

OVERSTOCK.COM, INC
Form 10-K
March 03, 2017

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, 2016

Or

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

For the transition period from _____ to _____

Commission file number: 000-49799

OVERSTOCK.COM, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

87-0634302

(I.R.S. Employer Identification Number)

799 West Coliseum Way, Midvale, UT

(Address of principal executive offices)

84047

(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

Common Stock, \$0.0001 par value

Name of Each Exchange on Which Registered

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of 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, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting

company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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, 2016), was approximately \$211.7 million based upon the last sales price reported by Nasdaq. For purposes of this disclosure, shares of Common Stock held by persons who hold more than 5% of the outstanding shares of Common Stock and shares held by officers and directors of the registrant have been excluded in that such persons may be deemed to be affiliates. This determination is not necessarily conclusive.

There were 24,895,038 shares of the Registrant's common stock, par value \$0.0001, outstanding on February 24, 2017.

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 2017 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 Annual 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:

- the anticipated benefits and risks of our business and plans;
- our beliefs regarding our ability to attract and retain customers in a cost-efficient manner;
- the anticipated effectiveness of our marketing;
- our future operating and financial results, including any projections of revenue, profits or losses, contribution, technology expense, general and administrative expense, cash flow, capital expenditures or other financial measures or amounts or non-GAAP financial measures or amounts or anticipated changes in any of them;
- our expectations regarding our new corporate headquarters and the risks relating to our new corporate headquarters;
- our beliefs and expectations regarding the adequacy of our new corporate headquarters and our leased warehouse facilities;
- our expectations regarding the benefits and risks of the credit facility we entered into for the purpose of, among other things, financing a portion of the costs of our new corporate headquarters;
- our future capital requirements and our ability to satisfy our capital needs;
- our expectations regarding the adequacy of our liquidity;
- our ability to retire or refinance any debt we may have or incur in the future;
- the competition we currently face and will face in our business as the ecommerce business continues to evolve and to become more competitive, and as additional competitors, including Amazon and competitors based in China or elsewhere, continue to increase their efforts in our primary markets;
- the effects of government regulation;
- our plans for international markets, our expectations for our international sales efforts and the anticipated results of our international operations;
- our plans and expectations regarding Supplier Oasis and our efforts to provide multi-channel fulfillment services;
- our plans and expectations regarding our insurance product offerings and consumer finance offerings;
- our plans for further changes to our business;
- our beliefs regarding current or future litigation or regulatory actions;
- our beliefs regarding the costs and benefits of our “spend and defend” policy under which we generally refuse to settle abusive patent suits brought against us;
- our beliefs and expectations regarding existing and future tax laws and related laws and the application of those laws to our business including any tax assessments we may receive;
- our beliefs regarding the adequacy of our insurance coverage;
- our beliefs regarding the adequacy and anticipated functionality of our infrastructure, including our backup facilities and beliefs regarding the adequacy of our disaster planning and our ability to recover from a disaster or other interruption of our ability to operate our website;
- our beliefs regarding our cybersecurity efforts and measures and our efforts to prevent data breaches and the costs we will incur in our ongoing efforts to avoid interruptions to our product offerings and other business processes from cyberattacks and from data breaches;
- our belief regarding our ability to meet our published product shipping standards;
- our belief that we can maintain or improve upon customer service levels that we and our customers consider acceptable;
- our beliefs regarding the adequacy of our order processing systems and our fulfillment and distribution capabilities;
- our expectations regarding the costs and benefits of our other businesses, innovations and projects including our car listing service, our Worldstock Fair Trade offerings, our Main Street Revolution offerings and our ecommerce marketplace channel offerings;

our expectations regarding the costs, benefits and risks of our efforts to develop blockchain and financial technology and of the costs, benefits and risks of our acquisitions of the assets and operations of a financial technology company and two registered broker dealers affiliated with the financial technology business;

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our expectations regarding the benefits of our recent rights offering of shares of our Blockchain Voting Series A Preferred Stock and our Voting Series B Preferred Stock;

- our expectations regarding the costs and benefits of various programs we offer, including Club O and programs pursuant to which we may offer free or discounted participation in Club O or other programs we offer to members of the United States Armed Forces and/or to full-time, post-secondary students or others, and including our community site and our public service pet adoption program;
- our expectations regarding the costs and benefits of modifying our marketing efforts to deemphasize coupons;
- our belief that we and our partners will be able to maintain inventory levels at appropriate levels despite the seasonal nature of our business;
- our expectations regarding our emphasis on home and garden product offerings and our attempts to brand ourselves as a home and garden shopping destination;
- our belief that our sales through other ecommerce marketplace channels will be successful and will become an important part of our business; and
- our belief that we can successfully offer and sell a constantly changing mix of products and services.

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 forward-looking statements for a variety of reasons, including among others:

- changes in U.S. and global economic conditions and consumer spending;
- any downturn in the U.S. housing industry;
- world events;
- the rate of growth of the Internet and online commerce, and the occurrence of any event that would discourage or prevent consumers from shopping online or via mobile apps;
- any failure to maintain our existing relationships or build new relationships with partners on acceptable terms;
- any difficulties we may encounter maintaining optimal levels of product quality and selection or in attracting sufficient consumer interest in our product offerings;
- any difficulties we may have with the quality or safety of the products we offer;
- modifications we may make to our business model from time to time, including aspects relating to our product mix and the mix of direct/partner sourcing of the products we offer;
- the mix of products purchased by our customers;
- any problems we may have with cyber security or data breaches or 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 credit card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the credit card processors or any difficulties we may have maintaining compliance with the rules of the credit card processors;
- any problems we may encounter as a result of the implementation in the U.S. of the EMV (Europay, MasterCard and Visa) standards for credit cards, which generally became effective in the U.S. in 2015, including any problems that may result from any increase in online fraud as a result of the implementation of the EMV standards;
- 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;
- difficulties we may have in responding to technological changes;
- problems with the volume of fraudulent purchase orders we receive;
- problems we may encounter as a result of the listing or sale of pirated, counterfeit or illegal items by third parties;
- difficulties we may have financing our operations or our expansion with either internally generated funds or external sources of financing;
- any environmental or other difficulties we may encounter relating to the real estate we recently purchased or with our new corporate headquarters, or with our financing of a substantial portion of the costs of our new corporate headquarters or the interest rate swaps we entered into in connection with the financing;

any difficulties we may encounter in connection with Supplier Oasis or our efforts to provide multi-channel fulfillment services, our Farmers Market offerings, our insurance product offerings, our consumer finance offerings or other businesses or product or service offerings outside of our main shopping website offerings;

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

any difficulties we may encounter in connection with the rapid shift of ecommerce and online payments to mobile and multi-channel commerce and payments;

the extent to which we owe income or sales taxes or are required to collect sales taxes or report sales or to modify our business model in order to avoid being required to collect sales taxes or report sales or avoid the application of other types of taxes;

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

increasing competition, including competition from well-established competitors including Amazon.com, competition from competitors based in China or elsewhere, competition from companies willing to incur substantial losses in order to build market share, and from others including competitors with business models that may include delivery capabilities that we may be unable to match;

difficulties with the management of our growth and any periods in which we fail to grow in accordance with our plans;

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;

fluctuations in our operating results;

difficulties we may encounter in connection with our efforts to expand internationally;

difficulties we may encounter in connection with our efforts to offer additional types of services to our customers, including insurance products and consumer financing;

difficulties, including expense and any operational or regulatory issues we may encounter in connection with the integration or operation of the assets and operations of a financial technology company and two registered broker dealers affiliated with the financial technology business that we acquired;

technical, operational, regulatory or other difficulties we may encounter in connection with our efforts to develop blockchain and financial technology, or with the operation of tØ.com's system for the trading of securities, including our Blockchain Voting Series A Preferred Stock;

difficulties we may encounter with our Medici blockchain and financial technology initiatives due to lack of market acceptance or as a result of competition from any of the numerous other competitors seeking to develop competing technologies or systems or as a result of patents that may be granted to other companies or persons;

- any impairment we may recognize with respect to assets or businesses that we have acquired or may acquire, including with respect to our investments in companies that are in the startup or development stages;

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

the outcomes of legal proceedings, investigations and claims;

any difficulties we have optimizing our warehouse operations;

risks of inventory management and seasonality;

the cost and availability of traditional and online advertising, the rapid changes in the online advertising business and the longer-term changes in the traditional advertising business, and the results of our various brand building and marketing campaigns;

risks that the amount of deferred tax assets we consider realizable could be reduced if estimates of future taxable income during the carryforward period are reduced; 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 Annual Report on Form 10-K in Item 1 - Business; Item 1A - Risk Factors; Item 3 - Legal Proceedings; Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations, and elsewhere in this report. 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.

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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 incubator of blockchain technology. Through our online retail business we offer a broad range of price-competitive brand name, non-brand name and closeout products, including furniture, home decor, bedding and bath, housewares, jewelry and watches, apparel and designer accessories, health and beauty products, electronics and computers, and sporting goods, among other products. We also sell hundreds of thousands of best seller and current run books, magazines, CDs, DVDs and video games ("BMMG"). We sell these 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.

In late 2014, we began working on initiatives to develop and advance blockchain technology, which we refer to collectively as Medici, and which includes our majority-owned subsidiary tØ.com, Inc. (formerly Medici, Inc.). As part of our Medici initiatives, we have formed a wholly-owned subsidiary Medici Ventures, Inc. and acquired a majority interest in a financial technology company and two related registered broker-dealers. We have also made minority investments in several blockchain technology companies. In 2015, we were the first public company to issue a private security using blockchain technology and in December 2016, as a successful demonstration of our technology, we issued publicly traded blockchain preferred shares of Overstock.com, Inc.

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 Business

In our retail business, we deal primarily in price-competitive, new and replenishable merchandise and use the Internet to aggregate both supply and demand to create an efficient marketplace for selling these products. We provide our customers an opportunity to conveniently shop for a broad range of price-competitive products. We continually add new, and sometimes limited, inventory to our Website in order to create an atmosphere that encourages customers to visit frequently and purchase products before our inventory sells out. We provide suppliers with access to a large customer base and convenient services for order fulfillment, customer service, returns handling, and other services. The merchandise offered on our Website is from a variety of sources including well-known, brand-name manufacturers. We have organized our retail business (sales of product offered through the Shopping Section of our Website) into two principal segments—a "direct" business and a "partner" business. We currently offer approximately 1.9 million non-BMMG products and approximately 742,000 BMMG products. Consumers and businesses are able to access and purchase our products 24 hours a day from the convenience of a computer, Internet-enabled mobile telephone or other Internet-enabled device. Our team of customer service representatives assists customers by telephone, instant online chat and e-mail. We also derive revenue from other businesses advertising products or services on our Website. Our sales are primarily to customers located in the United States. During the years ended December 31, 2016, 2015 and 2014 no single customer accounted for more than 1% of our total net revenue.

Retail direct business

Our direct business includes sales made to individual consumers and businesses from our owned inventory and that are fulfilled primarily from our warehouse in Salt Lake City, Utah. During the year ended December 31, 2016, approximately 6% of our order volume was generated through our direct business. Our warehouses primarily fulfill orders from our direct business, but also fulfill orders on behalf of our partners through our Supplier Oasis offering described below. Our warehouses generally ship between 2,000 and 5,000 packages per day and up to approximately

10,000 packages per day during peak periods.
Retail partner business

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For our partner business, we sell merchandise from manufacturers, distributors and other suppliers ("partners") primarily through our Website. We are considered to be the primary obligor for the majority of these sales transactions and we record revenue from the majority of these sales transactions on a gross basis. Our use of the term "partner" does not mean that we have formed any legal partnerships with any of our partners. We currently have relationships with approximately 4,100 third parties who supply approximately 1.9 million non-BMMG products, as well as most of the BMMG products, on our Website. These third party partners generally perform the same fulfillment operations as our warehouses, such as order picking and shipping; however, we handle returns and customer service related to substantially all orders placed through our Website. Revenue generated from sales on our Shopping site from both the direct and partner businesses is recorded net of returns, coupons and other discounts.

Both direct and partner revenues are seasonal, with revenues historically being the highest in the fourth quarter, which ends December 31, reflecting higher consumer holiday spending. We anticipate this will continue for the foreseeable future. To the extent possible we maintain supplier relationships, and seek new supplier relationships, for both our direct and partner businesses, and also use our working capital, to ensure a continuous allotment of product offerings for our customers. Because a portion of our product offerings are closeout merchandise, some of our suppliers cannot supply products to us on a continuous basis.

Generally, we require verification of receipt of payment, or authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal), before we ship products to consumers or business purchasers. From time to time we grant credit to our business purchasers with normal credit terms (typically 30 days). For sales in our partner business, we generally receive payments from our customers before our payments to our suppliers are due.

Medici business

Our Medici business initiatives leverage the security, transparency and immutability of cryptographically protected, distributed ledgers, such as the Blockchain, and are focused on solving important problems, including financial transaction issues, particularly in the area of securities settlement. Through our wholly-owned subsidiary, Medici Ventures Inc., we hold minority investments in several technology companies which, at December 31, 2016, included Peer Nova, Bitt, IdentityMind and Factom, whose focus include commercial blockchain applications, digital currency solutions, Know Your Customer and Anti Money Laundering compliance, voting and land titling. Medici Ventures also holds a majority interest in tØ.com, Inc., which includes a financial technology company and two related registered broker-dealers.

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. As described above, our Retail business consists of our Direct and Partner reportable segments. We use gross profit as the measure to determine our reportable segments because there is not discrete financial information available below gross profit for our Direct and Partner segments. As a result, our Medici business is not significant as compared to our Direct and Partner segments and is included in Other. Our Other segment consists of Medici.

Other offerings

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

- 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;
- Main Street Revolution, a store within our Website that features products from small businesses who offer their products using our national marketing and distribution channels;
- Farmers Market, a tab within our Website where our customers, in certain locations, can order locally grown fresh produce and other food products;
- Pet Adoptions, a free service and tab within our Website that leverages our technology to display pets available for adoption from shelters across the United States;
- Insurance, a tab within our Website where our customers can shop for insurance from major carriers for both personal and business insurance policies; and
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Supplier Oasis, a single integration point through which our partners can manage their products, inventory and sales channels, while tapping into our distribution network; and
• our international business where we offer products to customers outside the United States using third party logistics providers.

Manufacturer, Supplier and Distribution Relationships

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Generally, we do not enter into contracts with manufacturers or other suppliers that guarantee the availability of merchandise for a set duration. Our manufacturer and supplier relationships are based on historical experience with manufacturers and other suppliers and do not obligate or entitle us to receive merchandise on a long-term or short-term basis. In our direct business, we purchase the products from manufacturers or other suppliers using standard purchase orders. Generally, suppliers do not control the terms under which products are sold through our Website.

Products

Our Website Shopping section is organized into product and service lines or featured categories, including: Furniture, Rugs, Decor, Bed & Bath, Home Improvement, Kitchen, Outdoor, Jewelry, Watches, Women, Men, Kids & Baby, Worldstock, Main Street, Farmers Market, Pet Adoptions, o.info and Insurance. We frequently reorganize our departments and/or categories to better reflect our current product offerings.

For the years ended December 31, 2016, 2015 and 2014, the percentages of sales contributed by similar classes of products were as follows:

Product Lines	2016	2015	2014
Home and garden(1)			
Furniture	34 %	33 %	32 %
Home decor	22 %	19 %	18 %
Other	23 %	25 %	24 %
Total home and garden	79 %	77 %	74 %
Jewelry, watches, clothing and accessories	10 %	11 %	12 %
BMMG, electronics and computers	3 %	3 %	4 %
Other	8 %	9 %	10 %
Total	100%	100%	100%

(1) Home and garden includes furniture, home decor, garden and patio, kitchen and dining, bedding, home improvement, housewares and other related products.

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 co-location facility in Utah. We also have other data centers which we use for backups, redundancy, development, testing, disaster recovery, and our 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," some of 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;
- liquidation e-tailers;
- traditional general merchandise and specialty retailers and liquidators, many of which have a significant online presence; and
- online retailers who are developing significant "brick and mortar" capabilities.

Many of our current and potential 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, or have options for in-store product pick-up options or allow in-store returns and offer other delivery and returns options that we do not have. New technologies and the continued enhancement of existing technologies and developments in related areas, such as same-day product deliveries and the development of proprietary delivery systems, are also increasing competitive pressures on us. Our competitors include Amazon.com, Inc and Wayfair, Inc. We cannot ensure that we will be able to compete successfully against current or future competitors or address increased competitive pressures (see Item 1A—"Risk Factors").

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 29.2%, 29.0% and 31.4% of our annual revenue during the fourth quarter of 2016, 2015, and 2014, respectively.

Financial Information about Business Segments and Geographic Areas

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. 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. 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. Additionally, our efforts to protect our trade secrets may not succeed.

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.

Legal and Regulatory Matters

From time to time, we receive claims and become subject to regulatory investigations or 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. Such litigation is costly and time consuming and can divert our management and key

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personnel from our business operations. The uncertainty of litigation increases these risks. In connection with such litigation, we may be subject to significant damages, associated costs, or equitable remedies relating to the operation of our business and the sale of products on our Website. Any such litigation may materially harm our business, prospects, results of operations, financial condition or cash flows.

These and other types of claims could result in increased costs of doing business in the form of legal expenses, adverse judgments or settlements or 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 (see Item 1A—"Risk Factors").

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

Government Regulation

Our main business is subject to general business regulations and laws, as well as regulations and laws specifically governing the Internet, e-commerce and other services. Existing and future laws and regulations may result in increasing expense and may adversely affect our business. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, supply chain monitoring and transparency, mobile communications, electronic device certification, electronic waste, energy consumption, environmental regulation, electronic contracts and other communications, competition, consumer protection, information reporting requirements, the design and operation of websites, and the characteristics and quality of products and services. New state tax regulations in states where we do not now collect state and local taxes may subject us to the obligation to collect and remit state and local taxes, or subject us to additional state and local sales and income taxes, or to requirements intended to assist states with their tax collection efforts. New legislation or regulations, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business or the application of existing laws and regulations to the Internet and commercial online services could result in significant additional taxes on our business. These taxes or tax collection obligations could have an adverse effect on us. Further, there is a possibility that we may be subject to significant fines or other payments for any past failures to comply with these requirements. In addition, it is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the Internet, e-commerce and digital content. Laws and regulations may diminish the demand for our products and services and increase our cost of doing business. Certain of our services are subject to federal and state consumer protection laws, including laws protecting the privacy of consumer information and regulations prohibiting unfair and deceptive trade practices. In particular, under federal and state financial privacy laws and regulations, we must provide notice to consumers of our policies on sharing non-public information with third parties, advance notice of any changes to our policies and, with limited exceptions, we must give consumers the right to prevent sharing of their non-public personal information with unaffiliated third parties. Further, the growth and demand for online commerce could result in more stringent consumer protection laws that could impose additional compliance burdens on us. These consumer protection laws could result in substantial compliance costs.

In addition, the broker-dealers in which we hold a majority interest are subject to additional extensive regulatory requirements under federal and state laws and regulations and self-regulatory organization ("SRO") rules.

Broker-dealers are subject to regulation, examination and disciplinary action by the SEC, FINRA and state securities regulators, as well as other governmental authorities and SROs with which they are registered or licensed or of which they are members. See Item 1A - "Risk Factors - Medici has acquired registered broker-dealers, which are subject to extensive regulation."

Our efforts to expand our sales outside of the U.S. expose us to additional U.S. and foreign 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, data transfer across borders, 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.

Employees

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At December 31, 2016, we had approximately 1,800 full-time employees. We seasonally augment our workforce with temporary employees 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 February 24, 2017:

Executive Officers	Age	Position
Patrick M. Byrne	54	Chief Executive Officer and Director
Saum Noursalehi	37	President, Retail
Jonathan E. Johnson III	50	President, Medici
Amit Goyal	38	Senior Vice President, Software Engineering
Robert P. Hughes	57	Senior Vice President, Finance and Risk Management
Vidya R. Jwala	44	Senior Vice President, Demand Fulfillment
John Paul "J.P." Knab	37	Senior Vice President, Marketing
Carter P. Lee	47	Senior Vice President, Technology and People Care
Seth A. Moore	34	Senior Vice President, Analytics and OLABs
Brian L. Popelka	50	Senior Vice President, Customer and Partner Care
Vikram R. Raghavan	35	Senior Vice President, Product Development

Dr. Patrick M. Byrne has served as our Chief Executive Officer (principal executive officer) and as a Director since 1999, and as Chairman of the board of directors from 2001 through 2005 and 2006 through 2014. 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. Saum Noursalehi has served as our President, Retail since August 2016. He previously served as Chief Revenue Officer and Senior Vice President. Prior to his appointment as Senior Vice President in 2015, Mr. Noursalehi served as Vice President of OLABs, Vice President Product Development, and held roles in website, mobile and search engine optimization. Mr. Noursalehi joined Overstock in 2005 and holds a bachelor's degree in Computer Science from the University of Utah.

Mr. Jonathan E. Johnson III has served as President, Medici since August 2016 and as a Director since 2013. Mr. Johnson also serves as our Chairman of the Board of Directors. Mr. Johnson previously served as our President, as a Senior Vice President and as our General Counsel since joining Overstock in 2002. 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. Amit Goyal was appointed as our Senior Vice President of Software Engineering in February 2017. He had previously served as Vice President of Product Development. Since joining Overstock in 2006, Mr. Goyal has held roles including Senior Director of Software Development and Software Development Lead. Mr. Goyal holds a bachelor's degree in Engineering from Punjab Technical University.

Mr. Robert P. Hughes (principal financial and accounting officer) has served as our Senior Vice President, Finance and Risk Management since 2013. He had previously served as Vice President and Controller since joining Overstock in 2008. Mr. Hughes holds a bachelor's degree in Business Administration with an emphasis in Accounting and Finance from the University of California Berkeley, Haas School of Business, and is a certified public accountant (CA - inactive status).

Mr. Vidya R. Jwala has served as our Senior Vice President of Demand Fulfillment since joining Overstock in August 2016. Prior to joining Overstock, Mr. Jwala served as Vice President, Merchandising / Operations at Walmart from 2009 to 2016 and previously held similar roles at Tractor Supply Company, Lowe's, and Jo-Ann Stores. Mr. Jwala holds a master's degree in Industrial and Systems Engineering from Virginia Polytechnic Institute and State University.

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. Prior to this, Mr. Knab had served as our Vice President of Marketing and held other roles including Director of Merchandising and Director of Analytics. Mr Knab joined Overstock in 2005 and holds an MBA with a Marketing emphasis and a bachelor's degree in Finance from Brigham Young University.

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

Mr. Seth A. Moore was appointed as our Senior Vice President of Analytics and OLabs in February 2017. He had previously served in roles including Vice President of OLabs, Vice President of Analytics and Vice President of Website Marketing. Mr. Moore joined Overstock in 2006 and holds a bachelor's degree in Political Science from Brigham Young University.

Mr. Brian L. Popelka has served as a Senior Vice President of Customer and Partner Care since 2013. Mr. Popelka previously served as Vice President of Customer Care. Since joining Overstock in 2002, Mr. Popelka has held roles including Director of Books, Media, Movies and Games Department, and Manager of the Business-to-Business Department. Mr. Popelka holds a bachelor's degree in Journalism, Broadcasting, Film and History from the University of Nebraska.

Mr. Vikram R. Raghavan was appointed as our Senior Vice President of Product Development in February 2017. He had previously served in roles including Vice President of Product Development and Vice President of Marketing since returning to Overstock in 2015. Mr. Raghavan originally joined Overstock in 2008 and held roles including Senior Director of Marketing. From 2011 through 2015 Mr. Raghavan served as the co-founder of Rental Roost, an online apartment listing service. Mr. Raghavan holds an MBA with a Finance and Marketing emphasis from Temple University.

Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, are 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. Although we have organized the risk factors below under headings to make them easier to read, 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 securities.

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 Related to Our Infrastructure, Cyber Security, Data Breach and Related Matters

Our business depends on our Website, our mobile app, our network infrastructure and transaction-processing systems.

As an e-commerce company, we are completely dependent on our infrastructure and on the availability and reliability of the Internet and related systems. Any system interruption that results in the unavailability of our Website or our mobile app or reduced performance of our transaction systems could interrupt or substantially reduce our ability to conduct our business. We have experienced periodic systems interruptions due to server failure, power failure and intentional cyberattacks in the past, which we expect will continue to occur from time to time. Any failure or impairment of our infrastructure or of the availability of the Internet and related systems could have a material adverse effect on our business.

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

Substantially all of our computer and communications hardware is located at a single facility. Our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, acts of war, break-ins, earthquake and similar events. Our back-up facility is not adequate to support sales at a high level. Our servers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. The occurrence of any of the foregoing risks could have a material adverse effect on our business.

Natural disasters, pandemics, and geo-political events could adversely affect our business.

Natural disasters, weather conditions, pandemics, and geo-political events, including civil unrest or terrorist attacks, that affect us or our delivery services, suppliers, credit card processors or other service providers could have a material adverse effect on our business.

We are subject to cyber security risks and risks of data loss or other security breaches, and may incur increasing costs in an effort to minimize those risks and to respond to cyber incidents.

Our business is entirely dependent on the secure operation of our Website and systems as well as the operation of the Internet generally. Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, and to resulting claims, fines, and litigation. We have been subjected to a variety of cyberattacks. We may not have the resources or technical sophistication to defend against rapidly evolving types of cyber-attacks. Cyber-attacks may target us, our customers, our suppliers, banks, credit card processors, delivery services, e-commerce in general or the communication infrastructure on which we depend. Actual or anticipated attacks and risks may cause us to incur substantial and increasing costs, including costs to deploy additional personnel and protection technologies, train employees, and engage third party experts and consultants. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, which could have a material adverse effect on our business. The occurrence of any of the foregoing could have a material adverse effect on our business.

Our dependence on credit or debit card payments increases our risks.

Most of our customers use credit cards to pay for their purchases. Under payment card rules and our contracts with our card processors, if we experience a breach of payment card information or fail to follow payment card industry security standards, even if there is no compromise of customer information, we could incur significant fines, higher transaction costs or lose our ability to give customers the option of using payment cards. If we were unable to accept payment cards, it would have a material adverse effect on our business.

Our expansion into financial technology businesses and our acquisitions of registered broker dealers and related businesses increases our infrastructure, cyber security, data breach and related risks.

As we have expanded into financial technology businesses and have acquired registered broker dealers and related businesses, our infrastructure, cyber security, data breach and related risks have increased. See "Risks Relating to Certain Specific Businesses, Investments in Businesses and Recent or Planned Changes to Our Business."

Risks Related to Competition

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

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

- online retailers with or without discount departments, including AliExpress (part of the Alibaba Group), Amazon.com, eBay, and Rakuten.com (formerly Buy.com);
- online specialty retailers such as Blue Nile, Bluefly, Houzz, Jet.com, Wayfair, Zappos.com, and Zulily;
- private sale sites such as Groupon, Living Social and Rue La La;
- furniture specialists including Ashley Furniture, Bob's Discount Furniture, Havertys, Raymour & Flanigan and Rooms To Go;

traditional general merchandise and specialty retailers and liquidators including Barnes and Noble, Bed, Bath & Beyond, Best Buy, Costco Wholesale Corporation, Crate and Barrel, Ethan Allen, Gilt, Home Depot, HomeGoods, Hudson's Bay Company, IKEA, J.C. Penny Company, Kirkland's, Kohl's, Lands' End, Lowe's, Macy's, Nordstrom, Pier 1 Imports, Pottery Barn, Restoration Hardware, Ross Stores, Saks Fifth Avenue, Sears Holding Corporation, T.J. Maxx, Target Corporation, Wal-Mart and Williams-Sonoma, all of which also have an online presence; and liquidation e-tailers such as SmartBargains.

The intense and increasing competition we face from a wide variety of competitors, many of which have substantially greater resources than we do, and some of which are willing to incur losses in order to increase revenues, may result in our pricing of products or services below prices at which we can make a profit, may cause us to lose sales entirely, and may have a material adverse effect on our business.

Our competitors are rapidly developing a wide variety of services and other offerings, and we may be unable to provide more competitive offerings.

The online retail market has become far more competitive as traditional and online retailers continue to develop and improve services that compete with our services. Many traditional manufacturers and retailers have added or improved their e-commerce offerings, and we expect that more will do so and that they will all continue to improve their offerings. Traditional and predominantly online retailers may create proprietary, store-based distribution and returns channels that we may be unable to match, and may also be able to create their own traditional distribution and delivery services. Amazon continues to open additional fulfillment centers and to increase its same-day delivery capabilities in an increasing number of metro areas as well as one and two-hour delivery capability on certain items in an increasing number of metro areas, and staffed pickup locations in certain high-density locations. Competitive pressures, including same-day and one and two-hour delivery capabilities, from Amazon and from any of our other competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do, affect us and could have a material adverse effect on our business.

In addition to the types of retailers described above, we are competing with specialty firms in several areas, many of which focus exclusively or primarily on the business in which we are competing.

In addition to the types of retailers described above, in many areas we face competition from numerous other businesses, many of which may specialize in the type of business in which we are competing. Our furniture offerings compete with more than 100 online retail furniture websites, in addition to many more traditional furniture retail specialists. We face the risk that potential furniture and other customers will choose traditional retailers where they can physically examine products prior to purchase. Our Supplier Oasis service faces substantial competition from third party logistics providers as well as from Amazon and eBay and other e-commerce service providers having substantially greater experience and resources than we have. We are currently offering insurance products, and as such face competition from small and large established businesses with substantially more experience. An inability to compete in these areas could have a material adverse effect on our business.

Our tØ.com subsidiary is competing with a rapidly-growing group of companies in the financial industry as well as new entrants with significant resources from venture capital firms and other funding sources.

Our majority-owned subsidiary tØ.com, Inc. (formerly Medici, Inc.) is competing against a variety of companies with substantially greater financial resources and experience in financial technology. The number of competitors in this area and the resources being devoted to the area by competitors are growing rapidly. We may be unable to compete successfully against these competitors or others that may not yet have publicly announced their business plans in this area, which could have a material adverse effect on our business. See "Risks relating to Certain Specific Businesses, Investments in Businesses and Recent or Planned Changes to our Business," below.

Risks Related to Our Dependence on Third Parties

As an e-commerce company, we depend on a large number of other companies to perform functions critical to our ability to deliver products to our customers and to perform many of the related functions.

We depend on a large number of other companies, including a large number of independent partners whose products we offer for sale on our Website, to perform functions critical to our ability to deliver products to our customers and to perform many of the related functions. We depend on these partners to perform a number of traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers and delivering purchased merchandise on a timely

basis, and also on the delivery services that we and they utilize. Difficulties with our significant partners or with any of the delivery services, regardless of the reason, could have a material adverse effect on our business.

We depend upon our payment card processors and payment card associations.

Our customers primarily use credit cards to buy from us. We are completely dependent upon our payment card processors to process the sales transactions and remit the proceeds to us. The payment card processors have the right to withhold funds otherwise payable to us to establish or increase reserves based on their assessment of the inherent risks of payment card processing and their assessment of the risks of processing our customers' payment cards at any time, and have done so from time to time in the past. We are also subject to payment card associations' operating rules, certification requirements and rules governing electronic funds transfers. If we fail to comply with these rules or requirements, we may be subject to fines and higher transaction fees and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments. In addition, events 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, could have a material adverse effect on our business.

Implementation of the EMV credit card standards in the U.S. may increase fraud efforts against U.S. online retailers, including us.

Credit card issuers in the United States began replacing traditional credit cards with credit cards meeting the EMV (Europay, MasterCard and Visa) standards during 2015. Cards meeting the EMV standards contain a chip which makes the cards more difficult to counterfeit than the traditional magnetic stripe-only cards widely used in the U.S. However, to the extent that the EMV standards make physical card-duplication fraud more difficult, the new standards may drive more fraud efforts against online retailers, including us. Consequently, as an online retailer, we may be subject to increasing levels of fraudulent orders and other types of criminal activities. Increased levels of fraud and other criminal activities could have a material adverse effect on our business.

Risks associated with the suppliers from whom we or our fulfillment partners source products and the safety of those products could adversely affect our financial performance.

We depend on our ability to access products from qualified suppliers in a timely and efficient manner. We rely primarily on our suppliers' representations of product content and quality. Concerns regarding product content or quality, or the safety of products that we offer, could adversely affect our financial performance. Further, if any product we sell were to cause physical injury or injury to property, the injured party or parties might bring claims against us. Any indemnity agreement we may have with the supplier may be inadequate or inapplicable, and any insurance coverage we may carry may not be adequate to cover claims that could be asserted. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business. The occurrence of any of the foregoing could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners depend upon products manufactured internationally, and tariffs or other measures that increase the effective price of products imported into the United States could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners source a portion of the products we offer on our website from China and other countries. If the United States imposes tariffs or other measures that increase the price of products we or they import and that we offer on our website, the increased prices could have a material adverse effect on our business.

We depend upon third parties for all or substantially all of the services we offer.

In addition to the many third parties we rely on in connection with our sale and the delivery of products to our customers, we depend upon third parties for all or substantially all of the services we offer, including our insurance

offerings, our consumer financing offerings, our car listings and our car-related services. Services offerings are inherently different from product offerings, and we may encounter difficulties with our services offerings that may be different from the types of issues we face with our product offerings. Any such difficulties could have a material adverse effect on our business.

Risks Related to Marketing

Our business depends on effective marketing.

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We depend on effective marketing and high customer traffic. From time to time, competitors may bid up the cost of certain marketing channels, such as paid keywords. At such times, we may reduce the amounts we spend in those marketing channels, which may lead to decreased visitors to our site, or we may pay the increased rates, which increases our expenses. If we are unable to develop, implement and maintain effective and efficient advertising and marketing programs, it could have a material adverse effect on our business.

We rely upon paid and natural search engines including Google, Bing, and Yahoo! to rank our product offerings. Our financial results may suffer if search engines change their ranking algorithms and our product offerings are ranked lower, and we may at times be subject to ranking penalties if the operators of search engines believe we are not in compliance with their guidelines.

We rely on paid and natural search engines to attract consumer interest in our product offerings. Potential and existing customers use search engines provided by search engine companies, including, but not limited to, Google, Bing, and Yahoo!, which use algorithms and other devices to provide users a natural ranked listing of relevant Internet sites matching a user's search criteria and specifications. Search engine companies change their natural search engine algorithms periodically, and our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time. In addition, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms. Further, some shoppers may begin their searches at a competitor's website, and may not utilize traditional search engines at all. Our inability to place products on or access these sites may have a material adverse effect on our business.

Our business relies heavily on email, and reduced utilization of email in general and any restrictions on the sending of commercial email could have a material adverse effect our business.

We depend on email to promote our site and offerings. We provide daily emails to potential customers about our offerings, and email promotions are an important part of our marketing and help generate a substantial portion of our net revenue. If a significant portion of our target customers no longer utilize email, or if we are unable to effectively deliver email to our potential customers, our business, financial condition and operating results would be harmed. Anything, including legal or regulatory restrictions, that blocks, imposes restrictions on or imposes charges for the delivery of email could also harm our business. We also rely on social networking messaging services to send communications and to encourage customers to send communications, and anything that limits our ability or our customers' ability to utilize social networking services could have a material adverse effect on our business.

We are experimenting with various ways to reduce the number of coupons we offer to our customers, which may have adversely affected our revenue growth and may continue to do so.

Although our business has historically relied heavily on coupons to generate sales, we are experimenting with modifications to our coupon marketing. We believe that changes we have made to our coupon marketing in the past adversely affected our revenue growth, and that these and other changes we may make may continue to adversely affect our revenue growth. We have not yet achieved the results we are seeking, and there can be no assurance that we will be able to do so. If we are unable to generate sales using other marketing approaches at rates equal to or better than the rates we were generating through our coupon marketing, our revenue growth could be adversely affected or reversed, and our business, financial condition and operating results could be materially adversely affected.

Fraud Related Risks

Credit card fraud and our response to it could adversely affect our business.

We routinely receive orders placed with fraudulent credit card data. If we fail to adequately control fraudulent credit card transactions it could reduce our net revenues and our gross profit or cause credit card or payment system

companies to disallow their cards' use for customer payments on our website. We may suffer losses as a result of orders placed with fraudulent credit card data even if the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions because we do not obtain a cardholder's signature. If we are unable to detect or control credit card fraud, claims against us for these transactions could harm our business, prospects, financial condition and results of operation. Further, to the extent that our efforts to prevent fraudulent orders result in our inadvertent refusal to fill legitimate orders, we would lose the benefit of legitimate potential sales and risk the alienation of legitimate customers. The occurrence of any of the foregoing could have a material adverse effect on our business.

Tax and Regulatory Risks

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

We do not currently collect sales or other similar taxes on sales of goods into states where we have no duty to do so under federal court decisions construing applicable constitutional law. Certain jurisdictions are seeking payment of sales tax for sales we have made to customers in such jurisdictions or for payment of similar taxes or to impose sales tax collection obligations on us. To date we have been able to settle these claims without incurring material expenses. However, if any jurisdiction where we do not or did not collect sales or other taxes successfully asserts that we should do so or should have done so, or should otherwise have collected or paid other types of taxes, it could have a material adverse effect on our business.

In 2013 the United States Senate passed the Marketplace Fairness Act of 2013 (“MFA”), but it failed to pass in the House of Representatives. Efforts continue to enact similar legislation, which would permit qualifying states to force remote sellers like us to collect taxes in states where we have no physical presence. The enactment of legislation similar to the MFA could have a material adverse effect on our business.

Several states have enacted laws requiring remote vendors to notify resident purchasers in those states of their obligation to pay a use tax on their purchases and, in some instances, to report untaxed purchases to the state tax authorities. Other states have enacted legislation to require retailers without a physical presence in the state to collect and remit state sales taxes if they engage in any activity in connection with the selling, leasing or delivery of tangible personal property or taxable services within the state. Additional states have recently introduced legislation, and we anticipate that additional states may enact similar laws, or other laws to force or encourage through economic pressures remote retailers to collect and remit sales tax. Such laws could harm our business by imposing notice burdens upon us, by requiring transaction notices that would adversely affect sales, or by discouraging customer purchases by requiring detailed purchase reporting. The occurrence of any of the foregoing could have a material adverse effect on our business.

Existing or future government regulation could harm our business.

We are subject to regulation at the federal, state, local and international levels, including regulation relating to privacy, security, retention, transfer and use of personal user information and telemarketing laws. Increasing regulation may increase the cost of our business and may further restrict our marketing efforts. Existing laws, including those governing advertising, product labeling, product content requirements and product safety, may cause us to incur expenses. We may be subject to claims related to personal injury, death, environmental or property damage. We are periodically required to participate in product recalls. We may incur expense in connection with any of the foregoing or other matters or actions which may not be covered by any liability insurance we may carry. These current and future laws and regulations could have a material adverse effect on our business.

See “Risks relating to Certain Specific Businesses, Investments in Businesses and Recent or Planned Changes to our Business,” and “Risks Related to our Preferred Stock,” below.

Public statements we or our Chief Executive Officer, Patrick M. Byrne, have made or may make in the future may antagonize regulatory officials or others.

We and our Chief Executive Officer, Dr. Patrick M. Byrne, have from time to time made public statements regarding our or his beliefs about matters of public interest, including statements regarding naked short selling and regulatory capture. Some of those public statements have been critical of the Securities and Exchange Commission and other regulatory agencies. These public statements may have consequences for us, whether as a result of increased regulatory scrutiny or otherwise. Additionally, other officers may make public statements that could have adverse

consequences and these statements could have a material adverse effect on our business.

Macroeconomic Risks

Economic factors, including our increasing exposure to the U.S. housing industry, may adversely affect our financial performance.

Economic conditions, particularly any weakness in the United States housing market, may adversely affect our financial performance. Over the last few years the percentage of our sales from home and garden products has increased

substantially. We believe that our sales of home and garden products are affected by the strength of the U.S. housing industry, and that downturns in the U.S. housing industry would have a material adverse effect on our business.

Decreases in discretionary consumer spending may have an adverse effect on us.

A substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macro-economic conditions that impact consumer spending, including discretionary spending. Difficult macro-economic conditions, particularly high levels of unemployment or underemployment, also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, tax rates, consumer debt levels, and fuel and energy costs could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits and could have a material adverse effect on our business.

Risks of Changes and Unpredictability in the Industry and in Our Business

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

The Internet and the online commerce industry are changing rapidly. To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce businesses. If we fail to do so, or if we fail to remain competitive when our competitors develop new technologies or new industry standards and practices emerge, our Website, our mobile app and our proprietary technology and systems could become obsolete. Our failure to respond to technological change and to remain competitive would have a material adverse effect on our business.

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

Our business model has evolved in the past and continues to do so. In prior years we have added additional types of services and product offerings and in some cases we have modified or discontinued those offerings. We intend to continue to try to offer additional types of products or services, and we do not know whether any of them will be successful. From time to time we have also modified aspects of our business model relating to our product mix and the mix of direct/partner sourcing of the products we offer. We do not know whether these or any other modifications will be successful. The additions and modifications to our business have increased the complexity of our business and placed significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Future additions to or modifications of our business are likely to have similar effects. Further, any new business or website we launch that is not favorably received by consumers could damage our reputation or our brand. The occurrence of any of the foregoing could have a material adverse effect on our business.

Any acquisitions we make will increase costs and regulatory and integration risks.

From time to time we may acquire other businesses. Integrating an acquired business involves a number of risks and financial, managerial and operational challenges. We have incurred significant expenses in connection with acquisitions we have made in the past, and may incur additional expenses in connection with those acquisitions or in connection with other acquisitions we may make in the future. Our overall profitability would be adversely affected if our investments and expenses associated with any investments we have made or may make in the future are not justified by the revenues and profits, if any, that are derived from such investments. 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.

International Risks

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

We sell products in international markets, and are attempting to expand into some of these markets. International sales and transactions, and our efforts to expand them, are subject to inherent risks and challenges that could adversely affect our profitability, including:

- the need to develop new supplier and manufacturer relationships;
- the need to comply with additional U.S. and foreign laws and regulations to the extent applicable, including but not limited to, restrictions on advertising practices, regulations governing online services, regulations governing or prohibiting the use of cryptocurrency such as bitcoin, restrictions on importation of specified or proscribed items, importation quotas, consumer protection laws, laws regarding intellectual property rights, laws dealing with consumer and data protection, privacy, encryption, and restrictions on pricing or discounts;
- changes in international laws, regulatory requirements, taxes and tariffs;