

OVERSTOCK.COM, INC  
Form 11-K  
July 10, 2009  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 11-K**

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**ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended: December 31, 2008**

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

**For the transition period from                      to**

**Commission file Number 0001130713**

**OVERSTOCK.COM 401(k) PLAN**

**OVERSTOCK.COM, INC.**

6350 South 3000 East

Salt Lake City, Utah 84121



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OVERSTOCK.COM

401(k) PLAN

Financial Statements

And

Supplemental Schedule

December 31, 2008 and 2007

(With Reports of Independent Registered Public Accounting Firms)

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OVERSTOCK.COM

401(k) PLAN

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\* Other Schedules required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974 have been omitted because they are not applicable.

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**Report of Independent Registered Public Accounting Firm**

To Participants and Administrator of the Overstock.com, Inc

We have audited the accompanying statement of net assets available for benefits of the Overstock.com 401(k) plan (the Plan ) as of December 31, 2008, and the related statement of changes in net assets available for benefits for the year ended December 31, 2008. These financial statements are the responsibility of the Plan's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Plan is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of the Plan as of December 31, 2008, and the changes in net assets available for benefits for the year ended December 31, 2008 in conformity with U.S. GAAP.

Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplemental Schedule of Assets (Held at End of Year) as of December 31, 2008 is presented for the purpose of additional analysis and is not a required part of the basic financial statements but is supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. The supplemental schedule is the responsibility of the Plan's management. The supplemental schedule has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

/s/Grant Thornton LLP  
Salt Lake City, Utah  
July 10, 2009

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Audit Committee of Overstock.com, Inc.

**OVERSTOCK.COM 401(K) PLAN**

We have audited the accompanying statements of net assets available for benefits of Overstock.com 401(k) Plan as of December 31, 2007, and the related statement of changes in net assets available for benefits for the year ended December 31, 2007. These financial statements are the responsibility of the Plan's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Plan is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of Overstock.com 401(k) Plan as of December 31, 2007, and the changes in net assets available for benefits for the year ended December 31, 2007, in conformity with U.S. generally accepted accounting principles.

Our audit were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplemental schedule of assets (held at end of year) as of December 31, 2007, is presented for purposes of additional analysis and is not a required part of the basic financial statements, but is supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974. This supplemental schedule is the responsibility of the Plan's management, has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

/s/ Mayer Hoffman McCann P.C.  
Salt Lake City, Utah  
June 27, 2008



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## OVERSTOCK.COM

## 401(k) PLAN

## Statements of Net Assets Available for Benefits

as of December 31, 2008 and 2007

	2008	2007
<b>Assets</b>		
Investments at fair value:		
Mutual funds	\$ 2,185,857	\$ 2,704,264
Money market funds	1,250,000	892,738
Common stock of plan sponsor	1,673,837	1,180,038
Total investments	5,109,694	4,777,040
Contributions receivable:		
Employer discretionary matching contribution	20,728	
Participant contributions	45,419	
Profit sharing		455,616
Total receivables	66,147	455,616
Total assets	5,175,841	5,232,656
<b>Liabilities</b>		
Corrective distributions payable - Excess employee deferrals	35,015	62,843
Net Assets Available for Benefits	\$ 5,140,826	\$ 5,169,813

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



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## OVERSTOCK.COM

## 401(k) PLAN

## Statement of Changes in Net Assets Available for Benefits

for the Year Ended December 31, 2008

	<b>2008</b>
Additions (reductions) to net assets attributed to:	
Investment income (loss):	
Net depreciation in fair value of investments	\$ (1,680,905)
Interest and dividends	122,490
Total net investment loss	(1,558,415)
Contributions:	
Participant	1,402,796
Employer discretionary matching contributions	564,303
Rollovers	6,980
Total contributions	1,974,079
Total additions	415,664
Deductions from net assets attributed to:	
Benefits paid to participants	353,765
Administrative expenses	55,871
Corrective distributions	35,015
Total deductions	444,651
Net decrease in net assets available for benefits	28,987
Net assets available for benefits:	
Beginning of year	5,169,813
End of year	\$ 5,140,826

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

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401(k) PLAN

Notes to Financial Statements

**Note 1 Plan Description**

The following is a general description of the Overstock.com 401(k) Plan (the Plan ). Participants should refer to the Plan agreement for a more complete description of the Plan's provisions.

***General***

The Plan is a defined contribution plan which was originally adopted by Overstock.com, Inc. (the Company or Plan Sponsor ) in 1998 and has been amended from time to time since that date. Participation in the Plan is open to all eligible employees of the Company (individually, Participant and collectively, Participants ). The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended ( ERISA ).

***Trustee***

The Plan has engaged Fidelity Management Trust Company (the Trustee ) as Trustee to the Plan and all Plan assets are held in trust with the Trustee. The Plan has also engaged Fidelity Investments Institutional Operations Corporation, Inc. (the Record Keeper ) which provides recordkeeping and administrative services to the Plan.

***Eligibility***

Employees are eligible to participate in the Plan upon meeting the following criteria: (1) six months of service; and (2) 21 years of age. Employees of acquired companies, who meet the eligibility requirements of the Plan, may participate immediately upon acquisition. There were 931 and 893 participants in the Plan as of December 31, 2008 and 2007, respectively.

***Contributions***

Participants may contribute up to 60 percent of their annual compensation on a before-tax basis, provided the amounts do not exceed the annual limit imposed by the Internal Revenue Service ( IRS ). Such contributions are withheld by the Company from each Participant s compensation and deposited with the Trustee to be applied to the appropriate fund in accordance with the Participant s directives. The Company may contribute a discretionary matching percentage of these contributions subject to certain limitations. For the years ended December 31, 2008 and 2007, the Company matched 50 percent of participant contributions up to six percent of their annual compensation. The matching contributions were in shares of the Company s common stock.

The Company may also make, at its sole discretion, an annual profit sharing contribution. The Company made a profit sharing contribution of \$455,616 in shares of the Company s common stock, for the year ended December 31, 2007. No discretionary contribution was made for the year ended December 31, 2008. The Company deposits discretionary profit sharing contributions with the Trustee in the year following the year such contributions are authorized. Participant contributions and company matching contributions made on behalf of highly compensated employees may be limited pursuant to non-discrimination rules set forth in the Plan document and the Internal Revenue Code of 1986, as amended (the Code ).

### ***Participant Accounts***

Separate accounts are maintained for each Participant and each Participant s account is credited with the Participant s contribution, and an allocation of the Company s matching contribution and discretionary profit sharing contribution. The Company s matching contribution and discretionary matching contribution have been invested in shares of common stock of the Plan Sponsor. Plan earnings are allocated to each Participant s account in proportion to the average daily balance in each fund option. As of December 31, 2008, each Participant may elect to have his or her contributions invested in any one or any combination of twenty-seven investment funds and in the common stock of the Plan Sponsor. These funds include:

***Fidelity Blue Chip Growth*** The fund primarily invests in common stocks of well-known and established companies. Normally the fund invests at least 80% of its assets in blue chip companies (those with market capitalizations of at least \$200 million if included in the S&P 500 Index or the Dow Jones Industrial Average, or \$1 billion if not included in either index). The fund may also invest in common stocks of companies that Fidelity Management & Research Company ( FMR ) believes have above-average growth potential. The fund may invest in securities of domestic and foreign issuers.

***Fidelity Capital Appreciation*** The fund invests in common stocks of domestic and foreign issuers. The fund may invest in growth stocks or value stocks or both.

***Fidelity Contrafund*** The fund seeks to provide capital appreciation by investing in common stocks. The fund may invest in

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securities of domestic and foreign issuers whose value FMR believes is not fully recognized by the public. The fund may invest in growth or value stocks or both.

**Fidelity Dividend Growth** The fund invests at least 80% of assets in equity securities. Normally the fund invests in common stocks of companies that FMR believes have the potential to pay dividends in the future. The fund invests in domestic and foreign issuers.

**Fidelity Diversified International** The fund seeks capital growth by investing primarily in non-U.S. securities. Normally the fund invests in common stocks. The fund allocates investments across countries and regions considering size of the market in each country and region relative to size of the international market as a whole.

**Fidelity Equity Income** The fund invests at least 80% of assets in equity securities. Normally the fund invests in income-producing equity securities which tend to lead to investments in large cap value stocks. The fund potentially invests in other types of equity securities and debt securities, including lower-quality debt securities. The fund invests in domestic and foreign issuers.

**Fidelity Freedom Income** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to a stable asset allocation strategy designed for investors already in retirement.

**Fidelity Freedom 2000** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Having met its target date, Freedom 2000 continues becoming more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. The fund is targeted to investors who retired around the year 2000.

**Fidelity Freedom 2005** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Having met its target date, Freedom 2005 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. The fund is targeted to investors who retired around the year 2005.

**Fidelity Freedom 2010** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2010 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. The fund is targeted to investors expected to retire around the year 2010.

**Fidelity Freedom 2015** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity funds) and allocates its assets among these funds according to an asset allocation strategy. Upon meeting its target date, Freedom 2015 will continue to become more conservative for 10 to 15 years, until the asset mix is approximately the same as the Fidelity Freedom Income Fund. Ultimately, the funds will merge. The fund is targeted to investors expected to retire around the year 2015.

***Fidelity Freedom 2020*** The fund invests in a combination of Fidelity equity, fixed-income, and money market funds (underlying Fidelity fu