on sales as we did prior to July 1, 2003. Similar to the manner in which we generate consumer fulfillment partner revenue, we generate B2B fulfillment partner revenue when we sell the merchandise of third parties through our B2B Website or otherwise to business purchasers. Our use of the term partner or fulfillment partner does not mean that we have formed any legal partnerships with any of our fulfillment partners.

During the fourth quarter of 2003, we added a discount travel store to our Website. We used fulfillment partners to supply the travel products and services (flights, hotels, rental cars, etc.). For the products and services sold in our travel store, we did not have inventory risk or pricing control, and did not provide customer service. Therefore, for these sales we were not considered to be the primary obligor, and recorded only our commission as revenue. For the first and second quarters of 2004, our revenues from the Travel department were insignificant. During May of 2004, our travel store was closed so we could work to make improvements to the travel product offerings. We anticipate that the travel store will be reactivated within the next six months.

Our revenue is recorded net of returns, coupons and other discounts. Our returns policy for all products other than those sold in our Electronics and Computers department provides for a $4.95 restocking fee and the provision that we will not accept product returns initiated more than fifteen days after the shipment date. We charge a 15% restocking fee (instead of the $4.95 restocking fee) on all returned items from the Electronics and Computers department.

Cost of goods sold consists of the cost of the product, as well as inbound and outbound freight, fixed warehouse costs, warehouse handling costs, credit card fees, and customer service costs. Within the consumer channel, BMV product margins are typically less than margins on products in our other categories. In addition, B2B gross margins are typically less than individual consumer gross margins. Therefore, future overall gross margins will be impacted by the blend of net revenues from the consumer and B2B sales channels and by the percentage of BMV sales in those channels.

Sales and marketing expenses consist primarily of advertising, public relations and promotional expenditures, as well as payroll and related expenses for personnel engaged in marketing and selling activities. Advertising expense is the largest component of our sales and marketing expenses and is primarily attributable to expenditures related to online marketing activities and our offline national radio and television branding campaign launched during the third quarter of 2003. Our advertising expenses totaled approximately $6.4 million and $2.2 million for the three months ended June 30, 2004 and 2003, respectively, which represent 97% and 85% of sales and marketing expenses for the respective periods. For the six months ended June 30, 2004 and 2003, our advertising expenses totaled $10.5 million and $5.7 million, which represent 96% and 89%, respectively, of our sales and marketing expenses. We expect our sales and marketing expenses to increase in future periods on an absolute dollar basis as we expect to continue to increase our advertising efforts.

General and administrative expenses consist of wages and benefits for executive, accounting, technology, merchandising and administrative personnel, rents and utilities, travel and entertainment, depreciation and amortization and other general corporate expenses.

Goodwill, which resulted from the acquisition of Gear.com, Inc. in November 2000, is not amortized, but is evaluated at least annually for impairment. There were no impairments of goodwill during the six months ended June 30, 2003 and 2004.

We have recorded no provision or benefit for federal and state income taxes as we have incurred net operating losses since inception. We have provided a full valuation allowance on the net deferred tax assets, consisting primarily of net operating loss carryforwards, because of uncertainty regarding their realizability.

Both direct and fulfillment partner revenues are seasonal, with revenues historically being the highest in the fourth quarter, reflecting higher consumer holiday spending. We anticipate this will continue in the foreseeable future.

Executive Commentary

The following 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 Operation, as well as our audited financial statements included in our Annual Report filed with our Form 10-K for the year ended December 31, 2003, our Form 10-Q for the quarter ended March 31, 2004, and our unaudited financial statements included in this Form 10-Q, and the discussion of our business and risk factors and other information included elsewhere in this Form 10-Q. This executive commentary includes forward-looking statements, and investors are cautioned to read the Special Note Regarding Forward-Looking Statements included in this Form 10-Q.

Commentary Increases in Gross Bookings. Management believes that to understand our business and our financial statements, investors should understand the difference between total revenue and gross bookings. Gross bookings represents the gross selling price of all transactions, including those for which we only record a commission, before returns, sales discounts, and before payments to fulfillment partners prior to July 1, 2003, and therefore differs from total revenue. The Company sustained year-over-year growth in gross bookings, which grew 88% from $51.3 million to $96.6 million during the second quarter of 2004, and for the first six months of the year, gross bookings grew 83% from $103.6 in 2003 to $190.0 million in 2004. This was due to the continued growth of our new customer base (413,000 new customers were added during the second quarter of 2004) from our continued online and offline marketing efforts. We consider the growth in gross bookings especially noteworthy, because we ended our B2B program with Safeway in February 2004. The Safeway program had represented 12% of gross bookings for the first two quarters of 2003, and less than 1% of gross bookings in the first six months of 2004. In particular, gross bookings for the consumer business (through both direct and fulfillment partner channels) is up 109% year-over-year through June 30.

Commentary Expense Control. For the first six months of 2004, our sales and marketing expenses have increased 71% from $6.4 million in 2003 to $11.0 million in 2004. However, as a percentage of gross bookings, sales and marketing expenses decreased from 6.2% in the first six months of 2003 to 5.8% in 2004. G&A also increased 49%, from $7.9 million in 2003 to $11.8 million in 2004, but as a percentage of gross bookings, G&A decreased from 7.6% to 6.2%, for the respective periods. We are continuing to work on specific ways to reduce our logistics expenses, and we have made some progress in the first half of 2004. Our gross margins have increased from 9.6% in the fourth quarter of

2003 to 11.3% in the second quarter of 2004, and 10.8% year-to-date.

Commentary Capital. We ended the quarter with $66.9 million in cash and marketable securities. We did several things during the quarter to improve our capital position. During the second quarter, we completed a successful follow-up offering, bringing in an additional $37.9 million of capital. We also concluded our relationship with Safeway and collected approximately $5 million of our remaining receivable from them during the quarter, and generated a positive $10.4 million in operating cash flow. In addition, to provide further liquidity and the ability to more comfortably increase our inventory prior to the 2004 holiday season, we entered into a $20 million secured credit facility during the second quarter, which we plan to utilize during the fourth quarter of 2004.

Commentary - Infrastructure

Management believes that investors should understand that for our business to continue its growth, a variety of different aspects of our business must increase their capacities at a reasonably uniform rate. In addition to buying and marketing, other departments, such as systems and operations, must expand to support our growth. Following are comments on selected aspects of our infrastructure expansion.

Commentary - Finance and Accounting. We have increased our accounting staff, and their work has provided the foundation for many improvements. Our accounting staff prepares, and our executive team reviews, scorecards for every major sector of the business on a weekly basis. We focus on a short list of detailed cost and performance metrics. Management considers these weekly reviews to be of tremendous value.

Commentary Technology. We have assembled a team of experienced database administrators (DBA s), and our network has become more stable. We have developed a system of prioritizing and tracking code development, and have made significant improvements in our software development.

Commentary Logistics. Our warehouse operations have improved significantly. Handling, inbound, and outbound freight costs have all improved. Our pickers have become about 75% more productive than last year. We have developed a system for training, testing, and certifying warehouse workers for multiple positions. We have also made some slight progress in the net cost of returns; although we plan to do better. Our customer service costs are in line with our plan, even while we provide high-touch customer service, including live phone customer service 24/7. In the last few weeks we launched inbound live chat, individual benchmarking of customer service representatives (CSR s), and automated self-help and outbound live chat, all in an attempt to improve our customers experience while keeping a tight rein on costs. Management believes that there may be over 100 basis points of margin improvements to be found in tightening our supply chain, although there can be no assurance that we will achieve that result.

Commentary - Capacity Warehouse. In the fourth quarter of 2003, our warehouse strained to handle the demand for our products, and we had to transfer resources from other areas of the company to keep up with the orders. This year we focused on expanding capacity at the warehouse. Rather than spend to acquire significant

additional technology, we believe that we have increased capacity with better organization of our employees, who were formed into squads with team leaders, captains responsible for several teams, and managers responsible for several captains. We also implemented extensive process-mapping and training programs. We believe that these changes will allow our warehouse to handle a $250 million revenue quarter, and we are supplementing this capacity by opening a third-party logistics warehouse. With the addition of some relatively inexpensive (a few hundred thousand dollars) equipment, we believe that that the warehouse could handle a $400 million revenue quarter. To increase beyond that capacity level, however, would likely require a multi-million dollar investment in warehouse redesign and new equipment.

<u>Commentary - Capacity - Customer Service</u>. **We are working to maintain and improve the quality of our customer service as our business grows. We have outsourced a portion of our customer service function, and our close relationship with the outsourcing company seems to be working well, as is demonstrated by our recent American Customer Service Index (ACSI) score of 81. However, we are working to further improve the quality of our customer service. Among other things,**

we are taking steps to measure our customer service quality continuously and precisely while we increase our capacity.

__Commentary - Capacity - Information Technology__. **By mid-August, we will be moving our computers to a co-location facility with the infrastructure (telecommunications, power, air conditioning, security) to support future growth.**

A few quarters ago we issued a press release concerning our switch to an Oracle cluster solution. The Oracle cluster has performed well for us, and has given us relatively inexpensive, scaleable computing power. The next step for us is to replace our legacy storage infrastructure. To do so we are making a major capital expenditure in the form of a Storage Area Network, or SAN , that will become the backbone of the entire company. After exhaustive testing we chose EMC, and we expect to be live in the new co-lo facility on the SAN by mid-August.

Commentary - Sourcing, Marketing. **Sourcing is going well. Firms and brands that would not talk with us a year ago now sell to us. We believe that this is partially a result of our scale, and the demonstrated value of our business model, and also partially attributable to the reputation of professionalism and honesty that our buyers have developed.**

Our marketing team also is doing well. The team is analytical, non-dogmatic, and agile. We utilize portal relationships as well as our affiliate program, and we believe that each produces good results. We recently entered into a new relationship with MSN, based on our satisfaction with our prior relationship.

Commentary Strategic Projects. Following is a brief update on some of our recent strategic projects:

Club O In March 2004, we launched our frequent buyer s club, Club O. Members of Club O pay an annual fee of $29.99 and receive a 5% discount on all non-travel and non-BMV products and $1 shipping per order, along with access to a special customer service hotline. By the end of the second quarter of 2004, we had more than ten thousand members of Club O.

Overstock.com Daily Deals Over a year ago, we began investigating a push-based mCommerce application to deliver special offers to subscribers. On March 24, 2004, Verizon Wireless went live with our Overstock.com Daily Deals (ODD) application. The results to date have been disappointing. In brief, ODD is a system whereby owners of third-generation (3G) phones can opt to receive (for a small monthly fee) daily broadcasts of special offers from us. Although the current version of ODD requires consumers to call us to place their orders, we anticipate that a future generation of ODD will enable the user to place product orders simply by entering a personal identification number in response to the offer. However, we are unable to predict when that system may become available, or to give any assurance that it will actually become available.

Club O Gold Our B2B operations have stalled at about $20.0 million annualized for the last 18 months. In an effort to grow the B2B business, in the third quarter of 2004 we merged our B2B site (www.overstockb2b.com) into our B2C site, and opened a Club O Gold membership program (into which our current B2B customers will be grandfathered). The terms of this program include a higher annual fee ($99.95), Club O pricing (that is, our B2C price less 5%) on single product purchases, steeper discounts for products purchased in bulk, and access to a special, small business-focused, customer service team. In addition, we have formed an alliance with a company that will assist us in promoting this program, and we will be announcing this relationship during the third quarter in conjunction with the launch of the Club O membership program.

Search Engine We have recently completed the installation of Endecca, our new search engine described in a previous announcement. The preliminary results have been satisfactory, but we believe there is a large amount of fine-tuning to complete.

Trademark We discontinued our use of Overstock.com The Big O on July 1, 2004. For the very first part of Q3, there will be little TV expense. We have developed three new commercials, but continue to evaluate our commitment to TV advertising..

Critical Accounting Policies and Estimates

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. Our critical accounting policies are as follows:

revenue recognition;

estimating valuation allowances and accrued liabilities, specifically, the reserve for returns, the allowance for doubtful accounts and the allowance for obsolete and damaged inventory;

accounting for income taxes; and

valuation of long-lived and intangible assets and goodwill.

Revenue recognition. We derive our revenue from two sources: (i) direct revenue, which consists of merchandise sales made to consumers and businesses that are fulfilled from our warehouse; and (ii) fulfillment partner revenue, which consists of revenue from the sale of merchandise shipped by fulfillment partners directly to consumers and other businesses. Both direct revenue and fulfillment partner revenue are recorded net of returns, coupons redeemed by customers, and other discounts.

Prior to July 1, 2003, we did not own or physically handle the merchandise sold in fulfillment partner transactions, as the merchandise was shipped directly by a third party vendor, who also handled all customer returns related to those sales. However, beginning July 1, 2003, we took responsibility for all returned items relating to these sales, and we now handle the resale of any returned items. As a result, beginning July 1, 2003, we are considered to be the primary obligor for the majority of these sales transactions, and we assume the risk of loss on the returned items. We now record revenue from the majority of these sales transactions involving our fulfillment partners on a gross basis, rather than recording a commission on sales as we did prior to July 1, 2003. Similar to the manner in which we generate consumer fulfillment partner revenue, we generate B2B fulfillment partner revenue when we sell the merchandise of third parties through our B2B Website.

For sales transactions, we comply with the provisions of Staff Accounting Bulletin 104 Revenue Recognition , which states that revenue should be recognized when the following revenue recognition criteria are met: (1) persuasive evidence of an arrangement exists; (2) the product has been shipped or the service provided and the customer takes ownership and assumes the risk of loss; (3) the selling price is fixed or determinable; and (4) collection of the resulting receivable is reasonably assured. We generally require payment by credit card at the point of sale. Any amounts received prior to when we ship the goods or provide the services to customers are deferred.

Reserve for returns, allowance for doubtful accounts and the allowance for obsolete and damaged inventory. Our management must make estimates of potential future product returns related to current period revenue. Management analyzes historical returns, current economic trends and changes in customer demand and acceptance of our products when evaluating the adequacy of the sales returns reserve and other allowances in any accounting period. The reserve for returns was $1.1 million as of June 30, 2004 and December 31, 2003.

From time to time, we may grant credit to certain of our business customers on normal credit terms. We perform ongoing credit evaluations of our customers   financial condition and maintain an allowance for doubtful accounts receivable based upon our historical collection experience and expected collectibility of all accounts receivable. We maintained an allowance for doubtful accounts receivable of $818,000 as of June 30, 2004 and $650,000 as of December 31, 2003.

Overstock writes down its inventory for estimated obsolescence or damage equal to the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Our inventory balance was $30.8 million, net of reserve for obsolescence or damaged inventory of $1.8 million as of June 30, 2004. At December 31, 2003, our inventory balance was $29.9 million, net of reserve for obsolescence or damaged inventory of $1.1 million.

Accounting for income taxes. Significant management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our net deferred tax assets. As of June 30, 2004 and December 31, 2003, we have recorded a full valuation allowance of $27.0 million and $25.7 million, respectively, against our net deferred tax asset balance due to uncertainties related to our deferred tax assets as a result of our history of operating losses. The valuation allowance is based on our estimates of taxable income by jurisdiction in which we operate and the period over which our deferred tax assets will be recoverable. In the event that actual results differ from these estimates or we adjust these estimates in future periods, we may need to change the valuation allowance, which could materially impact our financial position and results of operations.

Valuation of long-lived and intangible assets and goodwill. Under SFAS 142, Goodwill and Other Intangible Assets, goodwill is no longer amortized, but must be tested for impairment at least annually. Other long-lived assets must also be evaluated for impairment when management believes that an asset has experienced a decline in value that is other than temporary. Future adverse changes in market conditions or poor operating results of underlying investments could result in losses or an inability to recover the carrying value of the asset that may not be reflected in an asset s current carrying value, thereby possibly requiring an impairment charge in the future. There were no impairments of goodwill or long-lived assets during 2003 or 2004. Net intangible assets and goodwill amounted to $3.0 million as of June 30, 2004 and December 31, 2003.

Results of Operations 2004 compared to 2003

Revenue

Beginning July 1, 2003, customer returns from sales shipped by our fulfillment partners are returned directly to us and processed through our Salt Lake City warehouse, rather than returned to our fulfillment partners, as they previously were. We made the decision to change this policy to have more control over the Overstock customer shopping experience, as we believe that a seamless customer experience is key to creating loyal, long-term customers. By accepting returns at our warehouse, we can verify that fulfillment partner products are being packaged and shipped to our standards. Additionally, as customer returns are now all shipped to one location, the process is simpler and more convenient for our customers.

As a result of this change in business practices, we now record the majority of these sales transactions shipped by our fulfillment partners on a gross basis instead of a net basis as we have historically done. Therefore, from the third quarter 2003 forward, revenue recorded in accordance with accounting principles generally accepted in the United States (GAAP) will increase significantly from our results as reported in previous SEC filings. As a result, for each quarter beginning in the third quarter of 2003 through the second quarter 2004, we believe that for year-over-year comparison purposes, gross bookings comparisons may be more informative than revenue comparisons, as the gross bookings were not affected by the change in business practices. Gross bookings represents the gross selling price of all transactions before returns, sales discounts, and before payments to fulfillment partners prior to July 1, 2003. Additionally, direct revenue, as a percentage of total revenue will decrease significantly while fulfillment partner revenue, as a percentage of total revenue, will increase significantly.

Total revenue was $87.8 million for the three-month period ended June 30, 2004, a 204% increase from the $28.8 million recorded in the same period in 2003. During that same period, direct revenue increased to $41.1 million from $25.4 million, representing growth of 62%. Fulfillment partner revenue also increased 1,261% to $46.7 million for the second quarter of 2004 compared to $3.4 million recorded in 2003. For the six-month period ended June 30, 2004, total revenue grew 193% to $169.9 million from $58.0 million recorded in the same period in 2003. Also during that six-month period, direct revenue grew

57% to $79.7 million in 2004 from $50.6 million in 2003 and fulfillment revenue grew 1,119% to $90.2 million from $7.4 million recorded in 2003. The significant increase in total revenue was primarily due to the change in our business practices described above which began July 1, 2003. Additionally, we saw continued growth in both direct and fulfillment partner orders as our customer base continues to expand from increased marketing efforts, including nationwide television and radio advertising campaigns. Furthermore, our sales mix in 2004 differed from the sales mix we had during 2003. The direct consumer business, which has higher margins than the direct B2B (including Safeway) business, increased in 2004 as a percent of total direct revenue.

Gross bookings totaled $96.6 million and $51.3 million for the three-month periods ended June 30, 2004 and 2003, respectively, representing growth of 88%. For the six-month periods ended June 30, 2004 and 2003, gross bookings totaled $190.0 million and $103.6 million, respectively, representing an increase of 83%. The 83% growth in gross bookings year-over-year is a better indicator of the true top-line growth of our business than the growth in total revenue, due to the change in business practices previously described.

In 2002, we entered into an agreement with Safeway Inc. to provide discounted merchandise to be sold within their stores. For the six months ended June 30, 2003, Safeway accounted for approximately $12.0 million, or approximately 21%, of our total revenues, compared to less than 1% of our total revenues for the same period in 2004. The term of our agreement with Safeway ended on February 26, 2004. In comparison with the first six months of 2003, we experienced significant growth (109%) in our direct and fulfillment partner consumer operations during the first six months of 2004, given that we no longer have the revenues from our Safeway program. In the future, we hope to develop relationships with other large retailers. However, there can be no assurance that we will be able to do so on terms we consider attractive.

Cost of goods sold

As a result of the fulfillment partner returns policy change that we implemented July 1, 2003, we now record sales transactions shipped by our fulfillment partners on a gross basis instead of on a net basis. Therefore, revenue increased significantly beginning in the third quarter of 2003, which results in a significant decrease in gross margin percentages from previous quarters. Fulfillment partner margins will now more closely resemble margins we receive from our direct revenue. As a result, for each quarter beginning in the third quarter of 2003 through the second quarter of 2004, we believe that for year-over-year comparison purposes, gross profit dollar comparisons may be more informative than gross margin percentage comparisons.

Cost of goods sold for the second quarter of 2004 was $77.9 million, or 89% of total revenue, compared to the $24.0 million, or 83% of total revenue recorded in 2003. This correlates to gross margins of 11% and 17% for those respective periods. For the six months ended June 30, 2004 and 2003, cost of goods sold totaled $151.5 million and $48.6 million, representing margins of 11% and 16%, respectively.

Gross profits for our direct operations increased to $4.3 million for the three months ended June 30, 2004 from $2.4 million recorded in the same period in 2003 (81% growth), which represent gross margins of 11% and 9%, respectively. For the six-month periods ended June 30, 2004 and 2003, gross profit dollars totaled $8.1 million and $4.1 million (97% growth), representing gross margins of 10% and 8%, respectively. The increase in gross margins for the first six months of 2004 over the same period in 2003 is due primarily to reductions in product and logistics costs. In particular, we have reduced warehouse handling costs as a result of better management and process changes at the warehouse, lowered customer service costs by outsourcing our customer service operations, and lowered freight costs as a result of our increased shipping volumes. The increase is also due to a change in sales mix in the first six months of 2004 compared to the same quarter period in 2003. The direct consumer business, which has higher margins than the B2B (including Safeway) business, increased as a percent of total direct revenue, from 63% in 2003 to 77% in 2004.

Cost of goods sold on sales transactions from our fulfillment partners now includes the cost of the product, warehousing and fulfillment costs, credit card fees and customer service costs. Therefore, beginning in the third quarter of 2003, overall blended gross margins will be significantly lower than they were previously.

Gross profits from our fulfillment partner operations increased 130% to $5.6 million in the second quarter of 2004 from $2.4 million recorded in 2003. For the six months ended June 30, 2004, gross profits from our fulfillment partner operations increased 93% to $10.3 million from $5.3 million recorded during same period in 2003. For our fulfillment partner operations, the increase in gross profit dollars from the previous year quarter is largely due to the increased fulfillment partner revenue over the previous year, offset by an increase in the lower margin BMV business (the majority of which is sold through fulfillment partners) over the previous year.

Operating expenses

Sales and marketing. Sales and marketing expenses totaled $6.6 million and $2.6 million for the three months ended June 30, 2004 and 2003, respectively, which represent 7% and 5% of gross bookings (8% and 9% of total revenue). For the six months ended June 30, 2004 and 2003, sales and marketing expenses totaled $11.0 and $6.4 million, respectively, which each represent 6% of gross bookings (6% and 11% of total revenue). The increased marketing expense reflects sustained online advertising efforts, particularly with the large portals (MSN, Yahoo & AOL), and with our affiliate marketing program. In addition, the national radio and television campaigns we initiated in the fourth quarter of 2003 continued through the first six months of 2004, although on a smaller scale. We expect total marketing expenses to continue to increase in the future as a result of the expenses related to online marketing agreements that we have entered into and similar online or offline radio, television, or other similar agreements that we may enter into in the future.

General and administrative. General and administrative expenses were $5.6 million and $3.4 million for the three months ended June 30, 2004 and 2003, respectively, which represent 6% and 7% of gross bookings (6% and 12% of total revenue). For the six months ended June 30, 2004 and 2003, general and administrative expenses totaled $11.8 and $7.9 million, respectively, which represent 6% and 8% of gross bookings (7% and 14% of total revenue). The increase in general and administrative costs for each comparative period is primarily attributable to costs associated with building infrastructure, including expansion of corporate systems and additional personnel costs from increased corporate headcount. In addition, we incurred increased compensation charges for options granted to consultants, and development costs related to strategic projects.

Amortization of stock-based compensation. Prior to the Company s initial public offering in May 2002, the Company recorded unearned stock-based compensation related to stock options granted below the fair market value of the underlying stock. Since the initial public offering in June 2002, the Company has not granted any additional stock options below fair market value. Amortization of stock-based compensation was approximately $123,000 and $112,000 for the three months ended June 30, 2004 and 2003, respectively, and $258,000 and $440,000 for the six-month periods ended June 30, 2004 and 2003, respectively.

Non-operating income (expense)

Interest income was $127,000 during the quarter ended June 30, 2004 versus $142,000 during the same quarter in 2003. For the six months ended June 30, 2004 and 2003, interest income totaled $225,000 and $294,000, respectively. The decrease in interest income in the current year quarter is due to the larger average cash balance we had during the previous year quarters. Interest expense was $46,000 and $55,000 for the quarters ended June 30, 2004 and 2003, respectively, which represents interest expense on short term borrowings (in 2004) and capital leases. For the six months ended June 30, 2004 and 2003, interest expense totaled $62,000. Other income (expense), net resulted in the recognition of $0 and $25,000 in income for the quarters ended June 30, 2004 and 2003, respectively, and $2,000 and $35,000 for the six months ended June 30, 2004 and 2003, respectively.

Income taxes

We incurred net operating losses during the quarters ended June 30, 2004 and 2003, and consequently paid insignificant amounts of federal, state and foreign income taxes. As of June 30, 2004, we had $72.8 million of net operating loss carryforwards, of which $21.9 million is subject to limitation. These net operating loss carryforwards will begin to expire in 2019.

Effect of Recent Accounting Pronouncements

In November 2003, the Emerging Issues Task Force (EITF) reached a consensus on disclosure guidance discussed under EITF 03-01, The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments. The consensus provides for certain disclosure requirements that were effective for fiscal years ending after December 15, 2003. In March 2004, the EITF reached a consensus on recognition and measurement guidance discussed under EITF 03-01. The consensus clarifies the meaning of other-than-temporary impairment and its application to investments classified as either available-for-sale or held-to-maturity under FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities, and investments accounted for under the cost method or the equity method. The recognition and measurement guidance is to be applied to other-than-temporary impairment evaluations in reporting periods beginning after June 15, 2004. The Company does not expect the adoption of this pronouncement to have a material impact on the Company s business, financial position, cash flows or result of operations

Seasonality

Financial results for Internet retailers are generally seasonal. Based upon the Company s historical experience, increased revenues typically occur during the fourth quarter because of the Christmas retail season. The actual quarterly results for each quarter could differ materially depending upon consumer preferences, availability of product and competition, among other risks and uncertainties. Accordingly, there can be no assurances that seasonal variations will not materially affect the Company s results of operations in the future. The following table reflects the Company s revenues for each of the quarters available since 2001 (in thousands):

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2004	$ 82,078	$ 87,792	NA	NA
2003	29,164	$ 28,833	$ 57,788*	$ 123,160
2002	12,067	14,380	23,808	41,529
2001	9,578	7,407	8,744	14,274

* Note that the revenue since the third quarter of 2003 reflect the change in the Company s returns policy, as a result of which sales by fulfillment partners are now recorded gross instead of net as in prior quarters.

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 the Company s financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Liquidity and Capital Resources

Prior to the second quarter of 2002, we financed our activities primarily through a series of private sales of equity securities, warrants to purchase our common stock and promissory notes. During the second quarter of 2002, we completed our initial public offering pursuant to which we received approximately $26.1 million in cash, net of underwriting discounts, commissions, and other related expenses. We completed follow-on offerings in February 2003 and May 2004 pursuant to which we received approximately $24.0 million and $37.9 million, respectively, in cash, net of underwriting discounts, commissions, and other related expenses. Our cash and cash equivalents balance was $45.6 million at June 30, 2004. We also had marketable securities of $21.2 million at June 30, 2004.

Our operating activities resulted in net cash outflows of $11.4 million and $24.0 million for the six months ended June 30, 2004 and 2003, respectively. The primary use of cash and cash equivalents during the six months ended June 30, 2004 was to fund our normal operations, including net losses of $4.5 million, and changes in accounts payable ($8.8 million), prepaid expenses and other assets ($2.4 million), and other long-term assets ($1.4 million). Operating cash outflows was offset by a decrease in our receivables of $3.6 million.

Cash used in investing activities for the six months ended June 30, 2004 included $12.2 million of investments in marketable securities offset by $2.5 million in sales of marketable securities. Capital expenditures for property and equipment amounted to $1.6 million and restricted cash increased $1.9 million.

Net cash provided by financing activities during the six months ended June 30, 2004 was $41.5 million, which includes proceeds of $37.9 from our second follow-on offering that closed in May 2004 and $3.0 million received from the exercise of stock options and warrants. During the second quarter of 2004, we also drew down $1.0 million on the new $20.0 million credit facility.

Contractual Obligations and Commitments. The following table summarizes our contractual obligations as of June 30, 2004 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods:

	Payments Due by Period (in thousands)				
Contractual Obligations	**Total**	**Less than 1 Year**	**1-3 Years**	**4-5 Years**	**After 5 years**
Short-term borrowing arrangements	$ 1,000	$ 1,000	$	$	$
Capital lease obligations	1,642	698	944		
Operating leases	12,696	1,754	5,143	5,799	

Purchase obligations		22,915		22,915					
Total contractual cash obligations	$	38,253	$	26,367	$	6,087	$	5,799	$

Other Commercial Commitments	Total Amounts Committed	Amounts of Commitment Expiration Per Period (in thousands) Less than 1 Year	1-3 Years	4-5 Years	Over 5 years
Letters of credit	$ 4,301	$ 4,301	$	$	$
Redeemable common stock	3,072		3,072		
Total commercial commitments	$ 7,373	$ 4,301	$ 3,072	$	$

The amount of purchase obligations shown is based on assumptions regarding the legal enforceability against us of purchase orders we had outstanding at June 30, 2004. Under different assumptions regarding our rights to cancel our purchase orders or different assumptions regarding the enforceability of the purchase orders under applicable law, the amount of purchase obligations shown in the table above would be less.

The estimated amount of redeemable common stock is based solely on the statute of limitations of the various states in which stockholders may have rescission rights and may not reflect the actual results. We do not have any unconditional purchase obligations, other long-term obligations, guarantees, standby repurchase obligations or other commercial commitments.

We have a $10.0 million revolving letter of credit facility, which expires June 30, 2005, which we use to obtain letters of credit supporting our inventory purchases. At June 30, 2004 the issuing bank or an affiliate of the bank had letters of credit totaling $4.3 million outstanding under this facility. However, we have no liability for this amount except to the extent, if any, that a beneficiary of any of the outstanding letters of credit draws upon a letter of credit. In evaluating our contractual obligations and commitments, investors should understand that the amount shown above under letters of credit is duplicative of a portion of the amount shown above under purchase obligations, because we have no actual liability in connection with the letter of credit facility (other than for commitment fees and similar items) except to the extent that we fail to pay a similar amount included above in purchase obligations.

In May 2004, we entered into a senior secured credit facility for a revolving line of credit of up to the lesser of (i) $20.0 million, (ii) 60% of eligible inventory, or (iii) 80% times the net liquidation percentage minus the sum of (i) the Bank Product Reserve, and (ii) the aggregate amount of reserves, if any, all as defined in the agreement. The borrowings under this credit facility are collateralized by the assets of the Company and bear interest at a minimum of 3.5%, as defined in the agreement, or at the option of the Company, based on the LIBOR rate (4.37% at June 30, 2004), which may vary from time to time. At June 30, 2004, the applicable interest rate on the borrowings was prime plus 0.5%, or 4.75%. The credit facility will mature on May 6, 2006, although the Company has an option to extend it for an additional year. The facility also provides us the ability to issue letters of credit at a cost of 2.75% per annum of the face amount issued. Any outstanding letters of credit reduce the amount available to borrow under the facility. If a triggering event occurs (if the Company falls below $15 million in cash, marketable securities and availability on the line of credit), the Company must comply with certain financial covenants. No triggering event has occurred through June 30, 2004. As of June 30, 2004, we had $1.0 million in short term borrowings and $0 in letters of credit outstanding under this credit facility.

We believe that the cash and marketable securities currently on hand, the credit facilities and expected cash flows from operations will be sufficient to continue operations for at least the next twelve months. While we anticipate that, beyond the next twelve months, our expected cash flows from operations will be sufficient to fund our operational requirements, we may require additional financing. However, there can be no assurance that if additional financing is necessary it will be available, or, if available, that such financing can be obtained on satisfactory terms. Failure to generate sufficient revenues, generate profitability or raise additional capital could have a material adverse effect on our ability to continue as a going concern and to achieve our intended business objectives. Any projections of future cash needs and cash flows are subject to substantial uncertainty. See Factors that May Affect Future Results.

Factors that May Affect Future Results

Any investment in our common stock involves a high degree of risk. Investors should consider carefully the risks and uncertainties described below, and all other information in this Form 10-Q and in our other filings with the SEC including those we file after we file this Form 10-Q, before deciding whether to purchase or hold our common stock. 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 following risks could harm our business. The trading price of our common stock could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

Risks Relating to Overstock

Because we have a limited operating history, it is difficult to evaluate our business and future operating results.

We were originally organized in May 1997 and began posting a list of our merchandise on our Website in August 1998. In March 1999, we launched the first version of our Website through which customers could purchase products. Our limited operating history makes it difficult to evaluate our business and future operating results.

We have a history of significant losses. If we do not achieve profitability, our financial condition and our stock price could suffer.

We have a history of losses and we may continue to incur operating and net losses for the foreseeable future. We incurred net losses attributable to common shares of $5.2 million and $4.6 million for the six months ended June 30, 2003 and 2004, respectively. As of December 31, 2003, and June 30, 2004, our accumulated deficit was $67.8 million and $72.4 million, respectively. We will need to generate significant revenues to achieve profitability, and we may not be able to do so. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis in the future. If our revenues grow more slowly than we anticipate, or if our operating expenses exceed our expectations, our financial results would be severely harmed.

We will continue to incur significant operating expenses and capital expenditures as we:

enhance our distribution and order fulfillment capabilities;

further improve our order processing systems and capabilities;

develop enhanced technologies and features;

expand our customer service capabilities to better serve our customers   needs;

expand our product offerings;

rent additional warehouse and office space;

increase our general and administrative functions to support our operations; and

increase our sales, branding and marketing activities, including maintaining existing or entering into new online and off-line marketing arrangements including our national television and radio branding campaign.

Because we will incur many of these expenses before we receive any revenues from our efforts, our losses may be greater than the losses we would incur if we developed our business more slowly. Further, we base our expenses in large part on our operating plans and future revenue projections. Many of our expenses are fixed in the short term, and we may not be able to quickly reduce spending if our revenues are lower than we project. Therefore, any significant shortfall in revenues would likely harm our business, operating results and financial condition. In addition, we may find that these efforts are more expensive than we currently anticipate, which would further increase our losses. Also, the timing of these expenses may contribute to fluctuations in our quarterly operating results.

Our quarterly operating results are volatile and may adversely affect our stock price.

Our future revenues and operating results are likely to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control, and any of which could harm our business. As a result, we believe that quarterly comparisons of our operating results are not necessarily meaningful and that you should not rely on the results of one quarter as an indication of our future performance. In addition to the other risk factors described in this report, additional factors that have caused and/or could cause our quarterly operating results to fluctuate include:

increases in the cost of advertising;

our inability to retain existing customers or encourage repeat purchases;

difficulties developing our B2B operations;

the extent to which our existing and future marketing agreements are successful;

price competition that results in lower profit margins or losses;

the amount and timing of operating costs and capital expenditures relating to the expansion of our business operations and infrastructure;

the amount and timing of our purchases of inventory;

our inability to manage distribution operations or provide adequate levels of customer service;

our ability to successfully integrate operations and technologies from acquisitions or other business combinations;

entering into new lines of products; and

our inability to replace the loss of significant customers.

If we fail to accurately forecast our expenses and revenues, our business, operating results and financial condition may suffer and the price of our stock may decline.

Our limited operating history and the rapidly evolving nature of our industry make forecasting quarterly operating results difficult. We may not be able to quickly reduce spending if our revenues are lower than we project. Therefore, any significant shortfall in revenues would likely harm our business, operating results and financial condition and cause our results of operation to fall below the expectations of public market analysts and investors. If this occurs, the price of our common stock may decline.

We have grown quickly and if we fail to manage our growth, our business will suffer.

We have rapidly and significantly expanded our operations, and anticipate that further significant expansion will be required to address potential growth in our customer base and market opportunities. This expansion has placed, and is expected to continue to place, a significant strain on our management, operational and financial resources. Some of our officers have no prior senior management experience at public companies. Our new employees include a number of key managerial, technical and operations personnel who have not yet been fully integrated into our operations, and we expect to add additional key personnel in the future. To manage the expected growth of our operations and personnel, we will be required to improve existing and implement new transaction-processing, operational and financial systems, procedures and controls, and to expand, train and manage our already growing employee base. If we are unable to manage growth effectively, our business, prospects, financial condition and results of operations will be harmed.

In order to obtain future revenue growth and achieve and sustain profitability we will have to attract customers on cost-effective terms.

Our success depends on our ability to attract customers on cost-effective terms. We have relationships with online services, search engines, directories and other Websites and e-commerce businesses to provide content, advertising banners and other links that direct customers to our Websites. We rely on these relationships as significant sources of traffic to our Websites and to generate new customers. If we are unable to develop or maintain these relationships on acceptable terms, our ability to attract new customers and our financial condition could be harmed. In addition, certain of our online marketing agreements may require us to pay upfront fees and make other payments prior to the realization of the sales, if any, associated with those payments. Accordingly, if these agreements or similar agreements that we may enter into in the future fail to produce the sales that we anticipate, our results of operations will be adversely affected. We cannot assure you that we will be able to increase our revenues, if at all, in a cost-effective manner. We have also begun national television and radio branding and advertising campaigns. Such campaigns are expensive and may not result in the cost effective acquisition of customers.

Further, many of the parties with which we may have online-advertising arrangements could provide advertising services for other online or traditional retailers and merchandise liquidators. As a result, these parties may be reluctant to enter into or maintain relationships with us. Failure to achieve sufficient traffic or generate sufficient revenue from purchases originating from third parties may result in termination of these relationships by these third parties. Without these relationships, our revenues, business, prospects, financial condition and results of operations could suffer.

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, particularly Patrick M. Byrne, our President and Chairman of the Board. Our performance also depends on our ability to retain and motivate other officers and key employees. The loss of the services of any of our executive officers or other key employees for any unforeseen reason, including without limitation, illness or call to military service, could harm our business, prospects, financial condition and results of operations. We do not have employment agreements with any of our key personnel and we do not maintain key person life insurance policies. Our future success also depends on our ability to identify, attract, hire, train, retain and motivate other highly-skilled technical, managerial, editorial, merchandising, marketing and customer service personnel. Competition for such personnel is intense, and we cannot assure you that we will be able to successfully attract, assimilate or retain sufficiently qualified personnel. During 2003, individuals serving as our president and chief financial officer, our chief operating officer and our chief technology officer each stepped down from these positions for unrelated reasons. Each of these three individuals remained as an employee of the Company, and each continues to serve the Company at present. Our failure to retain and attract the necessary technical, managerial, editorial, merchandising, marketing and customer service personnel could harm our revenues, business, prospects, financial condition and results of operations.

Our operating results may fluctuate depending on the season, and such fluctuations may affect our stock price.

We have experienced and expect to continue to experience fluctuations in our operating results because of seasonal fluctuations in traditional retail patterns. Sales in the retail and wholesale industry tend to be significantly higher in the fourth calendar quarter of each year than in the preceding three quarters due primarily to increased shopping activity during the holiday season. However, there can be no assurance that our sales in the fourth quarter will exceed those of the preceding quarters or, if the fourth quarter sales do exceed those of the preceding quarters, that we will be able to manage the increased sales effectively. Further, we may increase our inventories substantially in anticipation of holiday season shopping activity, which may have a negative effect on our cash flow. Securities analysts and investors may inaccurately estimate the effects of seasonality on our results of operations in one or more future quarters and, consequently, our operating results may fall below expectations, causing our stock price to decline.

We depend on our relationships with third-party fulfillment partners for a large portion of the products that we offer for sale on our Websites. If we fail to maintain these relationships, our business will suffer.

During the quarter ended June 30, 2004, we had active fulfillment partner relationships with approximately 325 third parties whose products we offer for sale on our Websites. At June 30, 2004, these products accounted for approximately 50% of the non-BMV products available on our Websites. We do not have any long-term agreements with any of these third parties. Our agreements with third parties are terminable at will by either party immediately upon notice. In general, we agree to offer the third parties products on our Websites and these third parties agree to provide us with information about their products, honor our customer service policies and ship the products directly to the customer. If we do not maintain our existing or build new relationships with third parties on acceptable commercial terms, we may not be able to offer a broad selection of merchandise, and customers may refuse to shop at our Websites. In addition, manufacturers may decide not to offer particular products for sale on the Internet. If we are unable to maintain our existing or build new fulfillment partner relationships or if other product manufacturers refuse to allow their products to be sold via the Internet, our business would suffer severely.

We are partially dependent on third parties to fulfill a number of our fulfillment, distribution and other retail functions. If such parties are unwilling or unable to continue providing these services, our business could be seriously harmed.

In our fulfillment partner business, although we now handle returned merchandise, we continue to rely on third parties to conduct a number of other traditional retail operations with respect to their respective products that we offer for sale on our Websites, including maintaining inventory, preparing merchandise for shipment to individual customers and timely distribution of purchased merchandise. We have no effective means to ensure that these third parties will continue to perform these services to our satisfaction or on commercially reasonable terms. In addition, because we do not take possession of these third parties products, we are unable to fulfill these traditional retail operations ourselves. Our customers could become dissatisfied and cancel their orders or decline to make future purchases if these third parties are unable to deliver products on a timely basis. If our customers become dissatisfied with the services provided by these third parties, our reputation and the Overstock brand could suffer.

We rely on our relationships with manufacturers, retailers and other suppliers to obtain sufficient quantities of quality merchandise on acceptable terms. If we fail to maintain our supplier relationships on acceptable terms, our sales and profitability could suffer.

To date, we have not entered into contracts with manufacturers or liquidation wholesalers that guarantee the availability of merchandise for a set duration. Our contracts or arrangements with suppliers do not provide for the continuation of particular pricing practices and may be terminated by either party at any time. Our current suppliers may not continue to sell their excess inventory to us on current terms or at all, and we may not be able to establish new supply relationships. For example, it is difficult for us to maintain high levels of product quality and selection because none of the manufacturers, suppliers and liquidation wholesalers from whom we purchase products on a purchase order by purchase order basis have a continuing obligation to provide us with merchandise at historical levels or at all. In most cases, our relationships with our suppliers do not restrict the suppliers from selling their respective excess inventory to other traditional or online merchandise liquidators, which could in turn limit the selection of products available on our Websites. If we are unable to develop and maintain relationships with suppliers that will allow us to obtain sufficient quantities of merchandise on acceptable commercial terms, such inability could harm our business, results of operation and financial condition.

Our business may be harmed by the listing or sale of pirated, counterfeit or illegal items by third parties, and by intellectual property litigation.

We have received in the past, and we anticipate we will receive in the future, communications alleging that certain items listed or sold through our Websites infringe third-party copyrights, trademarks and trade names or other intellectual property rights or that we have otherwise infringed third parties past, current or future intellectual property rights. For example, in October 2003, Tiffany (NJ) Inc. and Tiffany and Company filed a complaint against us in the United States District Court for the Southern District of New York alleging that we have distributed counterfeit and otherwise unauthorized Tiffany product in violation of federal copyright and trademark law and related state laws. The complaint seeks statutory and other damages in an unspecified amount and injunctive relief. Although we have filed an answer and believe we have defenses to the allegations and intend to pursue them vigorously, the Tiffany lawsuit is in the early stages of discovery, and we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

We may be unable to prevent third parties from listing unlawful goods, and we may be subject to allegations of civil or criminal liability for unlawful activities carried out by third parties through our Websites. In the future, we may implement measures to protect against these potential liabilities that could require us to spend substantial resources and/or to reduce revenues by discontinuing certain service offerings. Any costs incurred as a result of liability or asserted liability relating to the sale of unlawful goods or the unlawful sale of goods could harm our revenues, business, prospects, financial condition and results of operations.

Resolving litigation or claims regarding patents or other intellectual property, whether meritorious or not, could be costly, time-consuming, cause service delays, divert our management and key personnel from our business operations, require expensive or unwanted changes in our methods of doing business or require us to enter into costly royalty or licensing agreements, if available. As a result, these claims could harm our business.

Our business may be harmed by fraudulent activities on our Websites.

We have received in the past, and anticipate that we will receive in the future, communications from customers who did not receive goods that they purchased. We also periodically receive complaints from our customers as to the quality of the goods purchased and services rendered. Negative publicity generated as a result of fraudulent or deceptive conduct by third parties could damage our reputation, harm our business and diminish the value of our brand name. We expect to continue to receive from customers requests for reimbursement or threats of legal action against us if no reimbursement is made.

We depend upon third-party delivery services to deliver our products to our customers on a timely and consistent basis. A deterioration in our relationship with any one of these third parties could decrease our ability to track shipments, cause shipment delays, and increase our shipping costs and the number of damaged products.

We rely upon multiple third parties for the shipment of our products. Because we do not have a written long-term agreement with any of these third parties, we cannot be sure that these relationships will continue on terms favorable to us, if at all. Unexpected increases in shipping costs or delivery times, particularly during the holiday season, could harm our business, prospects, financial condition and results of operations. If our relationships with these third parties are terminated or impaired or if these third parties are unable to deliver products for us, whether through labor shortage, slow down or stoppage, deteriorating financial or business condition, responses to terrorist attacks or for any other reason, we would be required to use alternative carriers for the shipment of products to our customers. We may be unable to engage alternative carriers on a timely basis or upon terms favorable to us. Changing carriers would likely have a negative effect on our business, operating results and financial condition. Potential adverse consequences include:

- reduced visibility of order status and package tracking;
- delays in order processing and product delivery;

- increased cost of delivery, resulting in reduced gross margins; and
- reduced shipment quality, which may result in damaged products and customer dissatisfaction.

Our operating results depend on our Websites, network infrastructure and transaction-processing systems. Capacity constraints or system failures would harm our business, prospects, results of operations and financial condition.

Any system interruptions that result in the unavailability of our Websites or reduced performance of our transaction systems would reduce our transaction volume and the attractiveness of the services that we provide to suppliers and third parties and would seriously harm our business, operating results and financial condition.

We use internally developed systems for our Websites and certain aspects of transaction processing, including customer profiling and order verifications. We have experienced periodic systems interruptions due to server failure, which we believe will continue to occur from time to time. If the volume of traffic on our Websites or the number of purchases made by customers substantially increases, we will need to further expand and upgrade our technology, transaction processing systems and network infrastructure. We have experienced and expect to continue to experience temporary capacity constraints due to sharply increased traffic during sales or other promotions, and during the holiday shopping season. Capacity constraints can cause unanticipated system disruptions, slower response times, degradation in levels of customer service, impaired quality and delays in reporting accurate financial information.

Our transaction processing systems and network infrastructure may be unable to accommodate increases in traffic in the future. We may be unable to project accurately the rate or timing of traffic increases or successfully upgrade our systems and infrastructure to accommodate future traffic levels on our Websites. In addition, we may be unable to upgrade and expand our transaction processing systems in an effective and timely manner or to integrate any newly developed or purchased functionality with our existing systems. Any inability to do so may cause unanticipated system disruptions, slower response times, degradation in levels of customer service, impaired quality and speed of order fulfillment or delays in reporting accurate financial information.

We may be unable to manage expansion into new business areas which could harm our business operations and reputation.

Our long-term strategic plan involves expansion of our operations in the B2B merchandise liquidation market, entering into agreements to provide products and services to retail chains and other businesses, and possible expansion into additional markets. We cannot assure you that our efforts to expand our business in this manner will succeed or that we will be successful in managing or maintaining agreements to provide products and services to retail chains and other businesses. To date, we have expended significant financial and management resources developing our B2B operations. As discussed elsewhere herein, we have been unable to generate significant traffic for our B2B website. As such we merged our B2B website into our B2C website. Our failure to succeed in this market or other markets may harm our business, prospects, financial condition and results of operation. In addition, we may choose to expand our operations by developing new Websites, promoting new or complementary products or sales formats, expanding the breadth and depth of products and services offered or expanding our market presence through relationships with third parties. In addition, we may pursue the acquisition of new or complementary businesses or technologies, although we have no present understandings, commitments or agreements with respect to any material acquisitions or investments. We cannot assure you that we would be able to expand our efforts and operations in a cost-effective or timely manner or that any such efforts would increase overall market acceptance. Furthermore, any new business or Website we launch that is not favorably received by consumers could damage our reputation or the Overstock brand. We may expand the number of categories of products we carry on our website. These and any other expansions of our operations would also require significant additional expenses and development and would strain our management, financial and operational resources. The lack of market acceptance of such efforts or our inability to generate satisfactory revenues from such expanded services or products to offset their cost could harm our business, prospects, financial condition and results of operations.

We may not be able to compete successfully against existing or future competitors.

The online liquidation services market is new, rapidly evolving and intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new Websites at a relatively low cost. Our consumer Website currently competes with:

other online liquidation e-tailers, such as SmartBargains;

traditional retailers and liquidators, such as Ross Stores, Inc., Walmart Stores, Inc. and TJX Companies, Inc.; and

online retailers and marketplaces such as Amazon.com, Inc., Buy.com, Inc. and eBay, Inc., which have discount departments.

Our Website competes with liquidation brokers and retailers and online marketplaces such as eBay, Inc.

We expect the online liquidation services market to become even more competitive as traditional liquidators and online retailers continue to develop services that compete with our services. In addition, manufacturers and retailers may decide to create their own Websites to sell their own excess inventory and the excess inventory of third parties. Competitive pressures created by any one of our competitors, or by our competitors collectively, could severely harm our business, prospects, financial condition and results of operations.

Further, as a strategic response to changes in the competitive environment, we may from time to time make certain pricing, service or marketing decisions or acquisitions that could harm our business, prospects, financial condition and results of operations. For example, to the extent that we enter new lines of businesses such as third-party logistics, online auction services or discount brick and mortar retail, we would be competing with large established businesses such as APL Logistics, Ltd., eBay, Inc., Ross Stores, Inc. and TJX Companies, Inc., respectively.

Many of our current and potential competitors described above have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do. In addition, online retailers and liquidation e-tailers may be acquired by, receive investments from or enter into other commercial relationships with larger, well-established and well-financed companies. Some of our competitors may be able to secure merchandise from manufacturers on more favorable terms, devote greater resources to marketing and promotional campaigns, adopt more aggressive pricing or inventory availability policies and devote substantially more resources to Website and systems development than we do. Increased competition may result in reduced operating margins, loss of market share and a diminished brand franchise. We cannot assure you that we will be able to compete successfully against current and future competitors.

A significant number of merchandise returns could harm our business, financial condition and results of operations.

We allow our customers to return products and beginning July 1, 2003, we started accepting returns of products sold through our fulfillment partners. Our ability to handle a large volume of returns is unproven. In addition, any policies intended to reduce the number of product returns may result in customer dissatisfaction and fewer return customers. If merchandise returns are significant, our business, financial condition and results of operations could be harmed.

If the products that we offer on our Websites do not reflect our customers tastes and preferences, our sales and profit margins would decrease.

Our success depends in part on our ability to offer products that reflect consumers tastes and preferences. Consumers tastes are subject to frequent, significant and sometimes unpredictable changes. Because the products that we sell typically consist of manufacturers and retailers excess inventory, we have limited control over the specific products that we are able to offer for sale. If our merchandise fails to satisfy customers tastes or respond to changes in customer preferences, our sales could suffer and we could be required to mark down unsold inventory which would depress our profit margins. In addition, any failure to offer products in line with customers preferences could allow our competitors to gain market share. This could have an adverse effect on our business, results of operations and financial condition.

If the single facility where substantially all of our computer and communications hardware is located fails, our business, results of operations and financial condition will be harmed.

Our success, and, in particular, our ability to successfully receive and fulfill orders and provide high-quality customer service, largely depends on the efficient and uninterrupted operation of our computer and communications hardware systems. Although we are in the process of moving some of our infrastructures to a co-location facility, at present substantially all of our computer and communications hardware is located at a single leased facility in Salt Lake City, Utah. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, acts of war, break-ins, earthquake and similar events. We do not presently have redundant systems in multiple locations or a formal disaster recovery plan and our business interruption insurance may be insufficient to compensate us for losses that may occur. Despite the implementation of network security measures, our servers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. The occurrence of any of the foregoing risks could harm our business, prospects, financial condition and results of operations.

We may be unable to protect our proprietary technology or keep up with that of our competitors.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We may be unable to deter misappropriation of our proprietary information, detect unauthorized use and take appropriate steps to enforce our intellectual property rights. In addition, our competitors could, without violating our proprietary rights, develop technologies that are as good as or better than our technology.

Our failure to protect our software and other proprietary intellectual property rights or to develop technologies that are as good as our competitors could put us at a disadvantage to our competitors. In addition, the failure of the third parties whose products we offer for sale on our Websites to protect their intellectual property rights, including their domain names, could impair our operations. These failures could harm our business, results of operations and financial condition.

If we do not respond to rapid technological changes, our services could become obsolete and we could lose customers.

To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce businesses. We may face material delays in introducing new services, products and enhancements. If this happens, our customers may forgo the use of our Websites and use those of our competitors. The Internet and the online commerce industry are rapidly changing. If competitors introduce new products and services using new technologies or if new industry standards and practices emerge, our existing Websites and our proprietary technology and systems may become obsolete. Our failure to respond to technological change or to adequately maintain, upgrade and develop our computer network and the systems used to process customers orders and payments could harm our business, prospects, financial condition and results of operations.

Issuances of our securities are subject to federal and state securities laws, and certain holders of common stock issued by us may be entitled to rescind their purchases.

Issuances of securities are subject to federal and state securities laws. From November 1999 through September 2000, we offered and sold common stock to investors in various states. Certain of those offerings may not have complied with various requirements of applicable state securities laws. In such situations a number of remedies may be available to regulatory authorities and the investors who purchased common stock in those offerings, including, without limitation, a right of rescission, civil penalties, seizure of our assets, a restraining order or injunction, and a court order to pay restitution and costs. As a result, certain investors in our common stock may be entitled to return their shares to Overstock and receive from us the full price they paid, plus interest, which we estimate to be an aggregate amount of approximately $3.1 million at June 30, 2004.

We face risks relating to our inventory.

We directly purchase some of the merchandise that we sell on our Websites. We assume the inventory damage, theft and obsolescence risks, as well as price erosion risks for products that we purchase directly. These risks are especially significant because some of the merchandise we sell at our Websites are characterized by rapid technological change, obsolescence and price erosion (for example, computer hardware, software and consumer electronics), and because we sometimes make large purchases of particular types of inventory. In addition, we often do not receive warranties on the merchandise we purchase. Further, beginning July 1, 2003, we started accepting returns of products sold through our fulfillment partners, and we have the risk of reselling the returned products.

In the recent past, we have recorded charges for obsolete inventory and have had to sell certain merchandise at a discount or loss. It is impossible to determine with certainty whether an item will sell for more than the price we pay for it. Because we rely heavily on purchased inventory, our success will depend on our ability to liquidate our inventory rapidly, the ability of our buying staff to purchase inventory at attractive prices relative to its resale value and our ability to manage customer returns and the shrinkage resulting from theft, loss and misrecording of inventory. If we are unsuccessful in any of these areas, we may be forced to sell our inventory at a discount or loss.

We may be liable if third parties misappropriate our customers personal information.

If third parties are able to penetrate our network security or otherwise misappropriate our customers personal information or credit card information, or if we give third parties improper access to our customers personal information or credit card information, we could be subject to liability. This liability could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims. This liability could also include claims for other misuses of personal information, including unauthorized marketing purposes. These claims could result in litigation. Liability for misappropriation of this information could adversely affect our business. In addition, the Federal Trade Commission and state agencies have been investigating various Internet companies regarding their use of personal information. We could incur additional expenses if new regulations regarding the use of personal information are introduced or if government agencies investigate our privacy practices.

We rely on encryption and authentication technology licensed from third parties to provide the security and authentication necessary to effect secure transmission of confidential information such as customer credit card numbers. We cannot assure you that advances in computer capabilities, new discoveries in the field of cryptography or other events or developments will not result in a compromise or breach of the algorithms that we use to protect customer transaction data. If any such compromise of our security were to occur, it could harm our reputation, business, prospects, financial condition and results of operations. A party who is able to circumvent our security measures could misappropriate proprietary information or cause interruptions in our operations. We may be required to expend significant capital and other resources to protect against such security breaches or to alleviate problems caused by such breaches. We cannot assure you that our security measures will prevent security breaches or that failure to prevent such security breaches will not harm our business, prospects, financial condition and results of operations.

We may expand our international business, causing our business to become increasingly susceptible to numerous international business risks and challenges that could affect our profitability.

We have begun to expand into international markets, and in the future we may do so more aggressively. International sales and transactions are subject to inherent risks and challenges that could adversely affect our profitability, including:

- the need to develop new supplier and manufacturer relationships;
- unexpected changes in international regulatory requirements and tariffs;
- difficulties in staffing and managing foreign operations;
- longer payment cycles from credit card companies;
- greater difficulty in accounts receivable collection;
- potential adverse tax consequences;
- price controls or other restrictions on foreign currency; and
- difficulties in obtaining export and import licenses.

To the extent we generate international sales and transactions in the future, any negative impact on our international operations could negatively impact our business. In particular, gains and losses on the conversion of foreign payments into United States dollars may contribute to fluctuations in our results of operations and fluctuating exchange rates could cause reduced gross revenues and/or gross margins from non-dollar-denominated international sales.

We may be subject to product liability claims that could be costly and time consuming.

We sell products manufactured by third parties, some of which may be defective. If any product that we sell were to cause physical injury or injury to property, the injured party or parties could bring claims against us as the retailer of the product. Our insurance coverage may not be adequate to cover every claim that could be asserted. If a successful claim were brought against us in excess of our insurance coverage, it could adversely affect our business. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business.

We may not be able to obtain trademark protection for our marks, which could impede our efforts to build brand identity.

We have filed trademark applications with the Patent and Trademark Office seeking registration of certain service marks or trademarks. There can be no assurance that our applications will be successful or that we will be able to secure significant protection for our service marks or trademarks. Our competitors or others could adopt product or service marks similar to our marks, or try to prevent us from using our marks, thereby impeding our ability to build brand identity and possibly leading to customer confusion. Any claim by another party against us or customer confusion related to our trademarks, or our failure to obtain trademark registration, could negatively affect our business.

Risks Relating to the Internet Industry

Our success is tied to the continued use of the Internet and the adequacy of the Internet infrastructure.

Our future revenues and profits, if any, substantially depend upon the continued widespread use of the Internet as an effective medium of business and communication. Factors which could reduce the widespread use of the Internet include:

- actual or perceived lack of security of information or privacy protection;
- possible disruptions, computer viruses or other damage to the Internet servers or to users computers; and
- excessive governmental regulation.

Customers may be unwilling to use the Internet to purchase goods.

Our long-term future depends heavily upon the general public s willingness to use the Internet as a means to purchase goods. E-commerce remains is a relatively new concept, and large numbers of customers may not begin or continue to use the Internet to purchase goods. The demand for and acceptance of products sold over the Internet are highly uncertain, and most e-commerce businesses have a short track record. If consumers are unwilling to use the Internet to conduct business, our business may not develop profitably.

The security risks of e-commerce may discourage customers from purchasing goods from us.

In order for the e-commerce market to develop successfully, we and other market participants must be able to transmit confidential information securely over public networks. Third parties may have the technology or know-how to breach the security of customer transaction data. Any breach could cause customers to lose confidence in the security of our Websites and choose not to purchase from our Websites. If someone is able to circumvent our security measures, he or she could destroy or steal valuable information or disrupt our operations. Concerns about the security and privacy of transactions over the Internet could inhibit the growth of the Internet and e-commerce. Our security measures may not effectively prohibit others from obtaining improper access to our information. Third parties may target our customers directly with fraudulent identity theft schemes designed to appear as legitimate communications from us. Any security breach or fraud perpetrated on our customers could expose us to increased costs and to risks of loss, litigation and liability and could seriously disrupt our operations.

Credit card fraud could adversely affect our business.

We do not carry insurance against the risk of credit card fraud, so the failure to adequately control fraudulent credit card transactions could reduce our net revenues and our gross margin. We have implemented technology to help us detect the fraudulent use of credit card information. However, we may in the future suffer losses as a result of orders placed with fraudulent credit card data even though the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions because we do not obtain a cardholder s signature. If we are unable to detect or control credit card fraud, our liability for these transactions could harm our business, results of operation or financial condition.

If one or more states successfully assert that we should collect sales or other taxes on the sale of our merchandise or the merchandise of third parties that we offer for sale on our Websites, our business could be harmed.

We do not currently collect sales or other similar taxes for physical shipments of goods into states other than Utah. One or more local, state or foreign jurisdictions may seek to impose sales tax collection obligations on us and other out-of-state companies that engage in online commerce. Our business could be adversely affected if one or more states or any foreign country successfully asserts that we should collect sales or other taxes on the sale of our merchandise.

Existing or future government regulation could harm our business.

We are subject to the same federal, state and local laws as other companies conducting business on the Internet. Today there are relatively few laws specifically directed towards conducting business on the Internet. However, due to the increasing popularity and use of the Internet, many laws and regulations relating to the Internet are being debated at the state and federal levels. These laws and regulations could cover issues such as user privacy, freedom of expression, pricing, fraud, quality of products and services, taxation, advertising, intellectual property rights and information security. Applicability to the Internet of existing laws governing issues such as property ownership, copyrights and other intellectual property issues, taxation, libel, obscenity and personal privacy could also harm our business. For example, United States and foreign laws regulate our ability to use customer information and to develop, buy and sell mailing lists. The vast majority of these laws were adopted prior to the advent of the Internet, and do not contemplate or address the unique issues raised thereby. Those laws that do reference the Internet, such as the Digital Millennium Copyright Act and the CAN-SPAM Act of 2003, are only beginning to be interpreted by the courts and their applicability and reach are therefore uncertain. These current and future laws and regulations could harm our business, results of operation and financial condition.

Laws or regulations relating to privacy and data protection may adversely affect the growth of our Internet business or our marketing efforts.

We are subject to increasing regulation at the federal, state and international levels relating to privacy and the use of personal user information. For example, we are subject to various telemarketing laws that regulate the manner in which we may solicit future suppliers and customers. Such regulations, along with increased governmental or private enforcement, may increase the cost of growing our business. In addition, several states have proposed legislation that would limit the uses of personal user information gathered online or require online services to establish privacy policies. The Federal Trade Commission has adopted regulations regarding the collection and use of personal identifying information obtained from children under 13. Bills proposed in Congress would extend online privacy protections to adults. Moreover, proposed legislation in this country and existing laws in foreign countries require companies to establish procedures to notify users of privacy and security policies, obtain consent from users for collection and use of personal information, and/or provide users with the ability to access, correct and delete personal information stored by us. We could become a party to a similar enforcement proceeding. These data protection regulations and enforcement efforts may restrict our ability to collect demographic and personal information from users, which could be costly or harm our marketing efforts.

Risks Relating to the Securities Markets and Ownership of Our Common Stock

Our stock price may be volatile and you may lose all or a part of your investment.

Our common stock has been publicly traded only since May 30, 2002. The market price of our common stock has been subject to significant fluctuations since the date of our initial public offering. These fluctuations could continue. It is possible that in some future periods our results of operations may be below the expectations of public market analysts and investors. If this occurs, our stock price may decline. Among the factors that could affect our stock price are as follows:

- changes in securities analysts recommendations or estimates of our financial performance or publication of research reports by analysts;
- changes in market valuations of similar companies;
- announcements by us or our competitors of significant contracts, acquisitions, commercial relationships, joint ventures or capital commitments;
- general market conditions;
- actual or anticipated fluctuations in our operating results;
- intellectual property or litigation developments;

changes in our management team;

economic factors unrelated to our performance; and

our issuance of additional shares of stock.

In addition, the stock markets have experienced significant price and trading volume fluctuations. These broad market fluctuations may adversely affect the trading price of our common stock. In the past, following periods of volatility in the market price of a public company s securities, securities class action litigation has often been instituted against that company. Such litigation could result in substantial cost and a diversion of management s attention and resources.

We do not intend to pay dividends on our non-redeemable common stock, and you may lose the entire amount of your investment.

We have never declared or paid any cash dividends on our non-redeemable common stock and do not intend to pay dividends on our non-redeemable common stock for the foreseeable future. We intend to invest our future earnings, if any, to fund our growth. Therefore, you will not receive any funds without selling your shares. We cannot assure that you will receive a positive return on your investment when you sell your shares or that you will not lose the entire amount of your investment.

Our Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws and the Delaware General Corporation Law contain anti-takeover provisions which could discourage or prevent a takeover, even if an acquisition would be beneficial to our stockholders.

Several provisions of our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws could discourage potential acquisition proposals and could delay or prevent a change in control of our company even if that change in control would be beneficial to our stockholders. For example, only one-third of our board of directors will be elected at each of our annual meetings of stockholders, which will make it more difficult for a potential acquirer to change the management of our company, even after acquiring a majority of the shares of our common stock. These provisions, which cannot be amended without the approval of two-thirds of our stockholders, could diminish the opportunities for a stockholder to participate in tender offers, including tender offers at a price above the then current market value of our common stock. In addition, our board of directors, without further stockholder approval, may issue preferred stock, with such terms as the board of directors may determine, that could have the effect of delaying or preventing a change in control of our company. The issuance of preferred stock could also adversely affect the voting powers of the holders of common stock, including the loss of voting control to others. We are also afforded the protections of Section 203 of the Delaware General Corporation Law, which could delay or prevent a change in control of our company or could impede a merger, consolidation, takeover or other business combination involving our company or discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk for the effect of interest rate changes and changes in the market values of our investments. Currently we do not utilize interest rate swaps, forward or option contracts on foreign currencies or commodities or other types of derivative financial instruments. Our financial instruments consist of cash and cash equivalents, trade accounts and contracts receivable, accounts payable and long-term obligations. We consider investments in highly-liquid instruments purchased with a remaining maturity of 90 days or less at the date of purchase to be cash equivalents. Our exposure to market risk for changes in interest rates relates primarily to our short-term investments and short-term obligations; thus, fluctuations in interest rates would not have a material impact on the fair value of these securities. We do not believe that the future market risks related to the above securities will have a material adverse impact on our financial position, results of operations or liquidity.

At June 30, 2004, we had $66.9 million in cash and marketable securities. At that same date we had $1.0 million in short term borrowings. A hypothetical 10% increase or decrease in interest rates would not have a material impact on our net loss, or the fair value or cash flows of these instruments.

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our investment portfolio. All of our cash equivalents and marketable securities are designated as available-for-sale securities and, accordingly, are presented at fair value on our balance sheets. We generally invest our excess cash in A-rated or higher short- to intermediate-term fixed income securities and money market mutual funds. Fixed rate securities may have their fair value adversely affected due to a rise in interest rates, and we may suffer losses in principal if forced to sell securities that have declined in fair value due to changes in interest rates.

ITEM 4. CONTROLS AND PROCEDURES

The Company s President (principal executive officer) and Vice President, Finance (principal financial officer), based on the evaluation of the Company s disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended) required by paragraph (b) of Rule 13a-15 or Rule 15d-15, as of June 30, 2004, have concluded that the Company s disclosure controls and procedures were effective to ensure the timely collection, evaluation and disclosure of information relating to the Company that would potentially be subject to disclosure under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

During the three-month period ended June 30, 2004, there was no change in the Company s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company s internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we receive and/or assert claims and become subject to consumer protection, employment, intellectual property and other commercial litigation related to the conduct of our business. Such litigation could be costly and time consuming and could divert our management and key personnel from our business operations. The uncertainty of litigation increases these risks. In connection with such litigation, we may be subject to significant damages or equitable remedies relating to the operation of our business and the sale of products on our websites. Any such litigation may materially harm our business, results of operations, financial condition or cash flows.

In October 2003, Tiffany (NJ) Inc. and Tiffany and Company filed a complaint against us in the United States District Court for the Southern District of New York alleging that we have distributed counterfeit and otherwise unauthorized Tiffany product in violation of federal copyright and trademark law and related state laws. The complaint seeks statutory and other damages in an unspecified amount and injunctive relief. Although we have filed an answer and believe we have defenses to the allegations and intend to pursue them vigorously, the Tiffany lawsuit is in the early stages of discovery, and we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

In July 2004, Printmaker International, Ltd. filed a complaint against us in the United States District Court for the Southern District of New York alleging that we have distributed counterfeit and otherwise unauthorized product in violation of federal copyright and trademark law and related state laws. The complaint seeks statutory and other damages in an unspecified amount and injunctive relief. While we are still in the process of investigating the claim and have not yet filed an answer, we believe we have defenses to the allegations and intend to pursue them vigorously. At this point in time, we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

In May 2004, we filed a complaint against TLMT Holdings, Inc (f/k/a LastMinuteTravel.com, Inc.) in the Superior Court of the State of Delaware alleging that it breached its contract with us. In July 2004, TLMT Holdings filed a counterclaim against us alleging that we have breached the contract. The counterclaim seeks damages in an unspecified amount. While we are still in the process of investigating the counterclaim and have not yet filed an answer, we believe we have defenses to the allegations and intend to pursue them vigorously. At this point in time, we do not have sufficient information to assess the validity of the claims or the amount of potential damages.

ITEM 2. CHANGES IN SECURITIES, USE OF PROCEEDS AND ISSUER PURCHASES OF SECURITIES

During the quarterly period ended June 30, 2004, we issued 50,000 shares of our common stock upon the exercise of warrants with a weighted average exercise price of $7.08 per share. The issuance of these securities was deemed to be exempt from registration under Section 4(2) of the Securities Act of 1933 or Regulation D there under as a transaction by an issuer not involving a public offering.

During the quarter ended June 30, 2004, no purchases were made by or on behalf of the Company or any affiliated purchaser as defined in Rule 10b-18(a)(3) under the Exchange Act, of shares of the Company s common stock.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Our Annual Meeting of Stockholders (the Annual Meeting) was held on April 27, 2004. A total of 13,744,688 shares of common stock, par value $0.0001 per share (the Common Stock), were present at the Annual Meeting, either in person or by proxy, representing 82% of the votes that all stockholders of the Company are entitled to cast, constituting a quorum. The matters voted upon at the Annual Meeting by the stockholders consisted of the three proposals set forth in our definitive Proxy Statement, dated March 18, 2004.

The first proposal related to the election of two (2) Class II directors of Overstock.com, Inc., to serve a term of three (3) years and hold office until their respective successors have been elected and qualified or until their following nominees for reelection as directors. The nominees were each elected and received, the following votes:

Director	For	Withheld
Gordon S. Macklin	13,724,862	19,826
John J. Byrne	13,503,117	241,571

The second proposal was to approve an amendment of the Company s 2002 Stock Option Plan to increase the number of shares of common stock reserved for issuance thereunder by 1,000,000 shares. This proposal was approved with 8,020,908 shares of the Company s common stock that voted at the meeting voting in favor of, 885,672 shares voting against, and 4,798 shares abstaining from amendment of the Company s 2002 Stock Option Plan.

The third proposal was to ratify the selection of PricewaterhouseCoopers LLP as the Company s independent accountants for the fiscal year ending December 31, 2004. This proposal was approved with 13,715,500 shares of the Company s common stock that voted at the meeting voting in favor of, 27,837 shares voting against, and 1,351 shares abstaining from ratification of the appointment of PricewaterhouseCoopers LLP to audit the financial statements of the Company and its subsidiaries for the fiscal year ending December 31, 2004.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

31 Rule 13a-15(d)/15d-15(d) Certifications

32 Section 1350 Certifications

(b) Reports on Form 8-K

Form 8-K filed on April 22, 2004 to furnish our earnings release for the quarter ended March 31, 2004.

Form 8-K filed on April 29, 2004 announcing the re-election of Gordon Macklin and the election of Jack Byrne to the Company s board of directors.

Form 8-K filed on May 7, 2004 to announce our entering into a credit facility agreement and to announce the approval by our stockholders of an amendment to our 2002 Stock Option Plan.

Form 8-K filed on May 10, 2004 announcing plans to offer shares of our common stock in an underwritten public offering under its existing shelf registration statement.

Form 8-K filed on May 10, 2004 in connection with a corrected press release.

Form 8-K filed on May 13, 2004 announcing our entry into an Underwriting Agreement.

Form 8-K filed on May 18, 2004, announcing the closing of the previously announced underwritten registered public offering of 1,200,000 shares of our common stock.

Form 8-K filed on June 7, 2004, announcing that the underwriters exercise of their over-allotment option.

Form 8-K filed on June 10, 2004, announcing the closing of the exercise of the over-allotment option.

SIGNATURE

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

OVERSTOCK.COM, INC.

/s/ David K. Chidester
David K. Chidester
Vice President, Finance

Dated: August 9, 2004