

OVERSTOCK.COM, INC
Form 10-K
March 18, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2018

Or
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware

87-0634302

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)

799 West Coliseum Way, Midvale, UT

84047

(Address of principal executive offices)

(Zip code)

(801) 947-3100

(Registrant's telephone number, including area code)

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

Title of Each Class

Name of Each Exchange on Which Registered

Common Stock, \$0.0001 par value

Nasdaq Global Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities

Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the

Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer,"

"accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ Smaller reporting company ☐

Emerging growth company ☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the act). Yes ☐ No ☒
The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second quarter (June 30, 2018), was approximately \$689.3 million based upon the last sales price reported by Nasdaq. For purposes of this disclosure, shares of Common Stock held by directors and certain officers and by others who may be deemed to be affiliates of the registrant have been excluded. The exclusion of such shares is not intended to, and shall not, constitute a determination as to which persons or entities may be affiliates as that term is defined in the federal securities laws.

There were 32,252,029 shares of the Registrant's common stock, par value \$0.0001, outstanding on March 13, 2019.
DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III of Form 10-K is incorporated by reference to the Registrant's proxy statement for the 2019 Annual Stockholders Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

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SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report on Form 10-K and the documents incorporated herein by reference, as well as our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. These forward-looking statements involve risks and uncertainties, and relate to future events or our future financial or operating performance. The forward-looking statements include all statements other than statements of historical fact, including, without limitation, all statements regarding:

- our estimates of our financial results for the quarter ending March 31, 2019, and all other estimates regarding the quarter ending March 31, 2019;
- our strategies and plans for our retail business and our Medici businesses, including our tZERO initiatives; the possibility that we will sell or attempt to sell our retail business or pursue or attempt to pursue one or more other strategic alternatives that could change our business dramatically, as well as the possibility that we will determine not to sell or attempt to sell our retail business or pursue any other strategic alternative at all in the foreseeable future;
- the possibility that we may sell our retail business and all statements about the potential effects of any such sale;
- whether we would or would not submit any sale of our retail business to a vote of our stockholders;
- whether we would or would not distribute any proceeds of any sale of our retail business to our stockholders by any means or use those proceeds in our blockchain initiatives;
- our expectations regarding the costs, benefits and risks of Medici Ventures' and tZERO's initiatives, including their acquisitions or purchases of interests in other companies;
- potential negotiated equity investments in Overstock and/or tZERO;
 - the plans of tZERO and Medici Ventures and the costs, benefits and risks of their initiatives, including those of tZERO's ownership of SpeedRoute and PRO Securities;
- our expectations regarding the costs, benefits and risks of the recently-completed tZERO security token offering;
- our expectations regarding the costs, benefits and risks of our efforts and plans to advertise or offer other additional businesses, innovations and projects that we or our subsidiaries may engage in, offer or advertise in the future;
- our expectations regarding Medici Land Governance Inc., a newly-formed public benefit corporation;
- our efforts to improve our natural search results in our retail business;
- our future operating or financial results, or other GAAP or non-GAAP financial measures or amounts or anticipated changes in any of them;
- our capital requirements and our ability to fund them;
- the adequacy of our liquidity and our ability, if any, to increase our liquidity or capital resources;
- tZERO's plans, including without limitation its plans regarding its Token Trading Systems;
- our plans and expectations regarding the costs, benefits, and risks of attempting to develop technology applications including applications using or relating to blockchain technology and our plans to commercialize any of these potential applications;
- the competition we currently face and anticipate;
- the effects of current and future government regulation;
- our expectations for our international sales efforts and the anticipated results of our international operations;
- our plans for further changes to our business;
- our expectations regarding our emphasis on home and garden product offerings;
- our expectations regarding our potential liabilities or exposure to claims under Delaware's Abandoned Property Law;
- our expectations regarding the actual costs of our employees' health insurance claims for which we may be liable; and
- our other statements about the anticipated benefits and risks of our business and plans.

Further, in some cases, you can identify forward-looking statements by terminology such as may, will, could, should, likely, expect, plan, seek, intend, anticipate, project, believe, estimate, predict, potential, goal, strategy, future or continue, the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially from those contemplated by our forward-looking statements for a variety of reasons, including among others:

-

any changes we may make to our business as a result of our current ongoing review of potential strategic alternatives, which could involve a sale of our retail business and/or additional equity or debt financings;

the possibility that we may sell our retail business and retain the after-tax proceeds of the sale for use in our blockchain initiatives, which would result in our stockholders owning equity interests in a publicly-held corporation seeking to develop entirely new businesses and revenue streams, without the benefits of our current retail business and the approximately \$1.8 billion it generates in annual net revenues, but with most if not all of the expenses of operating a publicly-held corporation;

the potentially substantial corporate level income tax expense we could incur if we were to sell our retail business in a taxable transaction;

the possibility that our well-publicized review of potential strategic alternatives including the potential sale of our retail business may distract our management and other employees, may cause members of our management and/or other key employees to seek employment elsewhere, and may have adverse effects on our business and financial results;

the technical, operational, financial, regulatory, legal, reputational, marketing and other obstacles we face in trying to create a profitable business from our blockchain initiatives;

our ability to reach a definitive agreement or complete a capital raising transaction for tZERO on the terms contemplated by the previously-disclosed memorandum of understanding we recently signed with GSR Capital and Makara Capital;

- the possibility that the proceeds of the security token offering recently completed by tZERO might be treated as income to us for federal income tax purposes;

difficulties we have encountered and continue to encounter with changes that Google has made to its natural search engine algorithms, which have periodically resulted in lower rankings of our products and may continue to do so, and future changes that Google and other search engine companies may make to their natural search engine algorithms, which may have similar effects on us;

increasing competition, including from Amazon, from well funded companies willing to incur substantial losses in order to build market share, and from others including competitors with delivery capabilities that we cannot currently match and do not expect to be able to match in the foreseeable future;

difficulties we may encounter in connection with our efforts to offer services to our customers outside of our retail business;

- difficulties, including expense and any operational or regulatory issues we may encounter in connection with tZERO or its subsidiaries;

technical, operational, regulatory or other difficulties we may encounter with our Medici or tZERO blockchain and financial technology initiatives, including any difficulties we may have marketing any products or services tZERO may offer, whether due to lack of market size or acceptance or as a result of competition from any of the numerous competitors seeking to develop competing technologies or systems or as a result of patents that may be granted to other companies or persons, and losses we may continue to incur in connection with our Medici and tZERO blockchain and technology initiatives;

the difficulties tZERO will face in attempting to generate revenues from blockchain-based applications of any nature, including its potential DLR software product;

impairment charges we may recognize with respect to assets or businesses that we, Medici Ventures or tZERO have acquired or may acquire;

any liability or expense we may incur as a result of our interests in other companies, whether as a result of regulatory issues or otherwise;

any downturn in the U.S. housing industry or other changes in U.S. and global economic conditions or U.S. consumer spending;

the imposition of tariffs or occurrence of other factors that increase the price of importing into the U.S. the types of merchandise we sell in our retail business;

modifications we may make to our business model from time to time;

the mix of products purchased by our customers and changes to that mix;

any claims we may face regarding cyber security issues or data breaches or difficulties we encounter regarding Internet or other infrastructure or communications impairment problems or the costs of preventing or responding to any such problems;

any problems with or affecting our payment card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the payment card processors or any difficulties we may have maintaining compliance with the rules of the payment card processors; the possibility that we will be unable to raise additional capital or obtain financing adequate to enable us to continue our operations;

problems with or affecting the facility where substantially all of our computer and communications hardware is located or other problems that result in the unavailability of our Website or reduced performance of our transaction systems;

any losses or issues we may encounter as a consequence of accepting or holding bitcoin or other cryptocurrencies, whether as a result of regulatory, tax or other legal issues, technological issues, value fluctuations, lack of widespread adoption of bitcoin or other cryptocurrencies as an acceptable medium of exchange or otherwise;

any difficulties we may encounter as a result of our reliance on numerous third parties that we do not control for the performance of critical functions material to our business;

- difficulties we may encounter in connection with our efforts to emphasize our home and garden product offerings and to brand ourselves as a home and garden shopping destination, including the risk that our sales of home and garden product offerings could decrease substantially as a result of a significant downturn in some or all of the U.S. housing market;

difficulties we may encounter in connection with our efforts to expand internationally, including claims we may face and liabilities we may incur in connection with those efforts;

adverse results in legal proceedings, investigations or other claims;

any difficulties we may have optimizing our warehouse operations;

any decrease in the volume of retail sales, particularly in home goods, and the occurrence of any event that would adversely affect e-commerce or discourage or prevent consumers from shopping online or via mobile apps;

the possibility that our liability for our employees' health insurance claims increases as a result of more claims or larger claims than we expect and/or increases in the costs of healthcare generally; and

the other risks described in this report or in our other public filings.

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Report, especially under the headings "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events.

Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

PART I

ITEM 1. BUSINESS

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

Introduction

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

Our Medici business initiatives seek to develop and advance the concepts of "Government as a Service" and a "Technology Stack for Civilization" by creating or fostering a set of products and solutions that leverage the transparency and immutability of blockchain technology to generate efficiencies and increase security and control in six areas of civilizational necessity: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. Our Medici business initiatives include our wholly-owned subsidiary, Medici Ventures, Inc. ("Medici Ventures"), which conducts the majority of its business through its majority-owned subsidiary tZERO Group, Inc. ("tZERO"), formerly tØ.com, Inc., a financial technology company pursuing potential financial applications of blockchain technologies as well as non-blockchain businesses. Medici Ventures currently holds minority equity interests in several technology companies whose focuses include the areas mentioned above. Our Medici business initiatives are described in more detail below under "Our Medici Business" and our tZERO business initiatives are described in more detail below under "Our tZERO Business Initiatives."

We are considering a range of potential transactions, including a sale of our retail business and additional equity or debt financings. Our Board of Directors continually discusses a variety of potential strategic and financial options and other changes to our business, but has not approved or made any determination to consummate any strategic transaction, and may not do so in the foreseeable future or at all. Our strategic initiatives are described in more detail below under "Strategic Initiatives."

Our company, based near Salt Lake City, Utah, was founded in 1997. We launched our initial website in March 1999 and were re-incorporated in Delaware in 2002. As used herein, "Overstock," "Overstock.com," "O.co," "we," "our" and similar terms include Overstock.com, Inc. and our majority-owned subsidiaries, unless the context indicates otherwise.

Our Retail Business

Our retail business generates nearly all of our net revenues. In our retail business, our goal is to provide goods to furnish and accessorize "dream homes" for our target customers—consumers who seek quality, stylish merchandise at bargain prices. At December 31, 2018, we offered 4.9 million products (8.9 million SKUs), of which over 99% were in-line products (products in active production), including more than 25,000 private label products offered under eleven private label brands. We believe that the furniture and home goods market, which is highly fragmented and has

traditionally been served by brick and mortar stores, will continue transitioning to online sales, particularly as Millennial consumers (which we define as those aged 20-36), who are generally comfortable shopping online, start families and move into new homes. We regularly change our product assortment to meet the evolving preferences of our customers and current trends. Our products include, among others, furniture, home décor including rugs, bedding and bath, home improvement, and kitchen items. We compete primarily based on:

Quality customer experience with an emphasis on price, value, and a wide assortment of products delivered in a personalized format with the convenience of our mobile app, and with the benefits of our award-winning customer care;

Proprietary technologies which we believe help us provide our customers with a quality shopping experience;

Logistics capabilities tailored to the furniture and home goods category and developed over our many years of e-commerce experience;

Long-term mutually beneficial relationships with our partners, which currently number approximately 4,000; and

Our Club O Loyalty Program, which we believe increases customer engagement and retention.

For 2018, nearly all our retail sales through our Website were from transactions in which we fulfilled orders through our network of approximately 4,000 third-party manufacturers, distributors and other suppliers ("partners") selling on our Website. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our retail partners. We provide our partners with access to a large customer base and convenient services for order fulfillment, customer service, returns handling, and other services. Our supply chain allows us to ship directly to our customers from our suppliers or from our warehouses. Our retail sales also include direct sales of our own inventory shipped from our warehouses. Our warehouses primarily fulfill orders from direct sales of our own inventory, including some customer returns of partner products. Our warehouses generally ship between 1,500 and 3,000 packages per day and up to approximately 6,000 packages per day during peak periods.

During the years ended December 31, 2018, 2017 and 2016 our sales were almost entirely to customers located in the United States and no single customer accounted for more than 1% of our total net revenue.

Additional Offerings

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

Our international business where we offer products to customers outside the United States using third party logistics providers;

Worldstock Fair Trade, a store within our Website that offers handcrafted products made by artisans all over the world to help improve the lives of people in emerging economies;

Pet Adoptions, a free service and portal within our Website that leverages our technology to display pets available for adoption from shelters across the United States;

Overstock Hotels, portal within our Website that enables customers to search and book hundreds of thousands of properties worldwide, including big box brands, modern boutiques, and more;

Supplier Oasis, a single integration point through which our partners can manage their products, inventory and sales channels, and also obtain multi-channel fulfillment services through our distribution network; and

Businesses advertising products or services on our Website.

Manufacturer, Distributor, and Supplier Relationships

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

Sales and Marketing

We use a variety of methods to target our retail consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon

websites, portals, banners, e-mail, direct mail, and viral and social media campaigns. We also do brand advertising through television, radio, print ads, and event sponsorships.

Customer Service

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

Technology

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

Competition

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

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

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

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

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

Seasonality

Our retail business is affected by seasonality because of the holiday season, which historically has resulted in higher sales volume during our fourth quarter, which ends December 31. We recognized 24.8%, 26.2%, and 29.2% of our annual revenue during the fourth quarter of 2018, 2017, and 2016, respectively. While we had lower sales volume during Q4 2018, we anticipate the trend of higher sales volume during our fourth quarter to continue for the foreseeable future.

Financial Information about Business Segments and Geographic Areas

As described further in Item 15 of Part IV, "Financial Statements"—Note 21. Business Segments, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K, we determined our segments based on how we manage our business, which, in our view, consists primarily of our Retail and Medici businesses. Our Retail business is a

reportable segment. As described below, our Medici business is comprised of many components or operating segments, including our tZERO reportable segment. We use pre-tax net income (loss) as the measure to determine our reportable segments. As a result, tZERO is the only reportable segment of our Medici business as it is quantitatively significant. The remaining Medici business operating segments are not significant and are included in Other. See Item 15 of Part IV, "Financial Statements"—Note 21. Business Segments for information regarding our business segments and geographical areas.

Intellectual Property and Trade Secrets

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

Our Medici Business

In late 2014, we began working on initiatives to develop and advance blockchain technologies. We pursue these initiatives through our wholly-owned subsidiary, Medici Ventures and its majority-owned subsidiary tZERO. These initiatives remain in the start-up phase, and neither Medici Ventures nor tZERO has generated significant revenues from any blockchain-based technology or application of blockchain technology. As of December 31, 2018, we have spent approximately \$209.6 million in our Medici business since its inception, with the majority of that being spent in tZERO.

Medici Ventures

Medici Ventures' strategy is to develop and advance the concepts of "Government as a Service" and a "Technology Stack for Civilization" by creating or fostering a set of products and solutions that leverage blockchain technology to generate efficiencies and increase security and control in six areas of civilizational necessity: identity management, property rights and management, central banking and currencies, capital markets, supply chains and commerce, and voting systems. A blockchain is a cryptographically secured, distributed infrastructure, or network, which may be accessed and, in some cases, maintained by each member of the network. Medici Ventures has a team of approximately 37 software engineers, developers and other technologists who work in blockchain development and deployment and enterprise level software development and deployment. Medici Ventures provides the services of its software engineers, developers, or other technologists to other blockchain companies. Medici Ventures also owns strategic minority equity interests in several blockchain-related companies, each of which focuses on at least one of the Government as a Service areas mentioned above. Medici Ventures takes an active interest in and holds seats on the boards of some of these companies. These companies include technology companies whose focuses include commercial blockchain applications for identity and social media, property and land, money and banking, capital markets, supply chain, and voting. All of the companies in which Medici Ventures holds strategic equity interests are startup businesses, businesses in the development stage, or businesses with a short operating history. The majority of Medici Ventures' business is its 80% interest in tZERO, which, as described below, is a financial technology company pursuing potential financial applications for blockchain technologies.

See "Risk Factors-Additional Risks Relating to Our Medici Business."

tZERO

Medici Ventures' majority-owned subsidiary tZERO is a financial technology company pursuing potential financial applications of blockchain technologies as well as non-blockchain businesses. tZERO has a team of approximately 50 software engineers, developers and other technologists who focus on developing and exploring opportunities for novel

applications of blockchain technology. As a result of its early stage of development, tZERO has not yet generated revenue from any commercially available blockchain-based applications. tZERO is currently involved in, among other things, the following:

Blockchain Services - Token Trading Systems. In connection with Overstock's 2016 SEC-registered offering of Blockchain Voting Series A Preferred Stock (the "Series A Preferred"), tZERO developed a suite of software and technologies referred to as the tZERO Issuance and Trading Platform (the "tZERO Platform"). The Series A Shares trade exclusively on the PRO Securities ATS, which utilizes the tZERO Platform. tZERO has been leveraging its experience and expertise from developing the tZERO Platform for the Series A Preferred to develop trading systems that are capable of trading tZERO's Preferred Equity Tokens ("tZERO Security Tokens"), issued in a private placement completed in October 2018, and, ultimately, other issuer's digital securities (such systems, the "Token Trading Systems"). First, in January 2019, the PRO Securities ATS, utilizing the tZERO Platform, partnering with Dinosaur Financial Group, LLC ("Dino") and Electronic Transaction Clearing, Inc. ("ETC"), each

SEC-registered broker-dealers and FINRA members, began facilitating private placement resales of tZERO Security Tokens to accredited investors in reliance upon an exemption from registration under Section 4(a)(7) of the Securities Act. Second, in June 2018, tZERO and BOX Digital Markets LLC ("BOX Digital") announced that they had entered into a joint venture, named Boston Security Token Exchange LLC, intended to develop a U.S. national securities exchange (the "Exchange") with regulatory approvals that would enable the Exchange to trade digital securities. The Exchange will require approval from the U.S. Securities and Exchange Commission prior to beginning operations. tZERO is creating the necessary technology, and will manage the ongoing technology implementation, administration, maintenance and support. BOX Digital is providing executive leadership and regulatory expertise. Subject to obtaining SEC approval, tZERO and Box Digital intend for the Exchange to operate as a facility of BOX Options Exchange, an existing registered U.S. securities exchange. We have been informed that the management of the joint venture continues to work with the Staff of the SEC, and anticipates filing the proposed trading rules of the Exchange in the second quarter of 2019. The commencement of operations of the Exchange would be subject to approval by the SEC of the trading rules and other matters. tZERO continues to explore the viability of other Token Trading Systems, any of which may be developed as an additional functionality of the PRO Securities ATS, as a functionality of another U.S. alternative trading system, as a functionality of a non-U.S. trading system or a non-U.S. exchange that tZERO may operate or designate, or any other format, wherever situated.

tZERO Preferred Equity Tokens. tZERO issued the tZERO Security Tokens on October 12, 2018, and in January 2019, tZERO began secondary trading of tZERO security tokens by accredited investors using digital securities brokerage accounts at Dino, which is serving as the introducing broker-dealer in connection with the PRO Securities ATS.

- Blockchain Services - Digital Locate Receipts ("DLR") software. The "digital locate receipt" software (the "DLR Software") is currently in customer production testing, which is being conducted by a third party, and tZERO has not yet entered into any commercial licenses with any licensees. The DLR Software is intended to help broker-dealer licensees with stock inventory to both load and manage their inventory in order to assist short sellers of public securities in establishing that they have located available shares in the U.S. public securities market prior to effecting short sales. The DLR Software is intended to enable licensees to create a blockchain-based record of the shares that the licensee has made available for "locates" using customizable DLR Software functionality and of the daily purchases of the right to "locate" specifically identified shares for purposes of compliance with regulatory requirements. The broker-dealer licensees of DLR Software are the parties responsible for ensuring that locates issued using the DLR Software comply with all applicable regulations, and the commercial viability of the DLR Software is dependent on the ability of broker-dealer licensees to establish locates using the DLR Software as an effective means of satisfying regulatory obligations in connection with effecting short sales.

Blockchain Services - Bitsy, Inc. Effective January 1, 2019, tZERO acquired 100% of the equity interest in Bitsy, Inc. by purchasing the 67% equity interest in Bitsy held by Steve Hopkins, Medici Ventures' former chief operating officer and general counsel, and current president of tZERO, and affiliates for \$8.0 million in cash, and purchasing the remaining 33% of the Bitsy common stock from Medici Ventures for a \$4.0 million convertible promissory note due December 31, 2020 and an assignment of certain intellectual property to Medici Ventures. In September 2018, Bitsy announced that it had begun a limited beta launch of a digital wallet service intended to create a bridge between traditional fiat currencies and cryptocurrencies.

Non-blockchain services - SpeedRoute and PRO Securities. tZERO wholly owns two registered broker-dealers, SpeedRoute, LLC ("SpeedRoute") and PRO Securities, LLC ("PRO Securities"). SpeedRoute is an electronic, agency only Financial Industry Regulatory Authority, Inc. ("FINRA")-registered broker-dealer that provides connectivity for its customers to U.S. equity exchanges as well as off-exchange sources of liquidity such as dark pools. All of SpeedRoute's customers are registered broker-dealers. SpeedRoute does not hold, own or sell securities. PRO Securities is a FINRA-registered broker-dealer that owns and operates the PRO Securities alternative trading

system (the "PRO Securities ATS"), which has filed a Form ATS with the Securities and Exchange Commission ("SEC") notifying the SEC of its activities as an alternative trading system, or ATS. The PRO Securities ATS is a closed system available only to its broker dealer subscribers. PRO Securities does not accept orders from non-broker dealers, nor does it hold, own or sell securities.

Non-blockchain services - Verify Investor, LLC. tZERO purchased 81.0% of Verify Investor, LLC, an accredited investor verification company, for \$12 million in cash, in February 2018. Verify Investor, LLC, through its website VerifyInvestor.com, provides a fast, easy, and cost-effective method of compliance for companies seeking to verify their investors as accredited investors.

tZERO is no longer offering automated investment advisory services through tZERO Advisors or electronic discount trading through Muriel Siebert & Co., Inc. (Member: FINRA & SIPC) under the FinanceHub tab on our Website. On January 18, 2019, tZERO sold its entire equity interest in StockCross Financial Services, Inc. to StockCross Financial Services, Inc. and Muriel Siebert & Co., Inc. for an amount equal to our original purchase price.

In January 2019, tZERO obtained a patent from the United States Patent and Trademark Office for a system that can take orders to trade “digital transactional items” such as securities, tokens, shares, cash, and other assets from broker dealers and then translate the orders into crypto orders on a digital trading platform or exchange. The patent was recently awarded and to date has not had any effects on tZERO’s business. tZERO believes that the patent will assist in protecting tZERO's proprietary technologies as competitors begin to develop their own trading platforms.

In March 2019, we disclosed that we had executed a Memorandum of Understanding regarding a potential equity investment of up to \$100 million in tZERO to be co-led by GSR Capital and Makara Capital, subject to due diligence, negotiation of binding contracts and regulatory approval. We are in continuing discussions regarding the potential investment, but have not yet entered into any definitive agreement.

We believe that a number of organizations are or may be working to develop trading systems utilizing distributed ledger or blockchain technologies or other novel technologies that may be competitive with tZERO's technology, including its patented technology. Although it is difficult to obtain reliable information about blockchain activities by companies that may be our competitors, they may include companies such as SharesPost, OpenFinance Network, Templum Inc., Coinbase, KoreConX, Blocktrade AG, Smart Valor, the Nasdaq Stock Market, Intercontinental Exchange, Circle, Ideanomics, CrowdEngine, Securitize, Harbor, Polymath, and other entities that are operating trading venues offshore or otherwise structured in an effort to avoid aspects of U.S. regulation.

To the extent that tZERO attempts to market its DLR Software, tZERO would be competing with virtually all of the largest broker dealers in the U.S., all of which have substantially greater resources than tZERO or Overstock, and some of which may generate substantial revenues and profits from the existing firmly entrenched system.

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

See "Risk Factors-Additional Risks Relating to Our tZERO Initiatives."

Strategic Initiatives

We have engaged Guggenheim Securities, LLC to help us identify and evaluate certain strategic initiatives. We are considering a range of potential transactions, including a sale of our retail business and additional equity or debt financings. Our Board of Directors continually discusses a variety of potential strategic and financial options and other changes to our business, but has not approved or made any determination to consummate any strategic transaction, and may choose not to do so in the foreseeable future or at all.

If we sell our retail business, the sale may not require approval by our stockholders under Delaware law. If we enter into an agreement to sell our retail business and determine that no vote of our stockholders is required, we do not expect to submit it to a vote. If we sell our retail business, we currently expect to retain all or substantially all of the after-tax proceeds of the sale for use in our blockchain initiatives.

Legal and Regulatory Matters

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

These matters and other types of claims could result in legal expenses, fines, adverse judgments or settlements and increase the cost of doing business. They could also require us to change our business practices in expensive and significant

ways. In addition, litigation could result in interpretations of the law that may limit our current or future business, require us to change our business practices, or otherwise increase our costs.

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

For further information, see (see Item 1A—"Risk Factors") and the information set forth under Item 15 of Part IV, "Financial Statements"—Note 12. Commitments and Contingencies, Legal proceedings and contingencies, contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Government Regulation

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

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

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

The Token Trading System launched in January 2019 is subject to or affected by numerous laws and regulations. The Token Trading System relies on the PRO Securities ATS, which is subject to Regulation ATS as well as other regulations, and which utilizes the tZERO Platform, partnering with broker-dealers that are also subject to regulation by the SEC and FINRA, in order to facilitate private placement resales of tZERO Security Tokens to accredited

investors in reliance upon an exemption from registration under Section 4(a)(7) of the Securities Act. The joint venture that tZERO and BOX Digital announced in June 2018 is seeking regulatory approvals that would enable the parties to operate a national securities exchange to trade security tokens. A national securities exchange, which will require approval from the U.S. Securities and Exchange Commission prior to beginning operations, will be subject to provisions of the Securities Exchange Act of 1934 and regulation substantially greater than that applicable to tZERO's current operations. In addition, depending on the digital assets traded, the U.S. Commodity Futures Trading Commission may consider the assets to be commodities or derivatives and subject to additional regulation. Certain aspects of our Medici business, including Bitsy's operations which were subsequently acquired by tZERO, are or may be subject to the state and federal laws and regulations applicable to money service businesses, including the requirements of FinCEN.

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

Employees

At December 31, 2018, we had approximately 2,060 full-time employees. We seasonally increase our workforce during our fourth quarter to handle increased workload in both our warehouse and customer service operations. We have never had a work stoppage and none of our employees are represented by a labor union. We consider our employee relationships to be good. Competition for qualified personnel in our industry is intense, particularly for software engineers and other technical staff.

Executive Officers of the Registrant

The following persons were executive officers of Overstock as of March 13, 2019:

Executive Officers	Age	Position
Patrick M. Byrne	56	Chief Executive Officer, President, and Director
Jonathan E. Johnson III	53	President of Medici Ventures, Inc. and Director
Saum Noursalehi	40	Chief Executive Officer of tZERO Group, Inc. and Director
Carter P. Lee	49	Chief Administrative Officer
Dave Nielsen	49	Chief Sourcing & Operations Officer
Gregory J. Iverson	43	Chief Financial Officer
John Paul "J.P." Knab	38	Chief Marketing Officer
Kamelia Aryafar	33	Chief Customer & Algorithms Officer
Nate F. Auwerda	38	Chief Technology Officer
Seth A. Moore	36	Chief Strategy Officer
Sumit Goyal	34	Chief Digital Officer

Dr. Patrick M. Byrne has served as our Chief Executive Officer (principal executive officer) and as a Director since 1999, President since May 2018, and as Chairman of the Board of Directors from 2001 through 2005 and 2006 through 2014. Dr. Byrne also served as the Chief Executive Officer of tZERO, a subsidiary of Overstock, from July 2015 through May 2018 and also has served as Co-chairman of the Board of Directors for tZERO since October 2017. Dr. Byrne founded Overstock in 1999. From 1994 to the present, Dr. Byrne has served as a Manager of the Haverford Group, an investment company and an affiliate of Overstock. Dr. Byrne holds a bachelor's degree in Chinese studies from Dartmouth College, a master's degree from Cambridge University as a Marshall Scholar, and a doctorate in philosophy from Stanford University.

Mr. Jonathan E. Johnson III has served as President of Medici Ventures since August 2016 and as a Director since 2013. Mr. Johnson also served as our Chairman of the Board of Directors from 2014 through 2017. Mr. Johnson joined Overstock in 2002 and previously served as our President, Executive Vice Chairman, Acting Chief Executive Officer, Senior Vice President, and General Counsel. Mr. Johnson holds a bachelor's degree in Japanese from Brigham Young University and received his law degree from the J. Reuben Clark, Jr. Law School at Brigham Young University.

Mr. Saum Noursalehi has served as the Chief Executive Officer of tZERO since May 2018. Mr. Noursalehi also served as our President of Retail from August 2016 through May 2018 and as a Director since May 2017. Mr. Noursalehi joined Overstock in 2005 and previously served as Chief Revenue Officer and Senior Vice President, Vice President of OLABS, Vice President of Product Development, and held roles in website, mobile and search engine optimization. Mr. Noursalehi holds a bachelor's degree in Computer Science from the University of Utah.

Mr. Carter P. Lee has served as our Senior Vice President of Technology and People Care since 2015 and was appointed as our Chief Administrative Officer during 2018. Mr. Lee joined Overstock in Overstock in 2001 and previously served as Vice President of Technology Operations and held other roles including Director of Internal Systems. Prior to joining Overstock, Mr. Lee was a Systems Engineer for Hospice of the Valley and Vice President of Technology for Motherboard Discount Center in Phoenix, AZ.

Mr. Dave Nielsen joined Overstock as our Chief Sourcing and Operations Officer in October 2018, having returned to Overstock after serving for three and half years as the Chief Executive Officer for Global Access. Mr. Nielsen originally joined Overstock in 2009 and previously served as our Senior Vice President of Business Development, Co-President, and Senior Vice

President and General Merchandise Manager. Additionally, Mr. Nielsen also served as President and CEO of Old Town Imports, LLC, and also held several leadership positions with Payless ShoeSource, Inc. Mr. Nielsen received his bachelor's Degree in Business Management with an emphasis in Marketing from Brigham Young University.

Mr. Gregory J. Iverson (principal financial and accounting officer) joined Overstock as our Chief Financial Officer in April 2018. Prior to joining Overstock, Mr. Iverson spent eleven years at Apollo Education Group, Inc. (AEG), a global private-sector education company, culminating with his role as Chief Financial Officer. Mr. Iverson also served as the Director of Financial Reporting at US Airways Group, Inc. (subsequently acquired by American Airlines), and began his career in the audit and advisory practices of Arthur Andersen, LLP and Deloitte & Touche, LLP, in Phoenix, Arizona. Mr. Iverson graduated with a B.S. in business from the University of Idaho and is a Certified Public Accountant.

Mr. John Paul "J.P." Knab has served as our Senior Vice President of Marketing since March 2016, having returned to Overstock after serving for one-year as the Senior Vice President of Marketing, Merchandising and Business Development for U.S. Water Filters in St. Paul, Minnesota, and was appointed as our Chief Marketing Officer in August 2018. Mr. Knab originally joined Overstock in 2005 and previously served as our Vice President of Marketing and held other roles including Director of Merchandising and Director of Analytics. Mr. Knab holds an MBA with a Marketing emphasis and a bachelor's degree in Finance from Brigham Young University.

Dr. Kamelia Aryafar has served as our Chief Algorithms Officer since September 2018. Dr. Aryafar joined Overstock in 2017 and previously served as our Vice President, Head of Machine Learning, Data Science and AI, and Director of Engineering. Dr. Aryafar transitioned from academia to the industry as a senior machine learning scientist and lead at Etsy in 2013. Dr. Aryafar holds a Ph.D. and M.Sc. in computer science and machine learning from Drexel University and has published several papers in scientific journals.

Mr. Nate F. Auwerda was appointed as our Chief Technology Officer in November 2018. Mr. Auwerda joined Overstock in 2004 and previously served as Vice President of Technology, Senior Director of Technology, Director of Website Operations, Senior Manager of IT Security & Infrastructure as well as various other positions.

Mr. Seth A. Moore was appointed as our Senior Vice President of Analytics in February 2017 and later appointed as Senior Vice President of Strategy in December 2017, Chief of Staff to the CEO in October 2017, and later appointed Chief Strategy Officer during 2018. Mr. Moore joined Overstock in 2006 and previously served as Vice President of OLabs, Vice President of Analytics, and Vice President of Website Marketing. Mr. Moore holds a bachelor's degree in Political Science from Brigham Young University.

Mr. Sumit Goyal was appointed as our Chief Digital Officer in November 2018. Mr. Goyal joined Overstock in 2011 and previously served as our Chief Technology Officer as well as various other positions in technology and software development. Before joining Overstock.com, Mr. Goyal held software engineering and programmer positions at eHarmony.com, eBay, Goldman Sachs, and IBM. Mr. Goyal holds a bachelor's degree in Computer Science from the National Institute of Technology Kurukshetra.

None of our officers has an employment agreement or any specific term of office.

Available Information

We make our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, available free of charge through the Investor Relations section of our main website, www.overstock.com, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet Website and the information contained therein or connected

thereto are not a part of or incorporated into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Please consider the following risk factors carefully. If any one or more of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should read all of the risk factors below carefully before making any decision to acquire or hold our common stock or preferred stock. Virtually all of the risks of holding our common stock are also risks for holding our Series A Preferred Stock and our Series B Preferred Stock.

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

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

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

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

Risks Relating to Our Company and to Our Current Review of Strategic Initiatives

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

We have a history of significant losses and our losses have accelerated in recent years, particularly 2018, and we expect to incur operating and net losses in the foreseeable future. Net cash used in operating activities were \$138.9 million during 2018, and at December 31, 2018 our accumulated deficit was \$458.9 million. Our losses have accelerated in recent years, particularly in 2018, and we may not be able to achieve profitability promptly or at all. We are working to improve the efficiency of our operations but may be unable to do so. Recent staff reductions we have made and additional cost reductions we may implement in the future may adversely affect our business operations. If we are unable to successfully manage our business while reducing our expenses, our ability to continue in business could depend on our ability to raise sufficient additional capital, obtain sufficient financing, or sell or otherwise monetize significant assets such as our corporate headquarters. We do not expect to be able to obtain significant debt financing in the near future. Additionally, we may not be able to raise capital on acceptable terms or at all. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

We have significant negative working capital.

Our net working capital (current assets less current liabilities) was a negative \$26.2 million at December 31, 2018 compared to a positive \$50.5 million at December 31, 2017. Additionally, any significant declines in our revenues could result in decreases in our working capital, which would further reduce our cash balances. Our failure to generate sufficient revenues or profits or to obtain additional financing or raise additional capital could have a material adverse effect on our operations and on our ability to meet our obligations as they become due. The occurrence of any of the foregoing risks would have a material adverse effect on our financial results, business and prospects.

We do not have access to any credit facility or other arrangement for borrowing funds.

We currently do not have access to a credit facility or to the proceeds of any mortgage indebtedness or other secured or unsecured indebtedness for borrowed money. We may be unable to obtain financing on favorable terms, or at all. Our lack of any credit facility or other ready access to borrowed funds could have a material adverse effect on our ability to fund additional losses in the near future, or to respond to unexpected cash requirements or other liquidity issues that we may face from time to time. Our inability to generate sufficient cash flow from operations or obtain financing on acceptable terms would have a material adverse effect on our financial results, business and prospects.

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

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

In February of 2018, we and tZERO each received notice that the staff of the SEC's Division of Enforcement is conducting an investigation and has requested information regarding the tZERO security token offering.

In February 2018, the Division of Enforcement of the SEC informed tZERO and subsequently informed us that it is conducting an investigation and requested that we and our affiliates, including Medici Ventures and tZERO voluntarily provide certain information and documents related to tZERO and the tZERO security token offering in connection with its investigation. In December 2018, we received a follow-up request for information. We are cooperating fully with the SEC in connection with its investigation, which will require the time and attention of tZERO and our personnel and may have an adverse effect on our ability to focus attention on our businesses and our ability to raise capital. In addition, the outcome of the investigation could result in negative publicity for tZERO or us and may have a material adverse effect on us or on the current and future business ventures of tZERO.

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

We have been and are currently exploring certain strategic initiatives, and decisions we make could change our business fundamentally and increase the risks and uncertainties of our business substantially. We are considering a range of potential transactions, including a sale of our retail business and additional equity or debt financings. There can be no assurance that we will pursue or consummate any strategic transaction or, if consummated, that any such transaction will ultimately be favorable to the Company and its stockholders. Any such transaction could materially adversely affect our business and financial results. In addition, our exploration of strategic and financing options has required and will continue to require significant time and attention by our management, and the incurrence of significant expenses. Further, our efforts to keep investors informed about our consideration of strategic alternatives

may result in distraction and unrest among our employees, which may adversely affect employee engagement, morale and retention and which could have a material adverse effect on our financial results, business and prospects.

Our recent reduction in workforce may prevent us from executing initiatives to improve the performance of our retail business effectively or at all.

We have been and are currently implementing certain initiatives to improve the performance of our retail business, and our recent reduction in workforce could prevent us from engaging in certain initiatives we had previously considered and could prevent us from executing such initiatives effectively. At December 31, 2018, our workforce consisted of approximately 2,060 employees. At March 5, 2019, our workforce had been reduced by approximately 250, or approximately 12%, and consisted of

1,810 employees. The reduction in our workforce could prevent us from engaging in certain initiatives to improve the performance of our retail business, due to an insufficiency of workforce size or an insufficiency of certain required skills, and could prevent us from executing initiatives effectively, which could have a material adverse effect on our financial results, business and prospects.

If we sell our retail business, our revenues will decrease substantially, we will need to develop new businesses and sources of revenue, and our business, financial results and prospects may be materially adversely affected.

If we sell our retail business in order to focus on our efforts on our Medici initiatives, our revenues would decrease to an insignificant amount. Our retail business is a relatively mature and predictable business compared to our Medici initiatives, which have a short history, minimal revenues, significant expenses, significant losses and significant uncertainties, and conduct business in a new and rapidly changing industry. We would continue to bear most of the expenses we currently bear as a publicly held company but would have to build a new business and develop new sources of revenue based on our blockchain initiatives, and there is no assurance that we would be able to do so or, even if we could do so, that our new business could become profitable.

If we sell our retail business, we do not expect to make any distribution to stockholders.

If we sell our retail business for cash, we currently expect to retain all of the after-tax proceeds of the sale for use in our blockchain initiatives. The decision to retain all of the after-tax proceeds, or to declare a dividend, implement a stock repurchase program, make one or more issuer tender offers or take any other similar action, would be subject to the discretion of our Board of Directors, and would depend on the factors the Board deems relevant at the time. Relevant factors would likely include our capital resources, liquidity, operating results, internal projections and plans at the time. We have incurred significant losses recently, and we have utilized a significant amount of cash in funding of our Medici and tZERO initiatives. We also have plans for Medici and tZERO that will require significant additional funding, and we do not currently expect to make any distribution to stockholders even if we sell the retail business. As a result, the market price of our securities could decrease substantially.

A sale of our retail business might not be subject to a stockholder vote.

Whether a sale of our retail business would be subject to a stockholder vote would depend primarily on whether a vote is required by applicable law and whether a buyer would require us to submit it to a vote regardless of the requirements of applicable law. If we make a decision to sell our retail business, we and our Board will evaluate the applicable requirements and other factors we and our Board then deem relevant, but at present we do not expect to submit any transaction to a stockholder vote unless we are required to do so, whether by applicable law or otherwise. If we sell our retail business without submitting the transaction to a vote, we may face claims asserting that we should have submitted it to a vote. In addition, we may not sell our retail business in the foreseeable future or at all. Any developments, lack of developments (or announcements about any developments or lack of developments) could cause the trading prices of our securities to decrease.

If we sell our retail business, we could incur a substantial corporate level income tax liability.

If we sell our retail business in a transaction taxable to the Company, the corporate level income tax liability to the Company would depend in part on the sales price but could be substantial. If we experience an ownership change due to stock sales by our significant stockholders, the amount of net operating losses or credits that can be used to offset the tax on any gain may be limited. Depending on the sales price and limits that are triggered by an ownership change, any net operating losses and credits we have that might be used to reduce the income tax liability to the Company may be unlikely to reduce the tax liability by a significant amount.

If we sell our retail business, our Compensation Committee may accelerate the vesting, in whole or in part, of some or all outstanding restricted stock units under our Equity Incentive Plan.

If we sell our retail business, the Compensation Committee of our Board of Directors may accelerate the vesting, in whole or in part, of some or all outstanding restricted stock units ("RSUs") under our 2005 Equity Incentive Plan. Any such determination would be subject to the discretion of the Compensation Committee and such factors as the Compensation Committee might then deem relevant. Any such acceleration would result in an increase in the number of shares outstanding and would dilute stockholders' ownership of our company.

Our discussions with potential bidders for our retail business could result in the compromise of our intellectual property.

As a consequence of our discussions with potential bidders for our retail business, it may be possible for potential bidders to misappropriate intellectual property and other confidential information from us, which could have a material adverse effect on our financial results, business and prospects.

If we sell our retail business in order to focus on our blockchain initiatives and related efforts, risks relating to our Medici businesses, including our tZERO initiatives, that may be immaterial to us now would likely each become a material risk to us.

If we sell our retail business in order to focus on our blockchain initiatives and related efforts, we would immediately become a much smaller company than we are now. Consequently, risks relating to our Medici businesses, including our tZERO initiatives, which may currently be immaterial to us, would in all likelihood each become material risks to us. See "Additional Risks Relating to Our Medici Business," and "Additional Risks Relating to Our tZERO Initiatives" below.

We engage in related party transactions, which could result in conflicts of interest involving our management.

We engage in related party transactions with members of our management and Board of Directors, including with Patrick Byrne and Saum Noursalehi and their affiliates. We also own interests in businesses, including tZERO, in which one or more of our directors, officers and other employees own interests. Related party transactions present conflicts of interest which could have a material adverse effect on our financial results, business and prospects.

Our ownership of less than 100% of tZERO and other subsidiaries may cause conflicts of interest.

Our wholly-owned subsidiary Medici Ventures owns 80% of the outstanding common stock of tZERO, and tZERO employees, former employees and others own the balance of the shares. tZERO has issued employee stock options that may further dilute our ownership interest. In addition, tZERO may engage in capital raising activities in the future that could further dilute our ownership interest. To that end, in March 2019, we disclosed that we have executed a Memorandum of Understanding regarding a potential transaction involving an equity investment of up to \$100 million in tZERO by GSR Capital and Makara Capital, and are in continuing discussions in furtherance thereof. We cannot be sure that we will be able to complete any such transaction on the contemplated terms or on the desired timeframe, if at all. Medici Ventures also has issued employee stock options that may result in our owning less than 100% of Medici Ventures in the future, which would also reduce our effective interest in tZERO. The boards of directors of tZERO and Medici Ventures must consider the interests of all of their stockholders, and the interests of the individual stockholders may differ from our interests. Any significant divergence between our interests and the interests of other stockholders, who are also likely to be employees, of our majority owned subsidiaries, could result in disagreements regarding business matters and could have an adverse effect on employee morale and on our business.

The options granted by Medici Ventures and the options granted by tZERO could reduce our effective ownership of each of them significantly.

Medici Ventures has granted compensatory options under its stock option plan and sold warrants to purchase Medici common stock. If all of the currently outstanding Medici Ventures options were vested and exercised and all of the currently outstanding warrants were exercised, our ownership of Medici Ventures would decrease from 100% to 90%.

tZERO has granted compensatory options under its equity incentive plan. If all of the currently outstanding tZERO options were vested and exercised, Medici Ventures' ownership of tZERO would decrease from 80% to 76%.

If all of the currently outstanding Medici Ventures options and warrants and all of the currently outstanding tZERO options were exercised, our effective indirect ownership of tZERO would decrease from 80% to 69%.

An equity financing by tZERO, whether involving GSR Capital and/or Makara Capital or otherwise, could accelerate the vesting of the options granted by tZERO.

The tZERO equity incentive plan requires the administrator of the plan to accelerate, vest, or cause the lapse of restrictions applicable to awards outstanding under the plan upon a “change in control” as defined in the plan. For purposes of the tZERO plan, a “change in control” includes Overstock and any entity or entities directly or indirectly controlled by Overstock becoming the legal or beneficial owner of tZERO shares having less than a majority of the total voting power of the outstanding stock of tZERO. As a result, a sale of tZERO shares, whether involving GSR Capital and/or Makara Capital or

otherwise, could accelerate the vesting of the options granted by tZERO. Further, the exercise of options or warrants issued by Medici Ventures and/or the exercise of vested options issued by tZERO could contribute to or cause the accelerated vesting of any then unvested tZERO options.

Our subsidiary Medici Land Governance, Inc. is a public benefit corporation.

Our subsidiary Medici Ventures has formed Medici Land Governance, Inc. ("MLG") as a public benefit corporation under Delaware law. Directors of traditional corporations, including Overstock and Medici Ventures, are required to make decisions they believe to be in the best interests of their stockholders. The directors of MLG are required by Delaware law to manage MLG in a manner that balances (1) MLG stockholders' pecuniary interests, (2) the best interests of those materially affected by MLG conduct, and (3) MLG public benefit purpose, which is to promote full financial inclusion, economic advancement, and enfranchisement of individuals, by creating systems using blockchain and other technologies that help individuals prove rightful ownership of assets, capitalize their assets, and establish a formal identity. As a result, MLG may not have the same focus on increasing stockholder value that Overstock and Medici Ventures have, and the duties of the officers and directors of MLG, some of whom also are or will be officers and/or directors of Overstock and/or Medici Ventures, may conflict with the duties of the officers and directors of Medici Ventures and Overstock. Even in the absence of common directors, conflicts of interest may arise.

MLG does not have a proven business model, does not have revenues or profits, and may require additional capital.

MLG was formed in mid-2018 and is an early stage company that currently does not generate revenues or profits. Its current projects are being done as pilot projects without charge at MLG's expense to demonstrate MLG's capabilities and develop its reputation. Although MLG intends to generate revenues and profits in the future, it has not yet developed a business model. If MLG cannot generate revenues and profits, MLG will require additional capital, which may have a material adverse effect on our financial results, business and prospects.

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

We have developed strategic relationships, entered into joint ventures, purchased strategic interests in other companies, and acquired other companies, and we expect to pursue and engage in similar types of activities in the future. Each of these types of business transactions involve numerous risks, including difficulties in the evaluation of business opportunities and risks, including regulatory and integration risks, as well as difficulties in the assimilation of acquired operations and products. These types of transactions can also result in the diversion of management's attention from other business matters, employee retention issues, and the risk of liability for liabilities of acquired companies. We may not be able to successfully integrate businesses, operations, personnel, services, products or other assets that we have acquired or may acquire in the future. Further, acquisitions may also create a need for additional accounting, tax, compliance, documentation, risk management and internal control procedures, and may require us to hire additional personnel to implement, perform and/or monitor such procedures. To the extent our procedures are not adequate to appropriately implement, perform and/or monitor all necessary procedures relating to any new or expanded business, we could be exposed to a material loss or regulatory sanction. In addition, we may be unable to sell or otherwise monetize any of the interests or companies or other assets or rights we have acquired or may acquire in the future. We also may be unable to maintain our strategic relationships, including those with joint venture partners, or develop new strategic relationships. The occurrence of any of the foregoing which could have a material adverse effect on our financial results, business and prospects.

The potential investment in tZERO contemplated by the Memorandum of Understanding we announced in March 2019 with GSR Capital and Makara Capital may not occur.

In March 2019, we disclosed that we had executed a Memorandum of Understanding regarding a potential equity investment of up to \$100 million in tZERO to be co-led by GSR Capital and Makara Capital, subject to due diligence, negotiation of binding contracts and regulatory approval. We may not be able to reach agreement on the terms of any such investment. Even if we are able to reach agreement on the terms and enter into a definitive agreement regarding the potential investment, the transaction may not close. Our efforts to reach an agreement and close a transaction will continue to take time and attention from our senior executives, which may have an adverse effect on our business, and if the transaction fails to occur, it may have a material adverse effect on our financial results, business and prospects.

We may have additional exposure to claims under Delaware's Abandoned Property Law.

In September 2018 we lost a jury trial in Delaware brought on Delaware's behalf alleging that we had violated Delaware's unclaimed property laws by failing to report and turn over to Delaware certain unused gift card balances. The time period covered by the lawsuit was 2004 through 2007. The jury returned a verdict, which we expect to result in a judgment against us of approximately \$7.3 million plus attorneys' fees and costs. We may have additional exposure for the time period 2008 through 2014.

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

We have established a valuation allowance for our net deferred tax assets, primarily due to realized losses and uncertainty regarding our future taxable income. Determining whether a valuation allowance for deferred tax assets is appropriate requires significant judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. We intend to maintain a valuation allowance on our net deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances.

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

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

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

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

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

Prior to the Supreme Court's recent decision in *South Dakota v. Wayfair*, in which we were a named party, to overturn its 1992 decision in *Quill v. North Dakota*, we generally did not collect sales or other similar taxes on sales of goods into states where we had no duty to do so under *Quill*. If any jurisdiction where we did not collect sales or other taxes successfully asserts that we should have done so, it could have a material adverse effect on our business, regardless of the ultimate outcome.

A subsidiary of ours owns the land on which we built our headquarters, and we may incur environmental expense and liabilities.

In 2014, our wholly-owned subsidiary O.com Land, LLC purchased land near Salt Lake City, Utah on which we have built our new headquarters. The land is part of the Midvale SLAG Superfund Site ("Site"), a former Comprehensive

Environmental Response, Compensation and Liability Act ("CERCLA") superfund site. O.com Land, LLC is required to follow certain requirements of CERCLA and the consent decree governing remediation of the Site, and its failure to do so could expose us to material environmental liabilities.

Additional Risks Relating to Our tZERO Initiatives

Risks Related to tZERO's Business

tZERO has a limited operating history, which makes it hard to evaluate its ability to generate revenue through operations, and at the date of this filing, tZERO has not generated revenue from any commercially available blockchain-based application.

tZERO was formed in 2014 to develop blockchain and financial technology as part of Overstock's Medici initiatives. tZERO's limited operating history makes it difficult to evaluate its current business and future prospects. tZERO has encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly developing and changing industries, including challenges in forecasting accuracy, determining appropriate uses of its limited resources, gaining market acceptance, managing a complex regulatory landscape and developing new products. tZERO's current operating model may require changes in order for it to scale its operations efficiently. Investors in our common stock should consider tZERO's business and prospects in light of the risks and difficulties it faces as an early-stage company focused on developing products in the field of financial technology. To date, tZERO has focused on developing its business and exploring opportunities for novel applications of blockchain technology. tZERO has not generated revenue from any commercially available blockchain-based applications. tZERO has generated limited revenue and has accumulated losses since its inception. As such, tZERO's has historically been dependent upon continued financial support from us. If we are unable to generate positive cash flow in our retail business, raise additional capital, obtain financing, or sell or otherwise monetize significant assets, we may be unable to continue funding tZERO at the rate or levels we would otherwise do, which could have a material adverse effect on us and on the current and future business of tZERO.

tZERO may not successfully develop, launch, market, or sell its DLR Software.

tZERO anticipates that its first commercially available blockchain-based product will be its DLR Software. The DLR Software is currently in customer production testing, which is being conducted by a third party, and tZERO has not yet entered into any commercial licenses with any licensees. The DLR Software is intended to help broker-dealer licensees with stock inventory to both load and manage their inventory in order to assist short sellers of public securities in establishing that they have located available shares in the U.S. public securities market prior to effecting short sales. The DLR Software is intended to enable licensees to create a blockchain-based record of the shares that the licensee has made available for "locates" using customizable DLR Software functionality and of the daily purchases of the right to "locate" specifically identified shares for purposes of compliance with regulatory requirements. Although tZERO believes that the DLR Software provides broker-dealers with a better solution than the system currently in use for identifying "locates," the existing system is firmly entrenched and is controlled by firms with substantially greater resources than tZERO or Overstock. tZERO may not successfully develop, launch, market or sell its DLR Software.

The commercial viability of the DLR Software is dependent on the ability of broker-dealer licensees to offer the DLR Software as an effective means of satisfying the regulatory obligations of those effecting short sales. Regulation SHO under the Exchange Act ("Regulation SHO"), as interpreted and implemented by the SEC, is the principal regulation governing short sales. In preliminary discussions with regulators regarding the application of DLR Software, certain members of the SEC Staff (the "Staff") have expressed concerns regarding whether locates issued utilizing the DLR Software would provide customers of broker-dealer licensees with a valid locate for purposes of Regulation SHO unless certain conditions were satisfied by the issuing broker-dealers. The broker-dealer licensees of DLR Software,

as the parties issuing locates for purposes of Regulation SHO, will be responsible for ensuring that locates issued using the DLR Software comply with all applicable regulations and satisfy the requirements of Regulation SHO. In the event that compliance with regulatory obligations in utilizing DLR Software proves too burdensome to broker-dealer licensees, the DLR Software may not gain market acceptance among broker-dealers.